

IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCHES "F", MUMBAI

Before Shri Saktijit Dey, Judicial Member &  
Shri Manoj Kumar Aggarwal, Accountant Member

ITA No.4417/Mum/2012 Assessment Year : 2008-09

ITA No.1856/Mum/2013 Assessment Year : 2009-10

ITA No.5763/Mum/2013 Assessment Year : 2010-11

ACIT Cir 3(3)/DCIT3(3), Mumbai	Vs ·	Value Industries Ltd., 171-C, Mittal Court, Nariman Point, Mumbai 400 021,  PAN AAACV2299K
(Appellant)		(Respondent)

CO 124/M/2016

(Arising out of ITA No.4417/Mum/2012 Assessment Year : 2008-09)

CO 125/M/2016

(Arising out of ITA No.1856/Mum/2013 Assessment Year : 2009-10)

CO 126/M/2016

(Arising out of ITA No.5763/Mum/2013 Assessment Year : 2010-11)

Value Industries Ltd., Mumbai – 400 021.  PAN AAACV2299K	Vs ·	ACIT Cir 3(3)/DCIT3(3), Mumbai
(Cross-objector)		(Respondent)

Appellant By : Shri Rajeev Gubgotra  
Cross-Objector By : Shri Mayank Chauhan

Date of Hearing :08.08.2018

Date of Pronouncement : 19.09.2018

## **ORDER**

### **Per Saktijit Dey, Judicial Member**

Aforesaid appeals by the department and cross-objections by the assessee are directed against three separate orders passed by the CIT(A)-7, Mumbai, pertaining to assessment years 2008-09, 2009-10 and 2010-11.

#### **2. ITA 4417/Mum/2012, 1857&5763/Mum/2013:**

The grounds raised by the department in all these appeals are common. The first common issue in ground nos. 1 & 2 of the aforesaid appeals relate to disallowance made of different amounts u/s. 14A read with rule 8D (2)(ii). Since, the facts relating to this issue are common in all the assessment years under appeal, except, the quantum, for the sake of convenience, we shall deal with the facts as involved in ITA No.4417/Mum/2012 for A.Y. 2008-09.

3. Brief, facts are the assessee - a company, is engaged in manufacture and trading of electrical goods. For the assessment year under dispute assessee filed its return of income on 30.09.2008 declaring total income at Nil under the normal provisions after set-off of brought forward losses. Whereas, assessee offered book profit of ₹ 12,43,11,886 u/s. 115JB of the Act. Subsequently, assessee filed revised return of income on 12.03.2010 declaring total income at ₹ 10,73,84,259/- after set-off of brought forward loss of ₹ 32,08,23,143/-. During the assessment proceedings, the Assessing Officer noticed that in the relevant previous year assessee has received dividend

income of ₹ 19,82,960/- which, though, is exempt u/s. 10(34) of the Act, however, assessee has not claimed any exemption with regard to such income. Further, he found that the assessee had income of ₹ 1,52,79,126/- from Long term capital gain from sale of securities, which has been claimed as exempt u/s. 10(38) of the Act. When the Assessing Officer called upon the assessee to explain why disallowance u/s. 14A read with Rule 8D should not be made for earning exempt income, it was submitted by the assessee that unless it incurs expenditure attributable to earning of exempt income, no disallowance u/s. 14A can be made. Further, it was submitted by the assessee that no disallowance of interest expenditure can be made as the assessee had sufficient interest free funds available with it to make investment in exempt income yielding assets. After considering the submissions of the assessee, the Assessing Officer, however, did not find merit in them and held that as per the provisions of section 14A read with Rule 8D, disallowance has to be made for earning exempt income. Accordingly, applying the methodology prescribed under Rule 8D he disallowed interest expenditure of ₹ 2,02,13,803/- under Rule 8D(2)(ii) and administrative expenditure of ₹ 21,26,124/- under Rule 8D(2)(iii), total disallowance aggregating to ₹ 2,23,39,927/-. However, the Assessing Officer allowed exemption in respect of dividend income of ₹ 19,82,960/-. Being aggrieved of disallowance made u/s. 14A read with Rule 8D, assessee preferred appeal before the CIT(A).

4. The learned CIT(A) after considering the submissions of the assessee in the context of fact and material available before him, observed that as against surplus interest free funds available with the assessee to the tune of ₹ 398.79 crore, the investments made by the assessee amounted to ₹ 43.97 crore. Therefore, following the decision of Hon'ble Jurisdictional High Court in the case of CIT vs. Reliance Utilities Ltd. (313 ITR 340), learned CIT(A) held that no disallowance of interest expenditure under Rule 8D(2)(ii) can be made. However, as regards disallowance of administrative expenditure under Rule 8D(2)(iii) is concerned, learned CIT(A) rejecting the contention of the assessee upheld the disallowance made by the Assessing Officer at ₹ 21,26,124/-.

5. The learned DR submitted, assessee's claim that it has sufficient interest free funds available with it to make investment for exempt yielding assets has not been verified by the Assessing Officer and, hence, it should be restored back to him for examining assessee's claim.

