

**IN THE INCOME TAX APPELLATE TRIBUNAL
“D” Bench, Mumbai**

**Before Shri Shamim Yahya, Accountant Member
and Shri Ravish Sood, Judicial Member**

**ITA No.5293/Mum/2017
(Assessment Year: 2012-13)**

Assistant Commissioner of
Income Tax CIR 6(2)(1),
R.No. 504, 5th Floor,
Aaykar Bhavan, M.K. Road,
Mumbai-20

M/s Daiwa Portfolio Advisory
(India) Pvt. Ltd.
1102, 11th Floor, Tower 2,
Vs. ‘A’ one Indiabulls Centre, 841,
S.B. Marg, Elphinstone-West,
Mumbai- 400013

PAN – AALCS8890E

(Appellant)

(Respondent)

Appellant by: Shri D.G. Pansari, D.R

Respondent by: Shri Ketan Ved, A.R

Date of Hearing: 18.06.2019

Date of Pronouncement: 26.06.2019

ORDER

PER RAVISH SOOD, JM

The present appeal filed by the revenue is directed against the order passed by the CIT(A)-12, Mumbai, dated 02.05.2017, which in turn arises from the order passed by the A.O under Sec.143(3) of the Income Tax, 1961 (for short ‘Act’), for A.Y. 2012-13. The revenue assailing the order of the CIT(A) has raised before us the following grounds of appeal:

- “1. On the facts and circumstances of the case and in law, the Ld.CIT(A) erred in deleting the addition of Rs.88,24,558/- being disallowance u/s. 14A r. w. r. 8D of the Act without appreciating the fact that the disallowance was worked

- out only in respect of Administrative and Managerial expenses applying Rule 8D(2)(iii) of I.T Rule.
2. On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition of Rs.88,24,558/- being disallowance u/s.14A r.w.r. 8D of the Act without appreciating the fact that making huge Investments requires decision making at a higher level with greater managerial skills and it is evident that expenditure is bound to be incurred for procuring it.
 3. The appellant prays that the order of the CIT(Appeals) on the above grounds be set aside and that of the AO be restored.
 4. The appellant craves leave to amend or alter any ground or to submit additional new ground, which may be necessary.”

2. Briefly stated, the assessee company which is an investment manager to Daiwa Mutual Fund for which it charges management fees as per the SEBI (Mutual Fund) Regulations, Act, 1996, had e-filed its return of income for A.Y. 2012-13 on 09.10.2012, declaring total loss of Rs.2,29,45,983/-. Subsequently, the case of the assessee was selected for scrutiny assessment under Sec.143(2).

3. During the course of the assessment proceedings, it was observed by the A.O that the assessee had apportioned an amount of Rs.27,325/- under Sec.14A, as expenditure relatable to the exempt income. It was noticed by the A.O that the assessee was holding investments worth Rs.197,89,17,134/- at the end of the year under consideration. On a perusal of the working of disallowance under Sec. 14A that was furnished by the assessee during the course of the assessment proceedings, it was observed by the A.O, that while working the average of investments the value of inventories was not considered by the assessee. The A.O not being satisfied with the correctness of the assessee's claim regarding the expenditure apportioned for earning of the exempt income, thus re-determined the same as per Sec. 14A r.w. Rule 8D (2)(iii) at Rs.88,24,558/-. After inter alia making the aforesaid addition of Rs.88,24,558/-, the A.O assessed the income of the assessee company at Rs.1,28,04,611/-.

4. Aggrieved, the assessee carried the matter in appeal before the CIT(A). The CIT(A) deleted the disallowance made by the A.O under Sec.14A of Rs.88,24,558/- for multiple reasons viz. (i) that, the A.O had made the disallowance without recording his satisfaction; (ii) that, the disallowance was not sustainable as no expenditure was incurred by the assessee to earn any exempt income; and (iii) that, all the investments were made by the assessee company from its own funds.

5. The revenue being aggrieved with the order of the CIT(A) has carried the matter in appeal before us. The ld. Departmental Representative (for short 'D.R') relied on the order passed by the A.O. Per contra, the ld. Authorised Representative (for short 'A.R') for the assessee submitted, that the issue pertaining to the disallowance under Sec. 14A was squarely covered by the order of the Tribunal in the assessee's own case for the immediately succeeding year i.e A.Y. 2013-14 in ACIT, Circle 6(2)(1) Vs. M/s Daiwa Portfolio Advisory (India) Pvt. Ltd. (copy place on record). The ld. A.R drawing our attention to the aforesaid order of the Tribunal submitted, that by drawing support from the order of the 'Special Bench' of ITAT, Delhi in the case of ACIT Vs. Vireet Investments (P) Ltd. (82 taxman.com 415) (Del) (SB), the Tribunal had concluded that for the purpose of computing the 'average value of investments' for working out the disallowance under Rule 8D(2)(iii), the value of the investments which had not generated any exempt income during the year were to be excluded. It was thus submitted by the ld. A.R, that the lower authorities may be directed to exclude the value of the investments which had not yielded any exempt income during the year under consideration for the purpose of computing the disallowance under Sec. 14A r.w. Rule 8D(2)(iii).

6. We have heard the authorized representatives for both the parties, perused the orders of the lower authorities and the material available on record and also the judicial pronouncements relied upon by them. We find substantial force in the contention of the ld. A.R, that the A.O while working the 'average value of investment' for the purpose of quantifying the disallowance under Sec.14A r.w. Rule 8D(2)(iii), is required to exclude the value of such investments which had not yielded any exempt income during the year. Our aforesaid view is fortified by the order of the '**Special Bench**' of the **ITAT, Delhi in the case of ACIT Vs. Vireet Investments (P) Ltd. [82 taxman.com 415] (SB) (Del)**. Accordingly, on the basis of our aforesaid observations, we restore the matter to the file of the A.O for reworking the disallowance under Sec.14A r.w. Rule 8D(2)(iii) in terms of the view taken by the Special bench of the ITAT in the case of Vireet Investments Pvt. Ltd. (Supra).

7. Before parting, we may herein observe, that the claim of the revenue, that the observations of the CIT(A) that all the investments were made from the assessee's own funds were not relevant to the issue under consideration, as the disallowance was made by the A.O under Sec.14A r.w. Rule 8D(2)(iii), carries substantial force. Accordingly, the aforesaid observations of the CIT(A), not being relevant to the disallowance made by the A.O under Sec. 14A r.w. Rule 8D(2)(iii) are therefore vacated.

8. We thus, in terms of our aforesaid observations restore the matter to the file of the A.O for re-adjudicating the disallowance under Sec. 14A r.w. Rule 8D(2)(iii), in terms of our aforesaid observations.

9. The appeal filed by the revenue is allowed for statistical purpose in terms of our aforesaid observations.

Order pronounced in the open court on 26.06.2019

Sd/-
(Shamim Yahya)
ACCOUNTANT MEMBER
मुंबई Mumbai; दिनांक 26.06.2019
Ps. Rohit

Sd/-
(Ravish Sood)
JUDICIAL MEMBER

आदेश की 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.

सत्यापित प्रति //True Copy//

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

