

**IN THE INCOME TAX APPELLATE TRIBUNAL ‘A’ BENCH, MUMBAI  
BEFORE SHRI G.S. PANNU, AM AND SHRI RAVISH SOOD, JM**

आयकर अपील सं./ I.T.A. No.4015/Mum/2014

(निर्धारण वर्ष / Assessment Year: 2010-11)

Income-Tax Officer 2(2), Room No. 549, 5 <sup>th</sup> Floor, Aaykar Bhawan, M.K Road, Mumbai – 400 020	<b>बनाम/ Vs.</b>	M/s Kalimati Investment Co. Ltd. Bombay House Fort; Mumbai – 400 001.
स्थायीलेखासं / जीआइआरसं / <b>PAN/GIR No.</b> AAACK4330N		
<b>(अपीलार्थी/Appellant)</b>	:	<b>(प्रत्यर्थी / Respondent)</b>

आयकर अपील सं./ I.T.A. No.4982/Mum/2015

(निर्धारण वर्ष / Assessment Year: 2011-12)

DCIT – 2(3)(1), Room No. 552, 5 <sup>th</sup> Floor, Aaykar Bhawan, M.K Road, Mumbai – 400 020	<b>बनाम/ Vs.</b>	M/s Kalimati Investment Co. Ltd. Bombay House Fort; Mumbai – 400 001.
स्थायीलेखासं / जीआइआरसं / <b>PAN/GIR No.</b> AAACK4330N		
<b>(अपीलार्थी/Appellant)</b>	:	<b>(प्रत्यर्थी / Respondent)</b>

आयकर अपील सं./ I.T.A. No.4361/Mum/2014

(निर्धारण वर्ष / Assessment Year: 2010-11)

Tata Steel Ltd., (Successor in interest to the erstwhile :Kalimati Investment Company Limited); Bombay House, 24, Homi Mody Street; Fort, Mumbai – 400 001.	<b>बनाम/ Vs.</b>	Income-Tax Officer 2(2)(2), Room No. 549, 5 <sup>th</sup> Floor, Aaykar Bhawan, M.K Road, Mumbai – 400 020.
स्थायीलेखासं / जीआइआरसं / <b>PAN/GIR No.</b> AAAC2803M		
<b>(अपीलार्थी/Appellant)</b>	:	<b>(प्रत्यर्थी / Respondent)</b>

अपीलार्थी की ओर से/ <b>Assessee by</b>	:	Shri. Raj A. Kapadia
प्रत्यर्थी की ओर से/ <b>Revenue by</b>	:	Shri. V. Jenardhanan, D.R.

सुनवाई की तारीख/ <b>Date of Hearing</b>	:	15.09.2017
घोषणा की तारीख / <b>Date of Pronouncement</b>	:	11 .10.2017

आदेश / O R D E R

**PER RAVISH SOOD, JUDICIAL MEMBER :**

The present appeals filed in the case of the abovementioned assesses are directed against the respective orders passed by the Commissioner of Income-tax (Appeals)-5, Mumbai [for short 'CIT(A)] for A.Y 2010-11 & 2011-12, dated. 25.03.2014 and 21.07.2015, respectively, which in itself arises from the assessment orders passed by the Assessing Officers under Sec. 143(3) of the Income-tax Act, 1961 (for short 'Act'), dated 10.12.2012 and 05.03.2014, respectively, in the case of **Kalimati Investment Co. Ltd.**, which had been assailed before us as I.T.A. No(s).4015/Mum/2014 and ITA No. 4982/Mum/2015, respectively AND the order passed by the Commissioner of Income-tax (Appeals)-5, Mumbai for A.Y 2010-11, dated. 25.03.2014, which in itself arises from the assessment order passed by the Assessing Officer under Sec. 143(3) of the Income-tax Act, 1961 (for short 'Act'), dated 10.12.2012 in the case of **Tata Steel Limited** (successor in interest to the erstwhile Kalimati Investment

Company Limited) which had been assailed before us as I.T.A. No.4361/Mum/2014. That as certain common issues are involved in the aforesaid appeals, therefore, they are taken up and being disposed of by way of a consolidate order. We first take up the appeal for A.Y. 2010-11 in I.T.A.No.4015/Mum/2014. The revenue assailing the order passed by the Commissioner of Income tax (Appeals)-5, Mumbai, had raised before us the following grounds of appeal:-

*“ On the facts and in the circumstances of the case and in law, the learned CIT(A) has erred in allowing relief to the assessee to the extent impugned in the grounds enumerated below:-*

*1. i). On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred following the earlier years order directed the AO to compute the income from House Property on the basis of municipal value without appreciating that the department has not accepted the decision in the AY 2009-10 and an appeal to the Hon’ble ITAT has been filed.*

*ii). On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in directing the A.O to compute the Income from House Property on the basis of municipal value even though the prevailing market value in that area was much higher.*

*2. i). On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in restricting the disallowance u/s 14A r.w.s 8D ignoring the fact that the Rule 8D is applicable from F.Y. 2007-08.*

*ii). On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in restricting the disallowance made by the A.O adopting method of calculation provided in Rule 8D thereby overlooking the crucial fact that this method of calculation has been prescribed by the statute and held as a reasonable method by the Hon’ble Bombay High Court in Godrej & Boyce Mfg. Co. Ltd.*

*iii). On the facts and in the circumstances of the case and in law, the Ld. CIT(a) erred in directing the AO to restrict the disallowance u/s 14A to the extent of Rs. 37,11,208/- for the purpose of computation u/s 155JB of the IT Act without appreciating that as the Explanation 1 to Section 115JB of the IT Act an amount disallowed u/s 14A is to be considered as expenditure incurred for earning tax free dividend income*

and the same has to be added back/increased in the book profit u/s 115JB of the IT Act.

