

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "B", MUMBAI**

BEFORE SHRI SHAMIM YAHYA (AM) AND SHRI RAM LAL NEGI (JM)

**ITA No. 6580/MUM/2017
Assessment Year: 2012-13**

The Deputy Commissioner of Income Tax, Central Circle-6(3), Room No. 1926, 19 th Floor, Air India Building, Nariman Point, Mumbai - 400021	Vs.	M/s Bombay Rayon Fashions Ltd., (Formerly known as Mudra Fabrics Ltd.), D-Wing, 1 st Floor, Oberoi Garden Estate, Chandiwali Farms Road, Chandivali, Andheri (East), Mumbai - 400072 PAN: AAACM3447J
(Appellant)		(Respondent)

Revenue by : Shri Ritesh Mishra (DR)
Assessee by : Shri Dharmesh Shah (AR)

Date of Hearing: 13/03/2019
Date of Pronouncement: 11/04/2019

ORDER

PER RAM LAL NEGI, JM

This appeal has been filed by the revenue against the order dated 23.08.2017 passed by the Commissioner of Income Tax (Appeals)-54 (for short 'the CIT(A), Mumbai, for the assessment year 2012-13, whereby the Ld. CIT(A) has partly allowed the appeal filed by the assessee against the assessment order passed u/s 143 (3) r.w.s 144C (13) of the Income Tax Act, 1961 (for short the 'Act').

2. Brief facts of the case are that the assessee engaged in the business of manufacture, exports and retail of high-end designer ranges for fabrics and garments, filed its return of income for the assessment year under consideration declaring the Nil income under the normal provision of the Act and Rs. 307,25,09,928/- u/s 115JB of the Act. The return was processed u/s

143 (1) of the Act. In response to the notices u/s 143(2) and 142 (1), the authorized representative of the assessee appeared before the AO and submitted the details called for and discussed the case. The AO *inter alia* made addition of Rs. 1,38,48,551/- u/s 14A of the Act read with rule 8D (2) of the Income Tax Rules. The AO also made addition of the said amount to the income of assessee u/s 115JB of the Act. The assessee challenged the assessment order before the Ld. CIT (A). The Ld. CIT (A) following the decision of the ITAT rendered in the assessee's own case for the earlier years restricted the disallowance to 0.5% of the average value of the investments which earned exempt income during the year relevant to the assessment year under consideration. So far as the book profit u/s 115JB is concerned, the Ld. CIT (A) following the decision of the Special Bench of the ITAT Delhi, in the case of *Vireet Investments Pvt. Ltd.* 82 taxmann.com 415 deleted the addition of Rs. 1,38,48,551/- made by the AO. Against the said findings of the Ld. CIT (A), the department is in appeal before the Tribunal.

3. The revenue has challenged the impugned order passed by the Ld. CIT (A) on the following effective grounds:-

1. *“On the facts and in the circumstances of the case and in law the learned CIT (A) has erred in deleting the addition u/s 14A of the Income Tax Act, 1961 ignoring that the provisions of Section 14A apply even if no exempt income is actually earned or received during the year in any form whatsoever.*

2. *On the facts and in the circumstances of the case and in law the learned CIT (A) has erred in deleting the addition u/s 14A of the Income Tax Act, 1961 by ignoring the provisions of CBDT Circular no. 5/2014 dated 11.02.2014 wherein, it has been clarified that the Rule 8D r.w.s 14A provides for the disallowance of expenditure even where the assessee in particulars has not earned exempt income.*

3. *On the facts and in the circumstances of the case and in law the learned CIT (A) has erred in holding that the disallowance made U/s 14A cannot be considered while*

computing the book profit U/s 115JB, when the issue in the case of the assessee is squarely covered by the decision of 'F' bench of ITAT, Mumbai I the case of Viraj Profiles Ltd. (2016) 156 ITD 72, Mumbai."

4. At the outset, the Ld. counsel for the assessee submitted that the first ground of department's appeal is misconceived as the revenue has wrongly mentioned the fact that no exempt income was earned by the assessee during the assessment year under consideration. The Ld. counsel further submitted that there is no infirmity in the order of the Ld. CIT (A) as the Ld. CIT (A) has directed the AO to restrict the addition to 0.5% to the average value of investments which have yielded exempt income during the year relevant to the assessment year under consideration. The Ld. counsel further submitted that the ITAT has dealt with the identical issue in the assessee's own case for the A.Y. 2007-08 and restricted the disallowance under rule 8D(2)(iii) to 0.5% of only those investments which earned exempt income. So far as the second ground is concerned Ld. Counsel submitted the Ld. CIT (A) has rightly deleted the addition of Rs. 1,38,48,551/- by following the decision of the Special Bench of Delhi Tribunal in the case of Vireet Investments Pvt. Ltd. (supra).

