

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

**BEFORE SHRI C.N. PRASAD, HON'BLE JUDICIAL MEMBER AND  
SHRI MANOJ KUMAR AGGARWAL, HON'BLE ACCOUNTANT MEMBER**

**ITA NOS. 7176 & 7257/MUM/2017  
(A. Ys: 2014-15 & 2015-16)**

Dy. Commissioner of Income Tax Range – 9(1)(2) Room No. 260A, 2 <sup>nd</sup> Floor, Aayakar Bhavan, M.K. Road, Mumbai-400 020	v.	M/s. Atlanta Ltd., 101, Shri Ambashanti Chambers Andheri Kurla Road Andheri (E), Mumbai – 400 059  <b>PAN: AAACA 8865 E</b>
<b>(Assessee)</b>		<b>(Respondent)</b>

**C.O. No. 23/MUM/2019  
[Arising out of ITA NO. 7176/MUM/2017 (A.Y: 2014-15)]**

M/s. Atlanta Ltd., 101, Shri Ambashanti Chambers Andheri Kurla Road Andheri (E), Mumbai – 400 059  <b>PAN: AAACA 8865 E</b>	v.	Dy. Commissioner of Income Tax Range – 9(1)(2) Room No. 260A, 2 <sup>nd</sup> Floor, Aayakar Bhavan, M.K. Road, Mumbai-400 020
<b>(Assessee)</b>		<b>(Respondent)</b>

**Assessee by** : **Shri Vijay Mehta**  
**Shri Anuj Kisnadwala**

**Department by** : **Shri Anadi Varma**  
**Shri Rajesh Kumar Yadav**

**Date of Hearing** : **25.04.2019**

**Date of Pronouncement** : **31.05.2019**

## ORDER

### PER C.N. PRASAD (JM)

1. These appeals are filed by the Revenue and cross objection by the assessee, against different orders of the Learned Commissioner of Income Tax (Appeals)–16, Mumbai [hereinafter in short “Ld.CIT(A)”] dated 28.09.2017 for the Assessment Years 2014-15 and 2015-16.

2. The Revenue for the A.Y. 2014-15 raised the following Grounds: -

*“Whether on the fact and in the circumstances of the case, the Ld. CIT(A) erred in ignoring the CBDT Circular No. 5 of 2014 dated 1.02.2014 wherein it has been clarified that the term “includible” in the Heading section 14A of the Act and the Heading Rule 8D of the IT. Rules, 1962 indicates that the invoking disallowances u/s 14A, it is not material that the assessee should have earned such exempt income during the financial year consideration.”*

*“Whether on the fact and in the circumstances of the case, the Ld. CIT(A) erred in directing the AO to exclude the strategic investment made by the assessee to the tune of Rs. 3,30,07,10,274/- as on 31.03.2015 and ₹.2,71,47,34,371/- as on 31.03.2014 while computing the disallowances of u/s 14A read with Rule 8D of the IT. Rule, 1962. ”*

*“ Whether on the facts and circumstances of the case and in law, the Id. CIT(A) was justified, in deleting the disallowance on account of expenditure under section 14A read with Rule 1962 is covered under clause (f) of Explanation 1 to section 115JB(2).*

*“Whether on the facts and circumstances of the case and in law, the Id. CIT(A) was justified in deleting the disallowance on account of expenditure under section 14A read with Rule 1962 without appreciating the decision of Hon'ble ITAT,F-Bench, Mumbai vide its order dated 21.10.2015 in the DCIT Vs. Viraj Profiles Ltd (2016) 156 ITD 72 (Mumbai-Trib.) that in terms of clause ( f) to Explanation 1 to section 115JB(2) and Dabur India Ltd. Vs. ACIT (2013) 145 ITD 175 (Mumbai-Trib.) disallowance made by Assessing Officer under section 14A, read with rule 8D of 1962 Rules, has to be added back for purpose of arriving at figure of book profit. ”*

3. Assessee in its cross objection raised the following grounds: -

**“ 1. Disallowance u/s. 14A while computing the book profits u/s. 115JB:**

*On facts and circumstances of the case and in law, the Ld.CIT(A) erred in not holding that disallowance made by the Assessing Officer u/s. 14A of the Act while computing book profits u/s. 115JB is invalid. “*

