



**IN THE INCOME TAX APPELLATE TRIBUNAL**

**"C" BENCH, MUMBAI**

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND**  
**SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER**

ITA no.2962 & 2963/Mum./2018  
(Assessment Year : 2013-14 and 2014-15)

Dy. Commissioner of Income Tax  
Central Circle-7(1), Mumbai

..... Appellant

v/s

Pan India Network Infravest P. Ltd.  
135, Continental Building  
Dr. Annie Besant Road  
Worli, Mumbai 400 018  
PAN – AACCP2459H

..... Respondent

Revenue by : Shri Awungshi Gimsen  
Assessee by : Shri Jay Bhansali

Date of Hearing – 13.05.2019

Date of Order – 17.05.2019

**ORDER**

**PER SAKTIJIT DEY. J.M.**

The aforesaid appeals have been filed by the Revenue challenging separate orders, both dated 21<sup>st</sup> February 2018, passed by the learned Commissioner (Appeals)-49, Mumbai, for the assessment year 2013-14 and 2014-15.

2. The common dispute arising for consideration relates to disallowance made under section 14A r/w rule 8D, while computing the

income under the normal provisions as well as under section 115JB of the Income-tax Act, 1961 (for short "*the Act*").

3. Brief facts are, the assessee company is engaged in the business of providing internet data service. In the course of assessment proceedings, the Assessing Officer noticed that in the assessment year 2013-14, the assessee has earned exempt income by way of dividend amounting to ₹ 48,865, and in assessment year 2014-15, it had earned exempt income by way of dividend of ₹ 1,08,136. However, he noticed that the assessee had not disallowed any expenditure under section 14A r/w rule 8D for earning the exempt income. Accordingly, he called upon the assessee to explain why disallowance under section 14A r/w rule 8D should not be made. Though, the assessee objected to the proposed disallowance by stating that the disallowance of expenditure made voluntarily also takes care of the expenditure attributable to exempt income, however, the Assessing Officer rejecting the explanation of the assessee proceeded to compute the disallowance under rule 8D(2)(iii) for an amount of ₹ 4,00,61,500, in the assessment year 2013-14 and ₹ 3,73,61,000. He also made identical disallowance while computing book profit under section 115JB of the Act. Of course, ultimately the Assessing Officer computed the tax liability of the assessee under the normal provisions of the Act.

4. The assessee challenged the aforesaid disallowance before learned Commissioner (Appeals). While disposing of assessee's appeals, learned Commissioner (Appeals) restricted the disallowance to ₹ 57,42,904, in the assessment year 2013-14. Whereas in the assessment year 2014-15, he sustained the disallowance made by the Assessing Officer. However, subsequently, on applications made by the assessee under section 154 of the Act, learned Commissioner (Appeals) restricted the disallowance under section 14A r/w rule 8D in both the assessment years to the exempt income earned during the year by the assessee. In other words, learned Commissioner (Appeals) restricted the disallowance in assessment year 2013-14 to ₹ 48,865 and to ₹ 1,08,136, in assessment year 2014-15. As regards the disallowance of expenditure while computing book profit under section 115JB of the Act, learned Commissioner (Appeals) relying upon the Special Bench decision of the Tribunal, Delhi Bench, in CIT v/s Vireet Investment Pvt. Ltd., [2017] 82 taxmann.com 415 (Del.), held that while computing the book profit under section 115JB of the Act, no disallowance under section 14A r/w rule 8D can be made.

5. The learned Departmental Representative relying upon the observations of the Assessing Officer submitted that there is no condition under the provisions of section 14A of the Act to restrict the disallowance to the exempt income earned. He submitted, disallowance of expenditure under section 14A of the Act has to be

made as per rule 8D(2). Further, he submitted, as per the decision of the Tribunal, Mumbai Bench, in DCIT v/s Viraj Profiles Ltd., [2016] 156 ITD 72 (Mum.), disallowance of expenditure for earning exempt income has to be made as per Explanation-1(f) of section 115JB(2).

6. The learned Authorised Representative strongly relying upon the observations of the first appellate authority submitted, disallowance under section 14A r/w rule 8D cannot exceed the exempt income earned during the year. In support of such contention, he relied upon the following decisions:-

- i) Cheminvest v/s CIT, [2015] 378 IT 33;*
- ii) Joint Investments Pvt. Ltd. v/s CIT, [2015] 372 ITR 694;*
- iii) PCIT v/s Caraf Builders and Constructions Pvt. Ltd., 101 taxmann.com 167; and*
- iv) DCIT v/s Mahindra CIE Automotive Ltd., ITA no.6659/Mum./2014, dated 11.04.2018.*

7. Further, learned Authorised Representative submitted that while computing book profit under section 115JB(2) of the Act, the Assessing Officer has made disallowance under section 14A r/w rule 8D which is contrary to the ratio laid down in Vireet Investment (supra).

8. We have considered rival submissions and perused material on record. We have also applied our mind to the decisions relied upon.

Undisputedly, the exempt income earned by the assessee during the assessment year 2013-14, was ₹ 48,865 and in assessment year 2014-15, was ₹ 1,08,136. Whereas, the Assessing Officer has made huge disallowance by invoking the provisions of rule 8D(2)(iii). Now, it is fairly well settled that the disallowance under section 14A r/w rule 8D cannot exceed the quantum of exempt income earned during the year. The decisions relied upon by the learned Authorised Representative squarely support this view. That being the case, we do not find any reason to interfere with the decision of the learned Commissioner (Appeals) in directing the Assessing Officer to restrict the disallowance under section 14A of the Act to the exempt income earned by the assessee in respective assessment years.

9. As regards disallowance made by the Assessing Officer while computing the book profit under section 115JB of the Act, it is evident that the Assessing Officer has made such disallowance by resorting to the provisions of section 14A r/w rule 8D. In our view, as per the ratio laid down by the Tribunal, Special Bench Delhi, in *Vireet Investment (supra)*, the Assessing Officer while computing the book profit under section 115JB of the Act cannot make any disallowance by making reference to the provisions of section 14A r/w rule 8D. However, the Assessing Officer retains the power to make disallowance of expenditure incurred for earning exempt income as per Explanation-1(f) of section 115JB of the Act. Therefore, the disallowance made by

the Assessing Officer while computing book profit under section 115JB(2) of the Act is unsustainable. Thus, the Assessing Officer has is directed to examine and quantify the expenditure incurred by the assessee for earning exempt income in terms of Explanation-1(f) of section 115JB of the Act without taking aid of rule 8D(2) r/w section 14A of the Act. Grounds no. (i) and (ii) in both the appeals are dismissed and ground no. (iii) is partly allowed for statistical purposes.

10. In the result, both the appeals are partly allowed for statistical purposes.

Order pronounced in the open Court on 17.05.2019

**Sd/-**  
**MANOJ KUMAR AGGARWAL**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**SAKTIJIT DEY**  
**JUDICIAL MEMBER**

**MUMBAI, DATED: 17.05.2019**

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The CIT(A);*
- (4) *The CIT, Mumbai City concerned;*
- (5) *The DR, ITAT, Mumbai;*
- (6) *Guard file.*

*Pradeep J. Chowdhury*  
*Sr. Private Secretary*

True Copy  
By Order

(Assistant Registrar)  
ITAT, Mumbai