3. For these and other grounds that may be urged at the time of hearing, the decision of the CIT(A) may be set aside and that of the A.O restored.”

2. Briefly stated, the facts of the case are that the assessee which is an Investment & Finance company had e-filed its return of income on 27.09.2010, declaring an income of Rs. 6,86,028/-. The return of income filed by the assessee was processed as such under Sec. 143(1) of the ‘Act’. The case of the assessee was thereafter taken up for scrutiny assessment under Sec. 143(2). The A.O vide his order passed under Sec. 143(3), dated. 10.12.2012, had *inter alia* made the following disallowances/additions in the hands of the assessee:

S.No.	Particulars	Amount
1.	Disallowance under Sec. 14A	Rs. 1,38,37,713/-
2.	Addition on account of suppression of income under the head ‘Income from house property’.	Rs. 2,80,000/-

The A.O thereafter proceeded with and assessed the income of the assessee at Rs. 123,13,79,142/- under the normal provisions. The A.O further while framing the assessment had increased the ‘book profit’ under Sec. 115JB by the amount of disallowance of Rs. 1,38,37,713/- and worked out the adjusted ‘book profit’ at an amount of Rs. 268,14,28,982/-.

3. Aggrieved, the assessee assailed the assessment order in appeal before the CIT(A). The CIT(A) after deliberating on the contentions of the assessee in the backdrop of the facts of the case, therein partly allowed the appeal.

4. The revenue being aggrieved with the order of the CIT(A), to the extent the latter had set aside the disallowances and allowed relief to the assessee, had therein carried the matter in appeal before us.

5. The ld. Departmental representative (for short 'D.R') at the very outset submitted that the CIT(A) had erred in following the earlier years orders and directing the A.O to compute the income from house property on the basis of 'Municipal Valuation', failing to appreciate that the revenue being aggrieved with the orders passed by his predecessor in the case of the assessee for the preceding years, had assailed the same by way of appeals before the Tribunal. Alternatively, it was averred by the ld. D.R that as the prevailing market value in the area was much higher than the municipal value, therefore, for the said reason also the municipal value could not be adopted. Per contra, the ld. Authorised representative (for short 'A.R') for the assessee submitted that the issue involved in the present appeal was squarely covered by the judgment of the **Hon'ble High Court of Bombay** in the assessee's own case for A.Y. 2004-05, viz. **Commissioner of Income-tax-2 Vs. M/s Kalimati Investment Co. Ltd.** in **ITA No. 1308 of 2012; dated. 09.10.2014** and in A.Ys 2006-07 to 2007-08, viz. **Commissioner of Income-tax-2 Vs. M/s Kalimati Investment Co. Ltd.** in **ITA No. 1238 of 2012** and **ITA No. 1239 of 2012; dated. 09.10.2014**. The ld. A.R further submitted that the issue involved in the present appeal was also covered by the order of the Tribunal in the assessee's own case in ITA No. 7921/Mum/2011; dated. 08.11.2013 for A.Y. 2008-09, marked as Kalimati Investment Company Limited Vs. Dy. CIT (OSD), Circle 2(1), Mumbai, as well as the order passed by the Tribunal in the case of the assessee for the immediately preceding year, viz. A.Y. 2009-10, in ITA No. 6854/Mum/2012, dated. 31.07.2015. Thus, in the backdrop of the aforesaid facts it was submitted by the ld. A.R that as the issue involved in the present

appeal was squarely covered by the order of the Hon'ble High Court and the earlier orders of this Tribunal, therefore, no infirmity did emerge from the order of the CIT(A) who had adjudicated the issue following the aforesaid orders.

6. We have heard the authorised representatives for both the parties, perused the orders of the lower authorities and the material available on record. We find that the **Hon'ble High Court** while disposing of the appeal of the revenue in the assesses own case for A.Y. 2004-05 in ITA No. 1308 of 2012, had observed as under:

*“We have held that the Annual Letting Value has to be determined and in terms of Section 23(1)(a) with reference to the municipal rateable value. If that is found to be vitiated and for the reasons set out in our judgment then, alone a departure can be made. The Tribunal has held that there were no circumstances or factors brought on record which would enable the Assessing Officer to determine the Annual Letting Value by disregarding the municipal valuation. He could not have assumed any other value at which property would be let from year to year. In such circumstances and his assumption being contrary to law, the Tribunal was justified in allowing the assesses appeal.”*

