

**IN THE INCOME TAX APPELLATE TRIBUNAL "K"
BENCH, MUMBAI**

**BEFORE SHRI RAJENDRA, AM &
SHRI SANDEEP GOSAIN, JM**

**आयकरअपीलसं./ I.T.A. No. 2891/Mum/2016
(निर्धारणवर्ष / Assessment Year:2012-13)**

Star Chemicals (Bombay) Pvt. Ltd. 55/58, Jolly Maker Chambers No. 2, Nariman Point, Mumbai-400021.	बनाम/ Vs.	DCIT 3(3), 6 th floor, AayakarBhavan, Mumbai-400020
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**आयकरअपीलसं./ I.T.A. No. 3462/Mum/2016
(निर्धारणवर्ष / Assessment Year: 2012-13)**

DCIT 3(3)(2) 6 th floor, AayakarBhavan, Mumbai-400020	बनाम/ Vs.	Star Chemicals (Bombay) Pvt. Ltd. 55/58, Jolly Maker Chambers No. 2, Nariman Point, Mumbai-400021.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. AAACS7485E		

अपीलार्थीकीओरसे/ Appellant by	:	Shri A. K. Thanawala, AR
प्रत्यर्थीकीओरसे/ Respondentby	:	Shri Saurabh Deshpande, DR
सुनवाईकीतारीख/ Date of Hearing	:	21/03/2018
घोषणाकीतारीख / Date of Pronouncement	:	09/05/2018

आदेश / ORDER

Per Shri Sandeep Gosain, Judicial Member:

These two appeals filed by the assessee as well as revenue are against the order of Commissioner of Income Tax (Appeals) – 8, Mumbai dated 29.02.16 for AY 2012-13.

2. Since all the issues involved in these two appeals are common, therefore, they have been clubbed, heard together and a consolidated order is being passed for the sake of convenience and brevity.

ITA No. 2891/Mum/2016 (AY 2012-13)

3. First of all we take up assessee's appeal in ITA No. 2891/Mum/2016 for assessment year 2012-13 as lead case. The ground of appeal are mentioned herein below:-

1. On the facts and in the circumstances of the case and in law the CIT (A) erred in confirming the disallowance under sec. 14A read with Rule 8D of the Income Tax Act under normal provisions of the computation of Income under the Act.

2. The Appellant craves leave to add alter or modify any ground of appeal at or before the date of hearing.

4. As per the facts of the present case, the assessee company is engaged in the business of manufacturing of allied derivatives of phosphorous and trading, leasing and hire purchase, bill discounting and financing. The assessee filed its Return of Income on 27.09.2012 declaring total income of Rs.8,50,20,020/-. Subsequently, the case of assessee was selected for scrutiny and after serving statutory notices and seeking reply of assessee, the AO passed order of assessee u/s 143(3) thereby making additions u/s 14A r.w.r. 8D for computing of book profit u/s 115JB of the I.T. Act.

Aggrieved by the order of AO, assessee preferred appeal before Ld. CIT(A) and Ld. CIT(A) after considering the case of both the parties partly allowed the appeal of the assessee.

Aggrieved by the order of Ld. CIT(A), both i.e. assessee as well as the revenue have filed their respective appeals before us. However at present we are dealing with the appeal filed by the assessee on the grounds mentioned herein above.

Ground No. 1.

5. This ground relates to challenging the order of Ld. CIT(A) in confirming the disallowance under sec. 14A read with Rule 8D of the Income Tax Act under normal provisions of the computation of Income under the Act.

6. At the very outset, Ld. AR appearing on behalf of the assessee submitted before us that the present case is covered by the order of Hon'ble ITAT in assessee's own case in ITA No. 2538 & 2539/Mum/12, 6888/Mum/13 & 961/Mum/15 for AY 2008-09 to 2011-12, wherein the identical ground raised in the present appeal had already been decided by Hon'ble ITAT on merits.

7. We have heard counsels for both the parties at length and we have also perused the material placed on record as well as the orders passed by revenue authorities. We find that the identical ground raised in the present appeal had already been decided by the Coordinate Bench of Hon'ble ITAT in assessee's own case in ITA No. 2538 & 2539/Mum/12, 6888/Mum/13 & 961/Mum/15

for AY 2008-09 to 2011-12 on merits. The operative portion of the order of Hon'ble ITAT is contained in para no. 7 to 14 and the same is reproduced below:-

7. We have considered rival contentions and carefully gone through the orders of the authorities below. From the record, we found that during the course of scrutiny assessment, AO made an addition of Rs.47,52,634/- to the returned income by applying the provisions of Rule 8D read with Section 14A of the Act. The A.O. has discussed the issue in para 4 of the assessment order. During the course of assessment proceedings, the assessee company was asked to furnish details of expenses incurred for earning exempt income and also to show cause as to why the expenses incurred and claimed in respect of exempt income should not be disallowed as per the provisions of Section 14A read with Rule 8D. We found that assessee has furnished detailed working and offered disallowance of Rs.9,90,000/-, Rs.6,93,852/-, Rs.2,41,311/- and Rs.9,91,574 for the A.Y.2008-09, 2009-10, 2010-11 & 2011-12 respectively.