6. The learned AR strongly relied upon the observations of the learned CIT(A) and submitted that assessee has furnished all material evidence both before the Assessing Officer as well as the CIT(A) to demonstrate that it had sufficient interest free funds available with it to make the investment in exempt income yielding asset. He submitted, while the Assessing Officer completely overlooked the contention of the assessee and the evidences filed, the learned CIT(A) after verifying the documentary evidences available on record was convinced that the assessee had sufficient interest free funds available with it

to make investments. Therefore, he deleted the disallowance of interest expenditure made under Rule 8D(2)(ii). To demonstrate availability of interest free surplus funds with the assessee, the learned AR drew our attention to a chart indicating the surplus interest free funds available from A.Y. 1992-93 to A.Y. 2008-09. He submitted, the investments on which assessee has earned exempt income during the year were made in A.Y. 1993-94 and in that assessment year also the assessee had sufficient interest free funds available with it to make investment. Thus, the learned AR submitted, learned CIT(A)'s decision to delete the disallowance of interest expenditure made under Rule 8D(2)(ii) is in consonance with the ratio of decision laid down by the Hon'ble Jurisdictional High Court in the case of CIT vs. Reliance Utilities Ltd (supra) and CIT vs. HDFC Bank Ltd. (366 ITR 505)

7. We have considered rival submissions and perused material on record. We have also applied our mind to the decisions relied upon. The specific dispute between the parties is with regard to disallowance of interest expenditure under Rule 8D(2)(ii) of the Rules. As could be seen from the material on record, in course of assessment proceedings, the assessee while justifying its stand that no disallowance u/s. 14A read with Rule 8D can be made has specifically stated that interest expenditure incurred by the assessee cannot be attributed to earning of exempt income, since, there is no nexus between interest bearing funds and tax free investments. However, the Assessing Officer has rejected the aforesaid contention of the assessee simply

on the reasoning that disallowance u/s. 14A has to be computed by applying Rule 8D. However, the first appellate authority taking note of assessee's submissions, has examined the availability of interest free funds with the assessee and has found that as against investment made of ₹ 43.97 crore the assessee had interest free surplus funds of ₹ 398.79 crore. Being satisfied with the factual position that assessee had enough interest free surplus funds to take care of the investment, he has deleted the disallowance of interest expenditure made under Rule 8D(2)(ii) of the Act. From the chart submitted before us by the learned AR indicating the availability of funds with the assessee, we find that right from A.Y. 1992-93 to A.Y. 2008-09, each year assessee had sufficient interest free funds available with it, which is more than the investments made. Therefore, applying the ratio laid down by the Hon'ble Jurisdictional High Court in the case of CIT vs. Reliance Utilities Ltd (supra) and CIT vs. HDFC Bank Ltd.(supra), no disallowance of expenditure can be made under Rule 8D(2)(ii). That being so, we do not find any infirmity in the decision of the learned CIT(A) in deleting the disallowance made under Rule 8D(2)(ii) read with section 14A of the Act. This ground is dismissed.

8. The common issue raised in ground no.2 of all these appeals is with regard to applicability of section 14A read with Rule 8D while computing book profit u/s. 115JB of the Act. Briefly, facts are while making disallowance u/s. 14A read with Rule 8D of the Act under the normal provisions, the Assessing Officer also added it to the book profit computed u/s. 115JB of the Act. The

assessee challenged aforesaid decision of the Assessing Officer before the CIT(A). The CIT(A) after considering the submissions of the assessee held that provisions of section 14A cannot be imported while computing book profit u/s. 115JB of the Act. Referring to clause (f) of explanation to section 115JB he observed that it refers to amount debited to the Profit and loss account, which can be added back to the book profit computed u/s. 115JB of the Act. Referring to certain judicial precedent, learned CIT(A) ultimately concluded that no addition to book profit can be made on account of disallowance u/s. 14A, except, as stipulated under clause (f) of Explanation 1 of Section 115JB of the Act.

9. We have considered rival submissions and perused material on record. After analyzing the provisions contained u/s. 115JB of the Act, we agree with the learned CIT(A) that computation of book profit u/s. 115JB cannot be made by taking recourse to the provisions of section 14A read with Rule 8D, except, as stipulated under clause (f) of Explanation 1 of section 115JB of the Act, in so far as it relates to expenditure attributable to exempt income. This view has also been expressed by the ITAT, Delhi, Special Bench in case of ACIT vs. Vireet Investment Private Ltd. (2017) 165 ITD 27. In view of the above, we uphold the decision of the learned CIT(A) by dismissing the ground raised.

10. Our aforesaid decision applies mutatis mutandis to the other two appeals of the Revenue under consideration.

In the result, the appeals of the Revenue are dismissed.

11. **CO 124, 125 & 126/M/2016**

All these cross-objections have been filed by the assessee with inordinate delay. The cross-objections have been filed basically challenging the decision of the CIT(A) in sustaining the disallowance of administrative expenditure made u/s. 14A read with Rule 8D(iii). However, at the time of hearing, the learned AR on the instruction of his client did not press the cross-objection. Accordingly, the cross-objections are dismissed as not pressed

12. To sum up, the department's appeals and assessee's cross-objections are dismissed.

Order pronounced in the open court on this day of 19<sup>th</sup> September 2018.

**Sd/-**  
**(Manoj Kumar Aggarwal)**  
**ACCOUNTANT MEMBER**

Mumbai, Dated : 19<sup>th</sup> September, 2018.

**Sd/-**  
**(Saktijit Dey)**  
**JUDICIAL MEMBER**

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**Copy of the Order forwarded to :**

1. The Appellant.
2. The Respondent.
3. The CIT(A), Mumbai.
4. The CIT
5. The DR, 'F' Bench, ITAT, Mumbai

BY ORDER,

//True Copy//

(Assistant Registrar)  
Income Tax Appellate Tribunal, Mumbai