The aforesaid view was thereafter again followed by the Hon'ble High Court while disposing of the appeal of the revenue for A.Y. 2006-07 & A.Y. 2007-08, viz. ITA No. 1238 of 2012 and ITA No. 1239 of 2012, dated. 09.10.2014. We further find that the coordinate bench of the Tribunal, viz. ITAT 'A' bench, Mumbai while disposing of the appeal of the revenue in the assesses own case, viz. DCIT-2(3), Mumbai Vs. M/s Tata Steel (successor to M/s Kalimati Investment Co. Ltd.), marked as ITA No. 6854/Mum/2012, had observed as under:

“3. The issue raised in this ground no. 1 of appeal is that the annual value of the property was determined by the A.O on the basis of rent received and notional interest on the interest free security received from the tenant. The ld. A.O determined the ALV of the said property at Rs. 1,50,000/- per month. The municipal rateable value of the said flat was Rs. 12,26,300/-. The CIT(A) while relying upon the decision of the Tribunal in the own case of the assessee for earlier assessment year deleted the addition by observing as under:-

‘I have considered the facts of the case. The assessee owns property being flat no. 4C at 23, Prithviraj Road, New Delhi. The said flat was given on lease to parent company, Tata Steel Ltd. since March, 1994, The assessee has received rent of Rs. 7,20,000/- from the tenant and also interest free deposits of Rs. 75,00,000/-. The AO has taken into account notional interest on interest free deposit and has adopted ALV for Rs. 18,00,000/- u/s 23(1)(a) of the I.T Act. On the identical facts, the Hon’ble ITAT , Mumbai in ITA NO. 2706/Mum/2010 – AY 2004-05, ITA NO. 2553/Mum/2011-AY. 2006-07 combined order dated 09/05/2011 has held that the municipal value should be taken as ALV with out deduction of any municipal taxes which were borne by the tenant. During the year, municipal value of the property is Rs. 12,26,300/-. Respectfully following the above order of the ITAT, the A.O is directed to take Rs. 12,26,300/- as ALV subject to standard statutory deduction but not allowing any further deduction towards Municipal Taxes which were paid by the tenant and not by the assessee. Thus, this ground is partly allowed.’

*4. We further find that the assessee case is covered in its own case by the jurisdictional High Court in the Assessment Year 2004-05 and 2006 and 2007-08 in ITA No. 1308, 1238 and 1239 respectively. Thus, we find no infirmity in the order passed by the CIT(A) and uphold the same. In view of the above the ground no. 1 is dismissed.”*

**7.** We have given a thoughtful consideration to the facts of the case and find that the issue involved in the present case is squarely covered by the aforesaid orders of the Hon’ble High Court and the coordinate benches of the Tribunal, in the assessee’s own case for the preceding years. We find that the CIT(A) following the orders of the Tribunal in the assessee’s own case for A.Ys 2006-07 and A.Y. 2007-08 (which as on date had been upheld by the Hon’ble High Court), had directed the A.O to ascertain the municipal rateable value of the property for the year under consideration and compute the income from house property by taking the ‘annual value’ of the property at such municipal rateable value. We find that the CIT(A) had also as a word of caution directed the A.O to keep in mind that though the market rateable value of the property was Rs. 12,60,000/- in the earlier year, however, the same pursuant to efflux of time might have changed. We have given a thoughtful consideration to the issue before us and are of the considered view that as the CIT(A) had merely followed the order of the Tribunal passed in the assessee’s own case for A.Y. 2006-07 and A.Y. 2007-08, which as on date had been affirmed by the Hon’ble High Court, therefore, no infirmity arises from his order in respect of the issue under consideration. We thus, in light of the aforesaid facts uphold the order of the CIT(A) in respect of the issue under consideration. The **Ground of appeal No. 1** raised by the revenue before us is dismissed.

**8.** The ld. D.R adverted to the disallowance made by the A.O under Sec. 14A r.w Rule 8D, which on appeal had however been set aside by the CIT(A). It was submitted by the ld. D.R that the assessee who had earned dividend (exempt income) of Rs. 21,55,64,945/-, had *suo motto* offered a disallowance of Rs. 21,69,240/- under Sec. 14A in its return of income. The A.O observing that the disallowance was not properly computed by the assessee, therefore, worked out the same as per Rule 8D at Rs. 1,60,07,133/- [i.e (i). Rs. 15,41,787/- demat charges, as per clause 8D(i); and (ii). Rs. 1,44,65,346/- i.e 0.5% of the average investment as per clause 8D(2)(iii) ]. Thus, the A.O after reducing the *suo motto* disallowance of Rs. 21,69,240/-, added back the balance disallowance of Rs. 1,38,37,713/- [i.e Rs. 1,60,07,133/- (-) Rs. 21,69,240/-] to the total income of the assessee. The assessee assailed the disallowance made by the A.O before the CIT(A). We find that the CIT(A) observed that the plea of the assessee before him was that the disallowance contemplated under Sec.14A was to be restricted to the total expenditure of Rs. 21,69,420/- debited by the assessee in its Profit & loss account. We find that the CIT(A) observed that there was no dispute as regards the computation of disallowance as per Rule 8D, but the issue involved therein was that the disallowance was liable to be restricted to the extent of the total expenditure debited in the profit & loss account, as under:

S.No.	Particulars	Amount
1.	Opening Stock in trade	Rs. 1,62,95,071
2.	Diminution in value of investment	Rs. 999
3.	General Office Expenses	Rs. 15,93,333
4.	Auditors remuneration	Rs. 2,60,811
5.	Director's fees	Rs. 48,000
6.	Depreciation	Rs. 81,497