4. We have heard rival contentions. Coming to the Revenue's appeal, the contentions raised by the Revenue in its first para of grounds of appeal that, in view of the CBDT circular, for invoking the disallowance u/s. 14A of the Act it is not material that the assessee should have earned exempt income during the Financial Year is now settled by the Hon'ble Jurisdictional High Court in the case of CIT v. M/s. Delite enterprises in ITA.No. 110 of 2009 dated 26.02.2009 and ACIT v. M/s. Ballarpur Industries Ltd., in ITA.Nos. 376 to 379/NAG/2014 dated 04.12.2015 wherein the proportion laid down was if there is no exempt income there can be no disallowance u/s. 14A of the Act. In view of the above decisions, the contentions of the Revenue in Para No.1 of the grounds of appeal is rejected.

5. In Para No.2 of the grounds of appeal, the contention raised by the Revenue is that Ld.CIT(A) erred in directing the Assessing Officer to exclude the strategic investment made by the assessee while computing the disallowance u/s. 14A r.w. Rule 8D of I.T. Rules.

6. Whether strategic investments made by the assessee to hold control and whether such investments can be excluded from the purview of disallowance u/s. 14A r.w. Rule 8D is now settled by the Hon'ble Supreme Court in the case of Maxopp Investment Limited, v. CIT [402 ITR 640]. Thus, respectfully following the said decision, we reverse the findings of

the Ld.CIT(A) on this contention and hold that even the strategic investments shall have to be considered for the purpose of disallowance u/s. 14A r.w. Rule 8D of I.T. Rules. This contention of the Revenue is accepted and allowed.

7. Coming to the Contentions of the Revenue in Para Nos. 3 and 4 of grounds of appeal that, the Ld.CIT(A) was not justified in deleting the disallowance on account of expenditure u/s. 14A r.w. Rule 8D while computing the book profits u/s. 115JB of the Act is concerned, we find that the Ld.CIT(A) following various decisions including the Special Bench of Delhi in the case of ACIT v. Vireet Investments Private Limited [165 ITD 27] accepted the contention of the assessee only those investments wherein the assessee has earned exempt income should be considered for the purpose of computing the disallowance under Rule 8D of I.T. Rules. Before us, Revenue challenged the order of the Ld.CIT(A) in deleting the disallowance while computing the book profits whereas the assessee in its cross objection contends that Ld.CIT(A) erred in not holding that disallowance made by the Assessing Officer while computing the book profits u/s.115JB of the Act is invalid.

8. The issues raised by the Revenue in Para Nos. 3 and 4 and the issue in cross objection of the assessee have been decided by the ITAT Special Bench Delhi in the case of ACIT v. Vireet Investments Private

Limited (supra) wherein it has been held that while computing the book profits u/s. 115JB of the Act the disallowance u/s. 14A cannot be resorted to as computed under Rule 8D r.w.s. 14A of the Act. Thus, the issue is restored to the file of the Assessing Officer who shall decide afresh in accordance with the decision of the Special Bench, after providing adequate opportunity of being heard to the assessee.

9. Coming to the appeal of the Revenue for the A.Y. 2015-16, the Revenue has raised identical grounds except for figures, as was raised for the A.Y. 2014-15 with similar contentions. Thus, the decision rendered by us for the A.Y. 2014-15 applies mutatis mutandis to the appeal for the A.Y. 2015-16. We order accordingly.

10. In the result, appeals of the Revenue for the A.Y. 2014-15 and 2015-16 are partly allowed as indicated above and the cross objection of the assessee for the A.Y. 2014-15 is allowed for statistical purpose.

Order pronounced in the open court on the 31<sup>st</sup> May, 2019

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

Mumbai / Dated 31/05/2019  
Giridhar, Sr.PS

Sd/-  
**(C.N. PRASAD)**  
**JUDICIAL MEMBER**

**Copy of the Order forwarded to:**

1. The Assessee
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER

(Asstt. Registrar)  
**ITAT, Mum**