

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

**BEFORE SHRI C.N. PRASAD, JUDICIAL MEMBER AND  
SHRI RAJESH KUMAR, ACCOUNTANT MEMBER**

**ITA No.4427/M/2016  
Assessment Year: 2012-13**

M/s. Raptakos Brett and Co. Ltd., 253, Dr. Annie Besant Road, Worli, Mumbai- 400 030 <b>PAN: AAACR1772R</b>	Vs.	Dy. Commissioner of Income Tax, Range 5(3)(1), Mumbai
(Appellant) (Respondent)		

**Present for:**

Assessee by : Shri Yogesh A Thar, A.R.  
& Ms. Ayushi Modani, A.R.

Revenue by : Shri M.C. Omi Ningshen, D.R.

Date of Hearing :15.06.2018

Date of Pronouncement :20.06.2018

**ORDER**

**Per Rajesh Kumar, Accountant Member:**

The present appeal has been preferred by the assessee against the order dated 30.03.2016 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2012-13.

2. The various grounds raised by the assessee are as under:

Ground No 1 :Disallowance u/s 14A of the Act Amounting to Rs. 1,75,13,524/-.

"1 On the facts and circumstances of the case and in law, the CIT(A) erred in upholding the action of the AO to disallow a SLIM of Rs.1,75,13,524/- in addition to suo moto disallowance made by the Appellant of Rs.

52,05,005/- as expenses incurred towards earning exempt income under section 14A of the Act r.w.r. 8D of the Income Tax Rules, 1962 (the Rules').

2. The Appellant prays that disallowance of Rs. 1,75,13,524/- made under section 14A of the Act r.v.r. 3D of the Rules be deleted and the disallowance u/s. 14A should be restricted to Rs. 52,05,005/- towards expenses incurred for the purpose of earning exempt income as worked out by the Appellant.

3. **Without prejudice to 1, 2 above**, considering the fact that the Appellant had sufficient own interest free funds for making the investments, disallowance of interest u/s 14A r.w.r. 8D(2)(ii) be deleted.

4. **Without Prejudice to 1,2 & 3 above**, if Rule 8D were to apply, "average investments" for the purpose of calculation under Part 2(u) and (iii) of Rule 8D should not include the strategic investments made by an assessee.

5. Without Prejudice to 1,2, 3 & 4 above, if Rule 8D were to apply, "average investments" for the purpose of calculation under Part 2(u) and (iii) of Rule 8D will include only those investments from which exempt income has been earned during the year.

**GROUND II: ADJUSTMENT OF SECTION 14A DISALLOWANCE WITH BOOK PROFIT U/S 115JB OF THE ACT:**

1. On the facts and in the circumstances of the case and in law, the CIT (A) erred in upholding the action of the Ld. AO of adding the disallowance u/s 14A of Rs. 2,27,18,529/- to the book profit computed u/s 115 JB of the Act.

2. The Appellant prays that the Ld. AO be directed to delete the addition made to book profits computed u/s 115JB of the Act.

3. Without prejudice to 1, 2 above, the Appellant prays that the amount added back u/s 115JB in calculating the book profits be restricted to Rs.1,75,13,524/- being the additional amount disallowed u/s. 14A of the Act by the Ld. AO.

**GROUND III: LEVY OF INTEREST UNDER SECTION 234B AND 234C OF THE ACT:**

1. The AO erred in levying excess interest under section 234B and 234C of the Act.

2. The Appellant prays that the aforesaid addition be deleted."

3. The issue raised in ground No.1 & 2 is against the upholding of disallowance of Rs.1,75,13,525/- by Ld. CIT(A) as made by the AO by ignoring the fact that the assessee has

suo motto disallowed a sum of Rs.52,05,005/- towards the expenses incurred on earning of exempt income.