7.	Professional fees	Rs. 2,76,276
Total		Rs. 1,85,46,987

We find, that the CIT(A) while deliberating on the disallowance under Sec. 14A r.w Rule 8D, accepted the contention of the assessee that while working out the amounts debited in the Profit & loss account [relatable to exempted income and corresponding investments], the Opening 'Stock in trade' shown at Rs. 1,62,95,071/- was to be excluded. The CIT(A) further accepted the claim of the assessee that the depreciation (Rs. 81,497) and diminution in value of investment (Rs. 999/-) were also to be excluded from the total expenses. Thus, the CIT(A) in the backdrop of the fact that the assessee had on *suo motto* basis offered a disallowance of Rs. 21,69,420/- under Sec. 14A , viz. (i). General office expenses (Rs. 15,93,333/-); (ii). Auditors remuneration (Rs. 2,60,811/-); (iii). Directors fees (Rs. 48,000/-; and (iv). Professional fees (Rs. 2,67,276/-), in its return of income, therefore, concluded that the administrative expenses computed at 0.5% of the average investment was liable to be limited to Rs. 21,69,420/-, as against the amount of Rs. 1,44,65,347/- computed by the A.O as per Rule 8D(2)(iii). However, the CIT(A) being of the view that the assessee had failed to substantiate that the demat charges (Rs. 15,41,788/-) were included in the General Office Expense (Rs. 15,93,333/-), therefore, declined to accept the said contention of the assessee and made a separate disallowance in respect of the demat charges (Rs. 15,41,788/-) in the hands of the assessee. Thus, the CIT(A) on the basis of his aforesaid observations worked out the disallowance under Sec. 14A at Rs. 37,11,208/- (i.e Rs. 15,41.788/- + Rs. 21,69,420/-) as against the disallowance of Rs. 1,60,07,133/- made by the A.O. The revenue being aggrieved with the reducing of the further disallowance of Rs.1,38,37,713/- made by the A.O u/s 14A to an amount of Rs. 15,41,788/- by the CIT(A), with a consequential relief of Rs.

1,22,95,925/- [i.e Rs. 1,38,37,713 (-) Rs. 15,41,788/-] to the assessee, had thus carried the matter in appeal before us.

9. The ld. D.R submitted that the CIT(A) had erred in restricting the disallowance made by the A.O on the basis of Rule 8D, overlooking the fact that the method prescribed in Rule 8D was held as reasonable by the **Hon'ble High Court of Bombay** in the case of **Godrej & Boyce Mfg. Co. Ltd. Vs. DCIT & Anr. (2010) 328 ITR 81 (Bom)**. Per contra, it was submitted by the ld. A.R that though there was no escape from the fact that Rule 8D was applicable to the year under consideration, however, the scope of disallowance incurred in respect of earning of exempt incomes was required to be read and applied in context of Sec. 14A, which requires that the expenditure actually incurred in earning of such exempt income, and nothing more than such expenditure could be disallowed. The ld. A.R submitted that the issue was squarely covered by the order of the Tribunal passed in the assessee's own case for A.Y. 2009-10, viz. **DCIT Vs. M/s Tata Steel Ltd. (Successor to M/s Kalimati Investment Co. Ltd.); dated. 31.07.2015, in ITA No. 6854/Mum/2012**. The ld. A.R further placed reliance on the following orders of the coordinate benches of the Tribunal:

- (i). Gillette Group India Pvt. Ltd. Vs. ACIT  
(2012) 22 taxmann.com 61 (Del)
- (ii). ACIT Vs. Passionate Investments Management Ltd.  
(ITA No. 4578/Mum/2012; dated. 25.06.2014)
- (iii). Mahindra Holdings Ltd. vs. ACIT  
(ITA No. 1209/Mum/2013; dated. 05.11.2014)
- (iv). Modern Info Technology Pvt. Ltd. Vs. ITO  
(2012-TIOL-644-ITAT-Del)

**10.** We have heard the authorised representatives for both the parties, perused the orders of the lower authorities and the material produced before us. We find that the present issue before us had earlier too came up before the Tribunal in the appeal of the revenue, in the assessee's own case for A.Y. 2009-10, viz. DCIT Vs. M/s Tata Steel Ltd. (Successor to M/s Kalimati Investment Co. Ltd.), dated. 31.07.2015, in ITA No. 6854/Mum/2012, wherein it was observed by us as under:

*“5. The ground no. 2 is against the disallowance of Rs. 1,33,57,138/- under section 14A r.w rule 8D by the AO. The CIT(A) restricted the disallowance to Rs. 4,77,399/- by observing:*

*‘I have carefully considered the facts of the case. The assessee has shown dividend income of Rs. 20,82,32,286/-. The assessee has debited the total expenditure of Rs. 4,77,399/- to P & loss account which has been disallowed u/s 14A of the Act. However, the AO has increased this disallowance, which exceeded to the total expenditure debited in the P & loss account. It has been held by the Hon’ble Delhi ITAT in the case of Gillette Group India (P) Ltd. Vs. ACIT (2012) 22 Taxmann.co.61 (Delhi-Trib) that disallowance u/s 14A cannot exceed the expenditure actually claimed by the assessee.’*