8. In the working so furnished and placed at page 26,22,3 and 16 of the paper book of the respective assessment years, nowhere AO has pointed out that assessee has incurred expenditure more than the sum

offered by the assessee. As per the verdict of Hon'ble Supreme Court Sub-Section (2) & (3) of Section 14A r.w.r. 8D prescribes a formula for determination of expenditure incurred in relation to income which does not form part of the total income under the Act in a situation where the Assessing Officer is not satisfied with the claim of the assessee. As per the Supreme Court, this is to be determined having regard to the accounts of the Assessee as placed before the AO and only where it is not possible to generate requisite satisfaction with regard to the correctness of the claim of the assessee, AO should go for computation as per Rule 8D.

9. From the record we found that method adopted by assessee for disallowance u/s.14A is consistent method which was also followed in earlier years as decided by AO u/s.143(3) of the IT Act. The method so followed by the assessee takes into account all the administrative expenses which could have been incurred to earn the exempt income. We also found that for A.Y.2008-09 & 2009-10 AO has not recorded any satisfaction for invoking Rule 8D and for A.Y. 2010-11 & 2011-12 not recorded any objective satisfaction.

10. We also found that dividend from Mutual Fund as a percentage of total dividend income as under:-

A.Y.2008-09 85.57%
A.Y. 2009-10 89.26%
A.Y.2010-11 95.80%
A.Y.2011-12 95.43%

11. Assessee has suo-moto disallowed STT expenses over and above 14A disallowance computed by assessee. However the AO has mechanically proceeded to compute the notional disallowance under Section 14A read with Rule 8D. Rule 8D can be invoked only if the AO, having regard to the accounts of the assessee, is not satisfied with the correctness of the claim of the assessee. For this proposition, reliance can be placed on *Godrej & Boyce Mfg. Co. Ltd., vs. Dy. CIT (2010) 328 ITR 81 (Bom) (HC)(109)* and *Cit vs. Hero Management Services Ltd., (2014) 360 ITR 68 (Delhi)(HC)*. In order to invoke rule 8D, the AO has to first record a finding that he was not satisfied with the correctness of the claim for expenditure made by the assessee in relation to income, which did not form part of the total income.

12. Hon'ble Delhi High Court in the case of *Maxopp Investment Limited ITR 347 ITR 272* held that the condition precedent for the AO to determine the amount of expenditure under Rule 8D is that he must record his dissatisfaction with the correctness of the claim of expenditure made by the assessee or with the correctness of the claim made by the assessee that no

expenditure has been incurred. It is only when this condition precedent is satisfied, that the AO is required to determine the amount of expenditure in relation to income not includable in total income in the manner indicated in Rule 8D(2). Furthermore, in view of the judicial pronouncements Section 14A read with Rule 8D is not applicable to investments which have not yielded any exempt income. Hence, while computing Rule 8D such investments must be excluded.

13. Keeping in view the totality of facts and circumstances of the case and applying the proposition of law laid down by Hon'ble Bombay High Court, part of which has been affirmed by the Hon'ble Supreme Court, we restore the matter back to the file of the AO for deciding afresh the disallowance warranted under Rule 8D having regard to the guidelines laid down by the Hon'ble Supreme Court in the case of Godrej And Boyce Mfg. Co. Ltd., in its order dated 08/05/2017. We direct accordingly.

14. Similar grounds have been taken in all the four years under consideration, following the reasoning given hereinabove, we restore the disallowance made under Rule 8D back to the file of the AO for deciding afresh in terms indicated hereinabove.

After having gone through the aforementioned orders, facts of the present case as well as considering the orders passed by the revenue authorities and submissions made by both the parties, we find that the identical issue has already been decided by the Coordinate Bench of Hon'ble ITAT in assessee's own case in ITA No. 2538 & 2539/Mum/12, 6888/Mum/13 & 961/Mum/15 for AY 2008-09 to 2011-12 on merits. Therefore, respectfully following the decision of the coordinate bench of Hon'ble ITAT which is applicable *mutatis mutandi* in the present case, we also restore the matter back to the file of the AO for deciding afresh the disallowance warranted under Rule 8D having regard to the guidelines laid down by the Hon'ble Supreme Court in the case of **Godrej And Boyce Mfg. Co. Ltd. and Maxopp Investment Ltd vs. CIT (2018) 91 taxmann.com 154 (SC)**. Accordingly, this ground is **allowed for statistical purposes.**

Ground No. 2

8. This ground is general in nature, thus requires no specific adjudication.

9. In the net result, the appeal filed by the assessee is **allowed for statistical purposes.**

ITA No. 3462/Mum/2016 for AY 2012-13.