5. On the other hand, the Ld. CIT (A) relying on the assessment order passed by the AO submitted that the Ld. CIT (A) has wrongly restricted the addition made u/s 14A read with rule 8D(2)(iii) of the Income Tax Rules and also wrongly deleted the addition of Rs. 1,38,48,551/- made by the AO while computing the book profits u/s 115JB of the Act ignoring the decision of the 'F' Bench of the ITAT, Mumbai in the case of *Viraj Profiles Ltd. (2016) 1156 ITD 72 (Mum)*.

6. We have heard the rival submissions and gone through the entire material on record including the cases relied upon the parties. We notice that the assessee has received the exempt income of Rs. 38.90 lakhs during the year relevant to the assessment year under consideration. The Ld. CIT (A) has

restricted the disallowance made u/s 14A read with rule 8D(2)(iii) to 0.5% by following the order of his predecessor which was based on the order of the co-ordinate Bench rendered in the assessee's own case for the A.Y. 2007-08. The concluding para of the order of the Ld. CIT (A) reads as under:-

“7.4 The facts are identical in this year. Therefore, respectfully following the decision of the Hon'ble jurisdictional ITAT in the appellant's own case for earlier years, the disallowance made by the Assessing Officer u/s 14A r.w. Ruled 8D(2) is restricted to 0.5% of the average value of these investments, which have yielded exempt income during the year. The Assessing Officer is directed to re-work the disallowance by considering only the investment which had yielded dividend income during the year. This ground of Appeal is Partly Allowed.”

6. We further notice that the co-ordinate Bench has decided the identical issue in favour of the assessee in assessee's own appeals for the A.Y. 2007-08, 2008-09, 2009-10 and 2010-11. The relevant part of the order reads as under:-

“22. After carefully considering the submissions made by both the counsels and also perusing the records, we are of the considered view, that so far the interest disallowance of Rs. 71.79 lacs sustained by CIT (A) is concerned the same is required to be deleted in view of the fact that share capital of the company is placed at Rs. 604.59 crores and the investment is that of Rs. 5.80crores, the ratio of Bombay High Court in the case of HDFC Bank Ltd. and Reliance Utilities & Power Ltd. (supra) are squarely applicable. Therefore, the sum of Rs. 71.79 lacs on account of interest and disallowance is hereby deleted.

As regard to the disallowance of 0.5% of average investment of Rs. 31.70 lacs is concerned, in this respect ld. AR submitted that chart in respect of the dividend earned and value thereof and submitted that since the dividend is the

shares the disallowance of 0.5% restricted to only those scrips on which the dividend is earned.

Therefore, while following the decisions of Hon'ble Tribunal and Hon'ble High Court, we hold that the disallowance of 0.5% is restricted to only those investment of Rs. 50.06 crores on the shares regarding which dividend is earned. Hence, Assessing Officer is directed to recalculate the disallowance keeping in view our above direction. Hence this ground of appeal of assessee is allowed."

7. Since, the order of the Ld. CIT (A) is based on the order passed by the coordinate Bench in the assessee's own case for the A.Ys. 2007-08, 2008-09, 2009-10 and 2010-11. We do not find any infirmity in the order of the Ld. CIT (A). We therefore, dismiss ground No. I and II of the appeal and uphold the findings of the Ld. CIT (A).

8. Ground No. III pertains to addition of disallowance u/s 14A to the book profit u/s 115JB(f). We notice that the Ld. CIT (A) has deleted the addition of Rs. 1,38,48,551/- (computed under section 14A of the Act) made by the AO to the Book profit u/s 115JB of the Act by following the decision of the Special Bench of the ITAT in Vireet Investment Pvt. Ltd. (supra) Hence, we do not find any infirmity in the order of the Ld. CIT (A) to interfere with. We therefore dismiss this ground of appeal of the revenue and upheld the findings of the Ld. CIT (A).

In the result, appeal filed by the revenue for assessment year 2012-2013 is dismissed.

Order pronounced in the open court on 11th April, 2019.

Sd/-

(SHAMIM YAHYA)

ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated: 11/04/2019

Alindra, PS

Sd/-

(RAM LAL NEGI)

JUDICIAL MEMBER

आदेश प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त (अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /
DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

**उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai**