

आयकर अपीलीय अधिकरण "E" न्यायपीठ मुंबई में।

IN THE INCOME TAX APPELLATE TRIBUNAL "E" BENCH, MUMBAI

श्री महावीर सिंह, न्यायिक सदस्य एवं श्री राजेश कुमार लेखा सदस्य के समक्ष।

BEFORE SRI MAHAVIR SINGH, JM AND SRI RAJESH KUMAR, AM

आयकर अपील सं./ ITA No. 346/Mum/2016

(निर्धारण वर्ष / Assessment Year 2011-12)

Tata Autocomp Systems Limited, House, 24, Homi Mody Street, Fort, Mummbai-400 001	बनाम/ Vs.	The Asst. Commissioner of Income Tax, (Large Taxpayer Unit)-2,
(अपीलार्थी / Appellant)		(प्रत्यर्थी/ Respondent)
स्थायी लेखा सं./PAN No. AAAC1848E		

आयकर अपील सं./ ITA No. 5683/Mum/2015

(निर्धारण वर्ष / Assessment Year 2011-12)

The Asst. Commissioner of Income Tax, (Large Taxpayer Unit)-2, World Trade Centre, Centre -1 , 29 th Floor Cuffe Parade, Mumbai-400 005	बनाम/ Vs.	Tata Autocomp Systems Limited, Bombay House, 24, Homi Mody Street, Fort, Mummbai-400 001
(अपीलार्थी / Appellant)		(प्रत्यर्थी/ Respondent)

अपीलार्थी की ओर से / Appellant by	:	Shri P.J. Pardiwalla, AR
प्रत्यर्थी की ओर से / Respondent by	:	Shri R. Manjunatha Swamy, CIT DR

सुनवाई की तारीख / Date of hearing:	05.09.2019
घोषणा की तारीख / Date of pronouncement :	08.11.2019

**आदेश / ORDER**

महावीर सिंह, न्यायिक सदस्य/
PER MAHAVIR SINGH, JM:

These cross appeals are arising out of the order of Dispute Resolution Panel-2, Mumbai [in short 'DRP'], in objection No. 5 vide direction dated 12.10.2015. The Assessment was framed by the Asst. Commissioner of Income Tax (Large Taxpayer Unit)-2, Mumbai (in short 'ACIT/AO') for the assessment years 2011-12 vide order of dated 28.01.2015, under section 143(3) read with section 144C(13) of the Income Tax Act, 1961(hereinafter 'the Act).

2. The only issue in this appeal of Revenue, in ITA No. 5683/Mum/2015 for AY 2011-12, is against the order of DRP directing the AO to delete the disallowance of interest proposed by AO under section 36(1)(iii) of the Act for the reason that the loan was used for the purpose of investment only. For this, Revenue has raised the following ground No. 1: -

"1. On the facts and in the circumstances of the case and in law, the Hon'ble DRP erred in directing to delete the disallowance under section 36(1)(iii) of the Act of ₹ 2,26,99,000/- when the loan was used for purpose of investment only."



3. Briefly stated facts are that the AO in its draft order proposed disallowance on account of interest expenditure in relation to borrowings made for investment in foreign subsidiary namely TACO Holdings Mauritius Limited (TACO) by treating the same as capital expenditure. For this, the Transfer Pricing Officer observed that income from investment would not be taxable under the head profits and gains of business or profession and income from investment would be taxed under the head income from other sources and hence, interest expenditure could be allowed under section 57 of the Act. The TPO contended that investment in shares of joint ventures/subsidiaries is not the business of the assessee. In view of these reasons, he proposed disallowance of interest amounting to ₹2,26,99,000/-. Aggrieved, against this proposal assessee raised objections before DRP, the DRP considered this issue and relying on earlier year order of DRP for AY 2010-11 directed the AO/Transfer Pricing Officer deleting the addition by observing in Para 7 as under: -

"7. Discussion and direction of DRP

7.1 Ground No.6 relates to disallowance on account of interest expenditure in relation to borrowing made for investment in subsidiary amounting to ₹2,26,99,000/-. This issue was also subject matter of dispute before the Hon'ble DRP in the immediately preceding



year i.e. AY 2020-11. The DRP has vide its direction dated 1.12.2014 in Para No. 9.3 held that the deduction of interest expenditure is allowable under section 36(1)(iii) of the I.T. Act, 1961. In order to maintain judicial consistency, the AO/ Transfer Pricing Officer is directed to delete the proposed addition of ₹2,26,99,000/- made on this ground.”

Aggrieved, against the directions of DRP, Revenue is in appeal before Tribunal.

4. We have heard rival contentions and gone through the facts and circumstances of the case. We noted that the assessee is in the business of making investments in joint venture and subsidiary companies. As per the main object clause of Memorandum of Association, the company making investment is the main business. Further, the assessee has treated investment in various joint ventures and subsidiary companies including TACO as capital assets and disclosed the same under investment in the balance sheet. We noted that assessee's claim before the AO as well as before DRP was that the returns on such investments would be in the form of dividend which would be taxable under the head income from other sources. The investment in capital is for the purpose of business of the assessee and hence, it was claimed that interest incurred in respect of capital borrowed for the purpose of the

business is allowable under section 36(1)(iii) of the Act. The assessee relied on the decision of Hon'ble Supreme Court in the case of DCIT vs. Core Health Care Ltd. (2008) 298 ITR 194 (SC), wherein it is held as under: -

"the legislature has, therefore, made no distinction in s. 36(1)(iii) between "capital borrowed for a revenue purpose" and "capital borrowed for a capital purpose". An assessee is entitled to claim interest paid on borrowed capital provided that capital is used for business purpose irrespective of what may be the result of using the capital which the assessee has borrowed."