10. Now we take up revenue's appeal filed in ITA No. 3462/Mum/2016 for AY 2012-13 on the grounds mentioned herein below:-

1. *"Whether on the facts of the case and in law the Id. CIT(A) is right in deleting the addition of Rs. 66,09,577/- made by AO u/s. 14A r.w.r. 8D(2) to the total income of the assessee u/s. 115JB of the I.T. Act."*

2. *"On the facts of the case and in law the Ld. CIT(A) erred in appreciating the fact that the Hon'ble ITAT 'D' Bench in the case of RBK Share Broking Pvt. Ltd. - 37-taxman 128 (2013) has held that the provisions of section 14A r.w.r. 8D is applicable for computation of book profit u/s 1153B of the Act."*

3. *"The appellant prays that the order of CIT(A) on the above ground be set aside and that of the Assessing Officer be restored."*

4. *"The appellant craves leave to amend or alter any ground or add a new ground which may be necessary."*

Ground No. 1 to 3.

11. These grounds raised by the revenue are inter connected and inter related and relates to challenging the order of Ld. CIT(A) in deleting the addition of Rs. 66,09,577/- made by AO u/s. 14A r.w.r. 8D(2) to the total income of the assessee u/s. 115JB of the I.T. Act, therefore, we thought it fit to dispose of these grounds by this common order.

12. We have heard counsels for both the parties at length and we have also perused the material placed on record as well as the orders passed by revenue authorities. We find that the identical ground raised in the present appeal had already been decided by the Coordinate Bench of Hon'ble ITAT in assessee's own case in ITA No. 2538 & 2539/Mum/12, 6888/Mum/13 & 961/Mum/15 for AY 2008-09 to 2011-12 on merits. The operative portion of the order of Hon'ble ITAT is contained in para no. 15 to 18 and the same is reproduced below:-

15. Assessee is also aggrieved for disallowance u/s.115JB r.w.s. 14A and r.w.r 8D.

16. At the outset, learned AR placed on record the order of the ITAT Special Bench in case of Vireet Investment Pvt. Ltd., in ITA No.502/Del/2012 dated 16/06/2017, wherein issue has been decided in favour of the assessee. Our attention was also invited to page 48 para 6.22, wherein Tribunal observed as under:-
6.22 In view of the above discussion, we answer the question referred to us in favour of the 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.

17. In view of the decision of the Special Bench, we direct the AO to recompute the income u/s.115JB(2) with reference to the disallowance sought u/s.14A r.w.r.8D, in terms of the detailed discussion in the order of the Special Bench in the case of Vireet Investment Pvt. Ltd., in ITA No.502/Del/2012 dated 16/06/2017. We direct accordingly.

18. As the facts and circumstances in all the years under consideration are same, we direct the AO to recompute the income u/s.115JB in terms of our above

discussion, following the proposition laid down by Special Bench of the Tribunal in case of Vireet Investment Pvt. Ltd., in ITA No.502/Del/2012 dated 16/06/2017.

After having gone through the aforementioned orders, facts of the present case as well as considering the orders passed by the revenue authorities and submissions made by both the parties, we find that the identical issue has already been decided by the Coordinate Bench of Hon'ble ITAT in assessee's own case in ITA No. 2538 & 2539/Mum/12, 6888/Mum/13 & 961/Mum/15 for AY 2008-09 to 2011-12 on merits. Therefore, respectfully following the decision of the coordinate bench of Hon'ble ITAT which is applicable *mutatis mutandi* in the present case, we also restore the matter back to the file of AO with a direction to re-compute the income u/s.115JB in terms of our above discussion, following the proposition laid down by Special Bench of the Tribunal in case of **Vireet Investment Pvt. Ltd.**, in ITA No.502/Del/2012 dated 16/06/2017. Accordingly, this ground is **allowed for statistical purposes.**

Ground No. 4

13. This ground is general in nature, thus requires no specific adjudication.

14. In the net result, the appeal filed by the assessee as well as revenue stands **allowed for statistical purposes.**

Order pronounced in the open court on 9th May 2018.

Sd/-

Sd/-

(Rajendra)

(Sandeep Gosain)

लेखासदस्य / Accountant Member

न्यायिकसदस्य / Judicial Member

मुंबई Mumbai; दिनांक Dated : 09.05.2018

Sr.PS. Dhananjay

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT- concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायकपंजीकार

(Dy./Asstt.Registrar)

आयकरअपीलीयअधिकरण, मुंबई/ ITAT, Mumbai