*6. The revenue relied upon the order of the A.O whereas the assessee vehemently argued that the case is covered by the decision of the Delhi bench of the Tribunal in the case of “Gillette Group India (P) Ltd. Vs. ACIT “(2012) 22 Taxmann.co.61 (Del-Trib). We have considered the rival arguments and found that the CIT(A) has rightly restricted the disallowance to Rs. 4,77,399/- as the disallowance can not exceed the total expenses claimed in the Profit & loss Account by the assessee and thus we find no*

*infirmary in the order of CIT(A) and therefore the ground no. 2 is dismissed.”*

**11.** We have given a thoughtful consideration the issue before us, and find substantial force in the contention of the ld. A.R that the scope of disallowance of expenses incurred for earning of exempt incomes was required to be read and applied in context of Sec. 14A, which requires that the expenditure actually incurred in earning of such exempt income, and nothing more than such expenditure could be disallowed. We find ourselves to be in agreement with the contention of the ld. A.R that the very purpose sought to be achieved by the legislature by making available the machinery proviso, i.e Rule 8D, cannot be lost sight of while computing the disallowance under Sec. 14A. We find that the Tribunal while disposing of the appeal of the revenue in the assesses own case for A.Y. 2009-10, viz. DCIT Vs. M/s Tata Steel Ltd. (successor to M/s Kalimati Investment Co. Ltd.); dated. 31.07.2015, in ITA No. 6854/Mum/2012, therein following the order passed by the coordinate bench of the ITAT, Delhi, in the case of Gillette Group India (P) Ltd. Vs. ACIT (2012) 22 Taxmann.co.61 (Delhi-Trib), had therein held that that disallowance under Sec. 14A cannot exceed the expenditure actually claimed by the assessee. We find ourselves to be in agreement with the aforesaid view taken by the Tribunal in the assesses own case, as well as the other cases on which reliance had been placed by the ld. A.R. We have given a thoughtful consideration to the order of the CIT(A) and do not find any infirmity in his order, to the extent the latter had reduced the further disallowance of Rs.1,38,37,713/- made by the A.O u/s 14A to an amount of Rs. 15,41,788/-, with a consequential relief of Rs. 1,22,95,925/- [i.e Rs. 1,38,37,713 (-) Rs. 15,41,788/-] to the assessee. We thus, in the backdrop of our aforesaid observations uphold the

order of the CIT(A) on the issue under consideration and dismiss the **Ground of appeal No. 2 (i) & (ii)** raised by the revenue before us.

**12.** We find that the A.O while framing the assessment had increased the 'book profit' under Sec. 115JB by the amount of disallowance of Rs. 1,38,37,713/- that was made by the A.O under Sec. 14A. The assessee had assailed the raising of the 'book profit' under Sec. 115JB before the CIT(A). It was averred before the CIT(A) that the 'book profit' for computing the tax liability of the assessee as per the MAT provisions contemplated under Sec. 115JB, was not liable to be raised by the notional component of such disallowance. The CIT(A) observed that as the disallowance under Sec. 14A was already restricted by him to the extent of the actual expenses debited in the Profit & loss account, he therefore directed the A.O to increase the 'book profit' only to the extent of disallowance of Rs. 37,11,208/- sustained by him in the hands of the assessee under Sec. 14A. We find that as the assessee in its appeal, viz. ITA No. 4361/Mum/2014 for A.Y. 2010-11 had assailed the direction of the CIT(A) that the 'book profit' be enhanced by an amount of Rs. 37,11,208/- (supra), therefore, the adjudication of the present issue, emerging from **Ground of appeal No. 2(iii)** of the revenues appeal will be taken up while adjudicating the same in the course of disposing of the appeal of the assessee.

**13.** The appeal of the revenue is dismissed in terms of our aforesaid observations.

### **ITA No. 4361/Mum/2014**

#### **A.Y. 2010-11**

**14.** We shall now take up the appeal of the assessee for A.Y. 2010-11. The assessee assailing the order of the CIT(A) had raised before us the following grounds of appeal :

“ The Learned Commissioner of Income-tax (Appeals) [“Ld. CIT(A)”] erred in adopting the Municipal Rateable Value of Rs. 12,26,300 as the Annual Value of the Appellants property at New Delhi and thereby , in increasing by an amount of Rs. 1,96,000/- , the amount of Rs. 6,86,000/- returned under the head “Income from house property” by the Appellant.

2. The Ld. CIT(A) erred in finding that “.....nothing has been placed on record to show that the general office expenses of Rs. 15,93,333/- includes demat charges of Rs. 15,41,788/-“ and , on that basis, in –

(i). enhancing the assessment by the Demat Charges of Rs. 15,41,788/- without ever having afforded to the Appellant any opportunity of showing cause against such enhancement, in gross and flagrant violation of the express mandate of sub-section (2) of section 251 and

(ii). disallowing under Section 14A, the said Demat Charges.

3. The Ld. CIT(A) erred in directing that the Assessing Officer’s enhancement of the Book Profit under Section 115JB be limited to the “actual expenses debited to the P & L A/C.” The Appellant submits that the Ld. CIT(A) ought to have held that no part of the amount disallowed under Section 14A was liable to be added in computing the Book Profit under Section 115JB.”

