

IN THE INCOME-TAX APPELLATE TRIBUNAL “J” BENCH MUMBAI

BEFORE SHRI G.S. PANNU, ACCOUNTANT MEMBER

AND SHRI PAWAN SINGH, JUDICIAL MEMBER

ITA No. 17/Mum/2017 (Assessment Year 2012-13)

M/s Smarniya Properties Pvt. Ltd. D-73/1, TTC Industrial Area, MIDC Road, Turbhe, Navi Mumbai-400705. PAN: AAHCS9922K	Vs.	ACIT, CC- 8(4), Mumbai.
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Appellant

Respondent

Appellant by : Shri J.P. Bairagra (AR)

Respondent by : Shri Arju Goradia (DR)

Date of Hearing : 18.06.2018

Date of Pronouncement : 18.06.2018

Order Under Section 254(1) of Income –tax Act

PER PAWAN SINGH, JUDICIAL MEMBER;

1. The instant appeal by assessee under section 253 of the Income-tax Act (the Act) is directed against the order of Id. Commissioner of Income-Tax (Appeals)-50 [Id. CIT(A)], Mumbai dated 26.10.2016 for Assessment Year 2012-13. The assessee has raised sole ground of appeal that *the Id. CIT(A) erred in confirming the action of Assessing Officer in making addition of disallowance under section 14A of the Income-tax Act, 1961 to the book profit computed under section 115JB of the Act.*
2. At the outset of the hearing, the Id. Authorized Representative (AR) of the assessee submits that the sole ground of appeal raised by the assessee in the appeal is covered in favour of assessee by the decision of Special Bench of the Tribunal in ACIT versus Vireet Investment (P) Ltd [2017] 82 taxmann.com 415 (Delhi-Tribunal)(SB). On going through the grounds of appeal and the learned DR of the revenue and the contents of the decision in Vireet Investment (P) Ltd (supra), the learned the DR for the revenue conceded that the ground raised by assessee is covered in favour of

- assessee. The learned DR prayed that grounds of appeal may be restored to the file of assessing officer for computation under section 115JB in accordance with the direction of decision of Special Bench referred above.
3. We have considered the rival submission of the parties and have gone through the orders of authorities below. We have noted that the Special Bench of Delhi Tribunal in Vireet Investment (P) Ltd held that computation under clause (f) of Explanation 1 to section 115 JB(2) is to be made without resorting to the computation as contemplated under section 14A read with Rule 8D. Therefore, respectfully following the decision of Special Bench the ground of appeal raised by the assessee is restored to the file of assessing officer to make the fresh computation by following the decision of Vireet Investment (P) Ltd (supra). Needless to say that the assessing officer shall grant opportunity of hearing to the assessee before passing the order in accordance with law. Hence, the ground of appeal raised by assessee is allowed for statistical purpose.
4. In the result, appeal filed by assessee is allowed for statistical purpose. Order pronounced in the open court on 18.06.2018 at the time of hearing.

Sd/-
G.S. PANNU
ACCOUNTANT MEMBER

Sd/-
PAWAN SINGH
JUDICIAL MEMBER

Mumbai, Date: 18 .06.2018

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Copy of the Order forwarded to :

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| 1. Assessee | 2. Respondent |
| 3. The concerned CIT(A) | 4. The concerned CIT |
| 5. DR "J" Bench, ITAT, Mumbai | |
| 6. Guard File | |

BY ORDER,
Dy./Asst. Registrar
ITAT, Mumbai