4. At the outset, the Ld. A.R. submitted that the case of the assessee is identical to one as has been decided in ITA No.7490/M/2013 for A.Y. 2010-11 in the own case of the assessee in which the co-ordinate bench of the Tribunal has taken a view under identical facts that no disallowance should be made under section 14A read with rule 8D over and above the suo motto disallowance by the assessee. The Ld. A.R., therefore, prayed before the Bench that following the order of the co-ordinate bench of the Tribunal in the assessee's own case the present appeal should also be decided in the like manner and be allowed accordingly.

5. The Ld. D.R. did not agree to the contention of the assessee that the present case is squarely covered by the Tribunal in assessee's own case in earlier years. The Ld. D.R. submitted that all the expenses have to be seen on year to year basis and the disallowance has to be made by applying the provision of section 14A read with rule 8D and thus prayed the Bench that the order of the Ld. CIT(A) be affirmed.

6. We have heard the rival submissions and perused the material available on record. The undisputed facts are that during the year, the assessee earned exempt income of Rs.8,27,30,037/- and made a suo motto disallowance under section 14A read with rule 8D of Rs.52,05,005/- as detailed in para 8 of the assessment order comprising the direct expenses

on account of Demat and Depository charges Rs.38,00,098/-, salary of employees Rs.6,33,415/-, other expenses of HO Prorated basis Rs.7,71,493/-. The detailed calculation whereof is incorporated by the AO in para 7 which for the sake of convenience is reproduced as under:

**“7. Expenses other than interest on borrowings:**

7.1 RBCL has incurred a total expense of Rs.38,00,098/- towards demat, depository charges and this has been considered for the purpose of disallowance.

7.2 In so far as other expenditure is concerned, based on the internal records, expenditure directly identifiable such as stamp duty, transfer fees and safe custody charges has not been disallowed as such expenses are not directly relatable to earning of dividend; they may be relatable to acquisition of shares but not to dividend being earned. For this view reliance is placed on CIT Vs GIC of India (254 ITR 203) (Born) which has held that expenses incurred on account of salary paid to staff, stamp duty, transfer fees, custody are not directly relatable to earning of dividend

7.3 We have thereafter identified the expenses that are indirectly incurred in relation to such investments by way of cost on the personnel of RBCL who are engaged in the day- to-day activity of Fund management and investments. Following table shows the entire emoluments of Fund management team on cost-to-company basis and also the portion thereof reasonably attributable, based on time spent by the team, to the activity of investment which gives / may give rise to tax free income.

Sr. No.	Name	Employee Designation	Emoluments [Cost to Company] (Amount in Rs.)	% Attributable to investments activity	Attributed amount (In Rs.)
1	Mr. Ketan Mazumdar	VP - Finance	19,63,140	20%	3,92,628
2	Mr. S K Shenoy	Sr. Manager - Finance	5,42,836	20%	1,08,567
3	Mr. Vithoba Patil	Sr. Executive - Accounts	3,72,817	18%	67,107
4	Mr. Laxman Addagatla	Executive - Accounts	3,61,740	18%	65,113
	Total				6,33,415/-

4. Apart from the emoluments that are incurred for such personnel, other expenses that can be directly or indirectly attributable to such personnel are also identified based on the total expenses of HO, which are duly allocated in relation to such personnel. There are total Ninety Six (96) employees in HO out of which four (4) employees mentioned at S. No. 1, 2, 3 & 4 in the above table are working in the Fund management team of the company. Details of such expenses is given below and the basis of allocation is the ratio of employees of the FMT to the total number of employees in HO:

Sr. No.	Particulars	Amount (Rs. Lacs)	
		Expense of HO	Appropriated Amount (4/90 of Expense of HO)
1.	Staff Welfare	8,08,247	33,704
2.	Electricity Expenses	25,30,603	1,05,526
3.	Repairs and Maintenance	20,09,738	83,806
4	Printing & Stationery	17,06,922	71,179
5	Books & Periodicals	2,87,671	11,996
6	Telecommunication Expenses	65,45,141	2,72,932
7	Postage and Telegram	7,73,152	32,240
8	Automobile Expenses	34,99,986	1,45,949
9	Conveyance Charges	3,39,561	14,160
	TOTAL	1,85,01,021	7,71,492

The AO, however, calculated the disallowance at Rs.2,27,18,529/- under section 14A read with rule 8D and after allowing the credit of suo motto disallowance of Rs.52,05,005/-, the addition under section 14A was restricted to Rs.1,75,13,524/-.

