

**IN THE INCOME TAX APPELLATE TRIBUNAL  
"G" Bench, Mumbai**

**Before Shri B.R. Baskaran, Accountant Member  
and Shri Ravish Sood, Judicial Member**

**ITA No. 246/Mum/2017**  
(Assessment Year: 2012-13)

Ms. Spaco Technologies (India) Pvt. Ltd. 901, Prasad Chambers Opera House Mumbai 400004	Vs.	DCIT, Circle 5(3)(2) Aayakar Bhavan M.K. Road Mumbai 400020
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PAN – AABCS5307E

**Appellant**

**Respondent**

Appellant by:	Shri M.C. Naniwadekar
Respondent by:	Shri Nishant Samaiya

Date of Hearing:	04.10.2018
Date of Pronouncement:	04.10.2018

**ORDER**

**Per B.R. Baskaran, AM**

The assessee has filed this appeal challenging the order dated 27.09.2016 passed by CIT(A)-10, Mumbai and it relates to A.Y. 2012-13. The assessee is aggrieved by the decision of the learned CIT(A) in partially confirming the disallowance made by the AO under Section 14A of the Income Tax Act, 1961 (hereinafter "the Act") read with Rule 8D of the I.T. Rules.

2. The learned A.R. submitted that the assessee is engaged in the business of manufacturing of carburettors, components and allied engineering products. During the year under consideration the assessee has earned dividend income of ₹332.12 lakhs, tax free interest income of ₹4.84 lakhs and long term capital gain of ₹234.15 lakhs, all are exempt from tax. The AO noticed that the assessee has disallowed a sum of ₹1,26,000/- only as expenditure incurred towards exempt income under Section 14A of the Act. The Assessing Officer, however, took the view that

the disallowance has to be computed as per provisions of Rule 8D. Accordingly, the AO worked out the disallowance as per Rule 8D at ₹102.82 lakhs. After giving set off of ₹1,26,000/- disallowed by the assessee and added ₹101.56 lakhs to the returned income of the assessee.

3. The learned CIT(A) noticed that the assessee possessed sufficient amount of interest free funds and hence no disallowance of interest expenditure under Rule 8D(2)(ii) of the I.T. Rules is called for. In this regard the learned CIT(A) placed reliance on the decision rendered by the Hon'ble Bombay High Court in the case of HDFC Bank Ltd. 383 ITR 529. Accordingly he deleted the disallowance of interest expenditure made under Rule 8D(2)(ii) of I T Rules. The disallowance of ₹1,26,000/- made by the assessee was considered by Ld CIT(A) as disallowance of direct expenditure under Rule 8D(2)(i) of the I.T. Rules. With regard to disallowance of administrative expenditure under Rule 8D(2)(iii) of the I.T Rules, the learned CIT(A) held that the investments made in growth funds are to be excluded for computing the average value of investments. Accordingly this ground of the assessee was allowed in part by the learned CIT(A).

4. The learned A.R. submitted that the investment portfolio of the assessee includes investments which did not yield any dividend income during the year under consideration and hence, as per the decision rendered by the Delhi Special Bench of the Tribunal in the case of ACIT vs. Vireet Investment Pvt. Ltd. (2017) 58 ITR (Trib) 313, the investment which did not yield exempt income during the relevant year has to be excluded while computing the average value of investments. The learned A.R. further submitted that the assessee has disallowed a sum of ₹16,97,462/- under Rule 8D(2)(i) as they are direct expenses incurred towards DMAT charges and STT. He submitted that the tax authorities did not consider this disallowance voluntarily made by the assessee. He submitted that the amount of ₹1,26,000/- disallowed by the assessee was out of administrative expenses falling under Rule 8D(2)(iii) of the I.T. Rules.

5. We heard the learned D.R. and perused the record. From the Statement of computation of total income filed along with the return of income, which is placed in page 1 of the Paper Book, we noticed that the assessee has disallowed DMAT charges and Security Transaction Tax amounting to ₹16,97,462/- and the same constitute direct expenditure covered under Rule 8D(2)(i) of the I.T. Rules. We noticed that the tax authorities have not considered this disallowance. The assessee has also disallowed a sum of ₹1,26,000/- under Section 14A of the Act. According to the learned A.R. the same pertains to administrative expenditure falling under Rule 8D(2)(iii) of the I.T. Rules.

6. We have noticed that the learned CIT(A) has already deleted the disallowance of interest expenditure made under Rule 8D(2)(ii) of I.T Rules. Though the Ld CIT(A) has held that the disallowance of Rs.1,26,000/- made by the assessee pertains to direct expenditure, yet we notice from the discussions made in the preceding paragraph that the same pertains to administrative expenses falling under Rule 8D(2)(iii) of I T Rules.

7. We have noticed that the Ld CIT(A) has directed the AO to exclude the investment made in growth funds while computing the average value of investments since the growth funds do not yield any dividend. Apart from the above the assessee, by placing reliance on the Special Bench decision rendered in the case of Vireet Investment Pvt. Ltd. (supra), has requested for exclusion of investments which did not yield dividend income during the year under consideration for the purpose of computing average investments. We find merit in the said request of the assessee as the said plea is in accordance with the decision rendered by the Special Bench referred supra. Accordingly we modify the order passed by the learned CIT(A) and direct the AO to exclude the investments made in growth funds as well as investments which did not yield dividend income during the year under consideration while working out average value of investments. The amount of ₹1,26,000/- voluntarily disallowed by the assessee should be given set off against the amount of disallowance computed under Rule 8D(2)(iii) of the I.T. Rules for the reasons discussed above. We order accordingly.

8. At the time of hearing the learned A.R. also contended that the AO has not recorded proper satisfaction as contemplated under Section 14A(2) of the Act. However, he did not press the same during the course of hearing and hence we decline to adjudicate the said plea of the assessee.

9. In the result, the appeal filed by the assessee is partly allowed.

Order pronounced in the open court on 4<sup>th</sup> October, 2018.

Sd/-  
**(Ravish Sood)**  
**Judicial Member**

Sd/-  
**(B.R. Baskaran)**  
**Accountant Member**

Mumbai, Dated: 4<sup>th</sup> October, 2018

Copy to:

1. *The Appellant*
2. *The Respondent*
3. *The CIT(A) -10, Mumbai*
4. *The Pr.CIT - 5, Mumbai*
5. *The DR, "G" Bench, ITAT, Mumbai*

*By Order*

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*Assistant Registrar*  
*ITAT, Mumbai Benches, Mumbai*

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