**15.** The assessee had vide ground of appeal no. 1 assailed the order of the CIT(A), on the ground that the latter had erred in not adopting the amount of Rs. 6,86,000/- returned by the assessee as the ‘Annual Value’, and had rather erred in directing the A.O to adopt the Municipal Rateable Value of Rs. 12,36,000/-. However, the ld. A.R at the time of hearing of the appeal fairly conceded that the issue was

covered against the assessee by the judgment of the **Hon'ble High Court of Bombay** in the assessee's own case for A.Y. 2004-05, viz. **Commissioner of Income-tax-2 Vs. M/s Kalimati Investment Co. Ltd.** in **ITA No. 1308 of 2012; dated. 09.10.2014** and in A.Ys 2006-07 to 2007-08, viz. **Commissioner of Income-tax-2 Vs. M/s Kalimati Investment Co. Ltd.** in **ITA No. 1238 of 2012** with **ITA No. 1239 of 2012; dated. 09.10.2014**. It was further submitted by the ld. A.R that the said issue was also covered against the assessee by the order of the Tribunal in the assessee's own case in ITA No. 2706/Mum/2010 (A.Y. 2004-05), ITA No. 4508/Mum/2010 (A.Y. 2005-06), ITA No. 2552/Mum/2011 (A.Y. 2007-08) and ITA No. 2553/Mum/2011 (A.Y. 2006-07). The ld. A.R further submitted that the Tribunal again vide its order passed in ITA No. 7921/Mum/2011; dated. 08.11.2013 for A.Y. 2008-09, marked as **Kalimati Investment Company Limited Vs. Dy. CIT (OSD), Circle 2(1), Mumbai**, as well in the case of the assessee for the immediately preceding year, viz. A.Y. 2009-10, in ITA No. 6854/Mum/2012, dated. 31.07.2015, had held that the 'annual value' of a property was to be ascertained on the basis of the municipal rateable value of the property for the year under consideration. We have given a thoughtful consideration to the issue before us, and in the backdrop of the aforesaid concession of the ld. A.R and after perusing the aforesaid orders of the Hon'ble High Court and the Tribunal in the assessee's own case, are of the considered view that the issue stands squarely covered against the assessee. We thus find no infirmity in the order of the CIT(A) to the extent the same had been assailed by the assessee before us, and thus uphold the same to the said extent. The **Ground of appeal No. 1** is dismissed.

**16.** The assessee had further assailed before us the order of the CIT(A), on the ground that he had failed to appreciate that as the 'demat charges' of Rs. 15,41,788/- were already included in the

amount of 'General office expenses' of Rs. 15,93,333/- (which had already been offered by the assessee for disallowance under Sec. 14A in its return of income), therefore, no separate addition of the same was called for while computing of the disallowance under Sec. 14A by the CIT(A). The ld. A.R submitted that the CIT(A) while recasting the amount liable for disallowance under Sec.14A, thus, wrongly made a separate addition of the 'demat charges' of Rs. 15,41,788/- in the hands of the assessee. It was averred by the ld. A.R that the observations of the CIT(A) that the assessee had failed to place on record any evidence which could go to prove that the 'demat charges' of Rs. 15,41,788/- were included in the 'General office expenses' of Rs. 15,93,333/- were not only perverse, but rather contrary to the material available on record. Alternatively, it was submitted by the ld. A.R that the making a separate disallowance under Sec. 14A of Rs. 15,41,788/- by the CIT(A), had as a matter of fact led to enhancement of income of the assessee, without putting him to notice and affording any reasonable opportunity of being heard to him, which thus on the said count too could not be sustained.

**17.** We have heard the authorised representatives for both the parties, perused the orders of the lower authorities and the material available on record. The ld. A.R in order to fortify his contention that the amount of the 'demat charges' of Rs. 15,41,788/- were included in the 'General office expenses' of Rs. 15,93,333/- and material in support thereof was made available on record by the assessee, therein took us through the 'Audit report' (Page 26) of his 'Paper book' (for short 'APB') alongwith the 'Annexure B' of the audit report (Page 32-33) wherein the computation of the disallowance under Sec. 14A was found mentioned. We find that a perusal of the computation of the disallowance under Sec. 14A, clearly reveals that the disallowance of Rs. 21,69,420/- that was offered by the assessee in its return of

income included the 'demat charges' of Rs. 15,41,788/- . We further find that the assessee had during the course of the assessment proceedings furnished with the A.O the bifurcated details of the 'General expenses' (comprising of 'demat charges' of Rs. 15,41,788/-) (Page 37 of 'APB') alongwith the further details of the 'demat charges' (Page 38 of 'APB'). We have perused the material to which our attention was drawn by the ld. A.R and are of the considered view that the amount of 'demat charges' of Rs. 15,41,788/-(supra) was included in the 'General office expenses' of Rs. 15,93,333/- (supra), and complete detail as regards the same were furnished by the assessee during the course of the assessment proceedings with the A.O. We thus, in the backdrop of the aforesaid facts are of the considered view that now when the 'demat charges' of Rs. 15,41,788/- were already included in the 'General office expenses' of Rs. 15,93,333/-(supra), which all the more was a fact borne from the records, therefore, the CIT(A) had erred in making a separate disallowance of the 'demat charges' of Rs. 15,41,788/- in the hands of the assessee while computing the disallowance under Sec. 14A. We thus, are of the considered view that the separate disallowance of Rs. 15,41,788/- made by the CIT(A) while computing the disallowance under Sec. 14A cannot be sustained and is liable to be deleted. We thus direct the A.O to delete the disallowance of Rs. 15,41,788/-. The **Ground of appeal No. 2** raised by the assessee before us is allowed.