7. In the appellate proceedings, the Ld. CIT(A) also sustained the addition as made by the AO by holding that the provisions of section 14A r.w.r. 8D have been correctly applied. Upon perusal of the order of the co-ordinate bench of the Tribunal in A.Y. 2010-11, we find that under similar set of facts, the Tribunal has deleted the addition as made by the AO under section 14A read with rule 8D by observing that the suo

motto disallowance made by the assessee is sufficient to cover the expenses relatable to earning the exempt income. We would like to mention that assessee's own funds in the form of share capital, reserves and surplus were Rs.434.47 crore whereas the investments were only to the tune of Rs.282.75 cr. which included the investments in subsidiary companies from strategic point of view. Thus, the interest free funds available with the assessee and therefore, the presumption has to be made that investments in the shares and securities were made out of interest free funds available with them. The co-ordinate bench of the Tribunal has decided the identical issue in favour of the assessee by observing and holding as under:

"6. We have heard rival contentions and gone through the fact and circumstances of the case. From the above it is clear that no disallowance u/s Rule 8D can be made for the reason that the above facts clearly demonstrated that the assessee is having non-interest bearing funds available in the shape of share capital and reserves and surpluses with him amounting to Rs. 285.27 crore which is more than the amount of investment made in interest earning instruments amounting to Rs. 18.19 crores and once availability of amount from interest free fund of the assessee is more than the investment, then a presumption arises that assessee might have invest out of interest free fund available with him. This view of ours is supported by the decisions of Hon'ble Bombay High Court in the case of HDFC Bank Ltd. (supra). As regards to direct expenditure under Rule 8D (1), there is no dispute. As regards to working of disallowance under Rule 8D (3), the assessee has computed the disallowance and the Assessing Officer could not point out any discrepancy or unreasonableness or could not find any fault in the same. Accordingly, in view of the given facts and circumstances, we delete the addition and allow the appeal of the assessee retaining the same to the extent of the assessee suo-moto disallowance of sum of Rs.11,78,104/-. We direct the AO accordingly."

8. We, therefore, following the order of the co-ordinate bench of the Tribunal and maintaining the consistency with the earlier year's decision, set aside the order of the Ld. CIT(A) and direct the AO to delete the additions of Rs.1,75,13,524/- made under section 14A read with rule 8D.

**9. The issue raised in ground Nos.3, 4 & 5 were without prejudice and therefore require no adjudication.**

10. The issue raised in ground No.II is against the decision of the Ld. CIT(A) upholding the action of AO in adding the disallowance under section 14A to the extent of Rs.2,27,18,529/- to the book profit under section 115 JB of the Act. The issue is decided by the Special Bench Delhi in the case of ACIT Vs Vireet Investment Pvt. Ltd. (165 ITD 27) wherein it has been held that the computation under clause (f) of Explanation 1 to section 115JB(2) is to be made without resorting to the computation as contemplated under section 14A read with Rule 8D of the Income Tax Rules. Thus respectfully following the said decision we restore this ground to the AO who shall decide the issue keeping in view the decision of the Special Bench (supra). Accordingly, this ground is also allowed for statistical purpose.

11. The issue raised in ground No.III is consequential and required no adjudication.

12. In the result, appeal of the assessee is partly allowed as indicated above.

**Order pronounced in the open court on 20.06.2018.**

**Sd/-  
(C.N. Prasad)  
JUDICIAL MEMBER**

**Sd/-  
(Rajesh Kumar)  
ACCOUNTANT MEMBER**

Mumbai, Dated: 20.06.2018.

\* Kishore, Sr. P.S.

Copy to: The Appellant  
The Respondent  
The CIT, Concerned, Mumbai  
The CIT (A) Concerned, Mumbai  
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.