

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCH "A", HYDERABAD**

**BEFORE SMT. P. MADHAVI DEVI, JUDICIAL MEMBER
AND
SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER**

	ITA No.294/Hyd/2018		
	Assessment Year: 2003-14		
Sri ASL Finvest Private Limited, Hyderabad. PAN: AADCS 2148 D	Vs.	Income Tax Officer, Ward-3(3), Hyderabad.	
(Appellant)		(Respondent)	
	Assessee by:	Sri V. Raghavendra Rao	
	Revenue by:	Sri R. Mohan Reddy, DR	
	Date of hearing:	15/11/2018	
	Date of pronouncement:	13/02/2019	

ORDER

PER Smt. P. Madhavi Devi, J.M.:

This appeal is filed by the assessee against the order of the CIT(A)-3, Hyderabad for the assessment year 2013-14.

2. Brief facts of the case are that the assessee-company which derives income from investments and rents, filed its return of income for the A.Y. 2013-14 on 30/03/2014 admitting income at Rs. 9,88,080/- under normal provisions and book profits of Rs. 32,42,406/- u/s 115JB of the Act. The case was selected for scrutiny under CASS and accordingly details were called for

and the assessee submitted the details. On perusal of the same, the A.O. observed that the assessee-company earned dividend income and income from units of mutual funds aggregating to Rs. 35,13,314/- which is exempt from tax as per the provisions of section 10 of the IT Act, 1961. Therefore, the assessee was asked as to why the disallowance u/s 14A r.w.s 8D was not made. The assessee submitted that the investment in shares and Mutual Funds was not made out of borrowed funds and that there was no direct expenditure attributable to earning of dividend income. It was also submitted that there was no interest payment made on account of borrowed funds and therefore, there cannot be any disallowance of expenditure u/s 14A r.w Rule 8D. However, the A.O was not satisfied with the assessee's contention and worked out the disallowance under Rule 8D(2)(iii) of Rs. 3,63,991/-. Further, he also added the same back to the book profits for computing the income u/s 115JB of the Act and since the income u/s 115JB was higher, the same was brought to tax. Aggrieved, assessee preferred an appeal before the CIT(A), who confirmed the order of the AO and the assessee is in appeal before us by raising the following grounds of appeal:

- “1. *Ld. CIT(A) has erred on facts and in law, in dismissing the appeal of the assessee.*

2. *Ld. CIT(A) has erred in holding that the A.O. was satisfied about the applicability of section 14A to the facts of the case ignoring that in the assessment order the A.O. has omitted to consider the provisions of Rule 8D(1) of the IT Rules as evident from the assessment order.*
3. *Having regard to the expenses incurred which were only for maintaining the status of the assessee as a company, the CIT(A) is not justified in holding that the expenses are incurred in relation to the exempt incom*

Without prejudice

4. *In computation of disallowance under Rule 8D(2)(iii), the investments from which exempt income has been received only should have been considered for finding out the average of the investments.*
5. *The Ld. CIT(A) has erred in law in sustaining the finding of the A.O. that the disallowable amount under section 14A is to be added for the purpose of computing the book profits u/s 115JB of the Act.*
6. *For these and any other Grounds that may be raised at / before the time of hearing, total income is prayed that the disallowance made by the A.O. and upheld by the Ld. CIT(A) be kindly deleted.”*

3. Learned Counsel for the Assessee has drawn our attention to Grounds No. 4 to 6 of the grounds of appeal and submitted that they have not been raised before the CIT(A) and therefore, it is prayed that they may be admitted as additional grounds of appeal. The assessee also filed the following additional grounds of appeal along with the application for admission of the same.

Additional Grounds of Appeal:-

1. *The appellant craves leave of the Hon'ble Bench to present Additional ground of appeal for consideration.*
2. *The issue in appeal is disallowance u/s 14A r.w.r 8D(2)(iii) of IT Act and IT Rules. While filing the grounds of appeal originally the ground regarding computation*

of disallowance under Rule 8D(2)(iii) has been raised as Ground No.4. However, similar ground has been raised before the Ld. CIT(A). Therefore, it may be considered as Additional Ground of Appeal.

3. *AO has taken the average of entire investments as at the beginning and as at the end of the previous year for computation under Rule 8D(2)(iii).*
4. *It is the contention of the assessee that as per law the average of the investments that yielded the exempt income that is dividend income only have to be adopted for computation under Rule 8D(2)(iii).*
5. *The additional ground is regarding the interpretation of Rule 8D(2)(iii) and it is a legal ground.*
6. *No new facts which are not already part of the record require to be investigated for consideration of the additional ground.*
7. *It is humbly and respectfully prayed that the Additional Ground of appeal be kindly admitted and considered. If it is not admitted the assessee would miss the opportunity of their consideration by the Hon'ble Bench.*
8. *It is submitted that the Additional Ground being purely legal in nature, Hon'ble Bench has the power and discretion to admit it for consideration in terms of the judgment of Supreme Court in the case of NTPC Ltd (229 ITR 323)*
9. *It is prayed that the Additional Ground of appeal be kindly admitted for consideration and adjudication."*

4. These grounds being legal grounds, they are admitted and adjudicated as under:-

5. Learned Counsel for the Assessee briefly narrated the facts of the case and reiterated the submissions made before the Authorities below. He relied upon the decision of the Coordinate Bench "B" (SMC) of this Tribunal in the case of Sri Kode Finvest Private Limited vs. ITO (ITA No. 237/Hyd/2016)

dated 28/03/2018 wherein the Tribunal has held that the disallowance under Rule 8D(2)(iii) should be computed only on the average of investments which have yielded exempt income. Further, he placed reliance upon the decision of the Special Bench of the Tribunal in the case of ACIT vs. Vireet Investments (P.) Ltd [2017] 58 ITR (T) 313 (Delhi – Trib.) (SB) in support of his argument that the amount disallowed u/s 14A cannot be added u/s 115JB of the Act.

6. Learned Departmental Representative, on the other hand, supported the orders of the Authorities below.

7. Having regard to the rival contentions and the material on record, we find that the issue of disallowance u/s 14A r.w. Rule 8D(2)(iii) is covered in favour of the assessee in various decisions of the ITAT and one of such decisions is the decision of the Special Bench of Delhi ITAT in the case of Vireet Investments Private Limited (supra), wherein it has been held that the disallowance under Rule 8D(2)(iii) can be only of the average of investments which have yielded exempt income. Respectfully following the same, the additional grounds of appeal are allowed.

8. As regards the assessee's computation of income u/s 115JB of the Act, we find that this issue is also covered in favour of the assessee by the Special Bench, ITAT Delhi decision in the case of Vireet Investments Private Limited (supra) wherein it was held that the computation u/s 115JB should be made without resorting to the computation as contemplated u/s 14A r.w. Rule 8D of the IT Rules, 1962. Accordingly, grounds raised by the assessee are allowed.

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

Pronounced in the open Court on 13th February, 2019.

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Sd/-
(P. MADHAVI DEVI)
JUDICIAL MEMBER

Hyderabad, Dated: 13th February, 2019

OKK

Copy to:-

- 1) Sri ASL Finvest Pvt Ltd., 3rd Floor, Mohans Plaza, Plot No.733, road No.66, Jubilee Hills, Hyderabad-33.
- 2) Income Tax Officer, Ward-3(3), Signature Towers, Kondapur, Opp. Botanical Gardens, Hyderabad.
- 3) The CIT(A)-3, Hyderabad
- 4) The Pr. CIT-3, Hyderabad
- 5) The DR, ITAT, Hyderabad
- 6) Guard File