**18.** The assessee had further assailed the order of the CIT(A), on the ground that the latter had erred in directing the A.O to enhance the 'book profit' under Sec. 115JB to the extent actual expenditure of Rs. 37,11,208/-(supra) was incurred by the assessee in earning of the dividend income. We find that the A.O while framing the assessment had made a further disallowance of Rs. 1,38,37,713/- under Sec. 14A. The A.O while passing the assessment order had enhanced the 'book

profit' for computing the tax liability under Sec. 115JB by the aforesaid amount of disallowance of Rs. 1,38,37,713/- and had worked out the Adjusted 'book profit' at an amount of Rs. 2,68,14,28,982/-. The assessee assailed the enhancing of the 'book profit' by the amount of disallowance under Sec. 14A by the A.O. The CIT(A) while disposing of the appeal of the assessee had restricted the disallowance under Sec. 14A to an amount of Rs. 37,11,208/-. The CIT(A) while adjudicating the ground of appeal of the assessee that the A.O had erred in raising the 'book profit' under Sec. 115JB by the amount of disallowance made by the A.O under Sec. 14A, therein observed that now when the disallowance under Sec. 14A had been restricted by him to the amount of actual expenditure of Rs. 37,11,208/- which was incurred by the assessee in earning of the exempt income, therefore, directed the A.O to restrict the raising of the 'book profit' to the said extent.

**19.** The ld. A.R for the assessee submitted that the issue that the 'book profit' for computing the tax liability under Sec. 115JB was not to be increased by the amount of disallowance made under Sec. 14A, stands settled as on date by the order of the '**Special bench**' of the Tribunal in the case of **ACIT Vs. Vireet Investment Pvt. Ltd. (ITA No. 502/Del/2012 & CO No. 68/Del/2012; dated. 16.06.2017(SB).** We have perused the order of the 'Special bench' of the Tribunal passed in the case of *Vireet Investment Pvt. Ltd. (supra)*. We find that the Tribunal in the aforesaid case had held at Page 48 – Para 6.22, as under:

*"6.22. In view of above discussion, we answer the question referred to us in favour of assessee by holding that the computation under clause (f) of Explanation 1 to Section 115JB(2) , is to be made without resorting to the computation as*

*contemplated u/s 14A read with Rule 8D of the Income-tax Rules, 1962.”*

We have perused the aforesaid order of the ‘Special bench’ of the Tribunal and are of the considered view, that as held therein, the A.O while computing the ‘book profit’ under Sec. 115JB cannot make any adjustment in respect of the disallowance made under Sec. 14A in the hands of the assessee. We thus, are of the considered view that the A.O while computing the ‘book profit’ under Sec. 115JB cannot make any adjustment as regards the disallowance made in the hands of the assessee under Sec. 14A. We thus, in the backdrop of the aforesaid order of the ‘Special bench’ of the tribunal, direct the A.O to modify the computing of the ‘book profit’ under Sec. 115JB and delete the adjustment of Rs. 37,11,208/- as was directed by the CIT(A) to be made in respect of the disallowance made under Sec. 14A in the hands of the assessee. We thus set aside the order of the CIT(A), to the extent he had directed the A.O to increase the ‘book profit’ by the amount of the disallowance of Rs. 37,11,208/- made by him under Sec. 14A. The **Ground of appeal No. 3** raised by the assessee is allowed.

**20.** The appeal of the assessee is partly allowed in terms of our aforesaid observations.

### **ITA NO. 4982/Mum/2015**

#### **A.Y. 2011-12**

**21.** We shall now take up the appeal of the revenue for A.Y. 2011-12. The revenue assailing the order of the CIT(A) had raised before us the following grounds of appeal:

*“On the facts and in circumstances of the case and in law, the learned CIT(A) has erred in allowing relief to the assessee to the extent impugned in the grounds enumerated below:*

- 1. The order of the CIT(A) is opposed to the law and facts of the case.*
- 2. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in restricting the disallowance u/s 14A r.w Rule 8D to amounts debited to P & L account ignoring the fact that Rule 8D is applicable from FY 2007-08.*
- 3. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in restricting the disallowance made by the AO adopting method of calculation provided in Rule 8D thereby overlooking the crucial fact that this method of calculation has been prescribed by the statute and held as reasonable method by the Hon’ble Bombay High Court in Godrej & Boyce Mfg. Co. Ltd. 328 ITR 81 (Bom).*
- 4. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in directing the AO to restrict the disallowance u/s 14A to the extent of Rs. 4,59,196/- for the purpose of computation u/s 115JB of the I.T Act without appreciating that as per Explanation 1 to Section 115JB of the I.T Act, an amount disallowed u/s 14A is to be considered as expenditure incurred for earning tax free dividend income and the same has to be added back /increased to the book profit u/s 115JB of the I.T Act.”*

**22.** Briefly stated, the facts of the case are that the assessee company had e-filed its return of income on 21.09.2011, declaring an income of Rs. 44,31,117/-. The case of the assessee was thereafter taken up for scrutiny assessment under Sec. 143(2). The A.O vide his order passed under Sec. 143(3), dated. 05.03.2014, had *inter alia*

made a disallowance of Rs. 1,56,91,134/- under Sec. 14A r.w Rule 8D, as against the disallowance of Rs. 4,59,196/- that was *suo motto* offered by the assessee in its return of income. The A.O thereafter proceeded with and assessed the income of the assessee at Rs. 1,98,49,470/- under the normal provisions. Still further, the A.O while framing the assessment also enhanced the 'book profit' under Sec. 115JB by the amount of further disallowance of Rs. 1,52,31,938/- made under Sec. 14A, and thus computed the 'book profit' for Sec. 115JB at an amount of Rs. 2,03,43,873/-.

**23.** Aggrieved, the assessee assailed the assessment order in appeal before the CIT(A).

**24.** The revenue being aggrieved with the order of the CIT(A), to the extent the latter had set aside the disallowances/additions and allowed relief to the assessee, had therein carried the matter in appeal before us. The A.O while framing the assessment had increased the disallowance of Rs. 4,59,196/- that was *suo motto* offered by the assessee in its return of income, to an amount of Rs. 1,56,91,134/-, leading to a consequential adding up of the disallowance by an amount of Rs. 1,52,31,938/-. The assessee assailed the raising of the disallowance under Sec. 14A by the A.O before the CIT(A). It was submitted by the assessee that the disallowance under Sec. 14A was liable to be restricted to the amount of actual expenditure of Rs. 4,59,196/- as was debited in the Profit & loss account of the assessee. The CIT(A) following the order passed in the case of the assessee for the immediately preceding year, viz. A.Y. 2009-10, therein accepted the contention of the assessee and directed the A.O to restrict the disallowance under Sc. 14A r.w Rule 8D(2)(iii) upto the amount of Rs. 4,59,196/-(supra).

**25.** The revenue being aggrieved with the order of the CIT(A) had carried the matter in appeal before us. The ld. A.R submitted that the ‘Grounds of appeal No. 1 to 3’ raised by the assessee in the present appeal, viz. ITA No. 4982/Mum/2015 were identical to those as were there before the Tribunal in the ‘Grounds of appeal No. 2(i) & 2(ii)’ in the appeal of the revenue for the immediate preceding year, viz. ITA No. 4015/Mum/2014 for A.Y. 2010-11. The said factual position was not controverted by the ld. D.R. Thus, as the ‘Grounds of appeal No. 1 to 3’ involved in the present appeal are identical to those raised before us by the revenue vide its ‘Grounds of appeal No. 2(i) & 2(ii)’ in its appeal in the case of the assessee for the immediate preceding year, viz. A.Y. 2010-11, in ITA No. 4015/Mum/2014, therefore, our order passed while disposing of the ‘Grounds of appeal No.2(i) & 2(ii)’ in the appeal of the revenue for A.Y. 2010-11, shall apply *mutatis mutandis* for disposing of the ‘Grounds of appeal No. 1 to 3’ raised by the assessee in the present appeal, viz. ITA No. 4982/Mum/2015. The **Grounds of appeal No. 1 to 3** raised by the revenue before us are dismissed in terms of our aforesaid observations.

**26.** The revenue had further assailed before us the direction of the CIT(A) that the ‘book profit’ under Sec. 115JB was to be raised by the disallowance under Sec. 14A only to the extent of Rs. 4,59,196/- which was sustained by the CIT(A). We find that as the issue involved in the present case stands settled by the order of the **‘Special bench’** of the Tribunal in the case of **ACIT Vs. Vireet Investment Pvt. Ltd. (ITA No. 502/Del/2012 & CO No. 68/Del/2012; dated. 16.06.2017(SB))**, therefore, in all fairness we restore the issue to the file of the A.Op with a direction to recompute the ‘book profit’ in terms of the order of the ‘Special bench’ of the Tribunal in the case of *Vireet Investments Pvt. Ltd. (supra)*. The **Ground of appeal No. 4** is allowed for statistical purposes in terms of our aforesaid directions.

**27.** The appeal of the revenue is partly allowed in terms of our aforesaid observations.

**28.** The appeal of the revenue for A.Y. 2010-11 in ITA No. 4015/Mum/2014 is dismissed, while for the appeal of the revenue for A.Y. 2011-12 in ITA No. 4982/Mum/2015 is partly allowed for statistical purposes. The appeal of the assessee for A.Y. 2010-11 in ITA No. 4361/Mum/2014 is partly allowed.

Order pronounced in the open court on 11/10/2017.

Sd/-

(G.S.PANNU)

ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक 11.10.2017

Ps. Rohit Kumar

Sd/-

(RAVISH SOOD)

JUDICIAL MEMBER

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /  
DR, ITAT, Mumbai
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