5. We noted from the above facts that the assessee is in the business of making investment in joint venture and subsidiary companies and this particular investment made in foreign subsidiary namely TACO and interest claim of ₹226.99 lacs is allowable under section 36(1)(iii) of the Act. Hence, we find no infirmity in the order of DRP directing the AO to delete the disallowance. We affirm the order of DRP and dismiss this appeal of Revenue.

6. The only issue in this appeal of assessee, in ITA No. 346/Mum/2016 for AY 2011-12, is against the order of DRP/ AO in disallowing expenses relatable to exempt income by invoking



the provisions of section 14A of the Act read with Rule 8D(2)(i), Rule 8D(2)(ii) and 8D(2)(iii) of the Income Tax Rules, 1962 (hereinafter 'the Rules'). For this assessee has raised the various grounds No. 1 to 8, but he mainly argued ground No.6, which read as under: -

"6. Ground No.6: Erroneously inclusion of the investments on which the Appellant would be paying capital gain tax are considered while making the computation of disallowance under Rule 8D(2)(ii) and (iii) for the purpose of section 14A

Without prejudice to the above grounds, on the facts and circumstances of the case and in law, the Ld. AO/ Hon'ble DRP has erred in including investments amounting to ₹2,86,13,32,555/- on which the Appellant would be paying capital gain tax are considered while making the computation of disallowance under Ruld8D(2)(ii) and (iii) for the purpose of section 14A."

7. Briefly stated facts are that the assessee claim exempt income of ₹39,08,23,000/-. The assessee suo moto made disallowance of ₹9,59,86,671/- relatable to exempt income and for this, he made following computation: -



Sr. No.	Particulars	Amount (₹)	Description
1.	Interest expenditure attributable to exempt income	9,40,37,921	Interest cost of ₹ 19,82,83,269 pertaining to general purpose borrowing, part of which (as the Company has also utilized own funds) could have been used for the purpose of investments generating exempt income.
2.	Administrative expenditure attributable to exempt income	19,48,750	Salary of treasury persons

8. The AO computed the direct interest expenses for the purpose of computation of disallowance of expenses under Rule 8D(2)(i) being loan taken from Tata Projects Ltd and Tata Investment Corporation of ₹3500 lacs for investment in yielding exempt income. Therefore, the AO disallowed the total interest expenses of ₹123.94 lacs incurred toward the loan amount of ₹3500 lacs to the interest expenses under Rule 8D(2)(i) of the Rules. Secondly, the AO computed the interest disallowance at ₹11,63,53,000/- relatable to exempt income under Rule 8D(2)(ii), as the assessee has shown that the loans are taken by the assessee and it cannot be specifically identified with particular loan and the corresponding interest expense was exclusively towards earning of taxable income. Thirdly, the AO also invoked the Rule 8D(2)(iii) and disallowed an amount equal to 1/2% of average value of investment being administrative expenses at ₹1,39,35,000/-. Against this proposal, the assessee raised objection before DRP.

9. Before DRP, the assessee contended that fresh ICDs taken from Tata Project and Tata Investment in subsidiaries corporation has been used for investment in subsidiaries/ joint ventures and accordingly, the interest expenses amounting to



₹1,23,94,178/- is directly relating to income which does not form to the part of the total income. He also contended that interest expenditure with respect to investment in TACO has not been considered for the purpose of disallowance under section 14A of the Act read with Rule 8D(2)(i) as the return on investment in TACO in the form of dividend would be taxable income from the company as against exempt income.

10. In regard to disallowance under Rule 8D(2)(ii), the assessee contended that the finance cost attributable to manufacturing activities should be excluded while generating taxable income of the company while computing the disallowance under Rule 8D(2)(ii) and argued that the DRP in AY 2008-09 has accepted this contention and same funds are carried forward from AY 2008-09 and there is no change in facts. The learned Counsel stated that the assessee itself has made suo moto disallowance of interest expenditure of ₹9,40,37,921/- out of interest cost of ₹19,82,83,269/- pertaining to general purposes of operating and part of which has been utilized out of own funds for the purpose of investment generating exempt income. Apart from other, the learned Counsel for the assessee stated that no other disallowance can be attributable and even, there is no finding by the AO or DRP.

11. As regards to the disallowance of expenses relatable to exempt income under Rule 8D(2)(iii), first of all the assessee itself has computed the administrative expenditure attributable



to exempt income at ₹19,48,750/- being salary of treasury persons and no other expenditure can be attributable to exempt income. Even, the AO could not point out which investment is relatable to exempt income for which administrative expenditure was incurred. The DRP rejected the contentions of the assessee and upheld the disallowance of ₹4,66,95,329/- by observing in Para 9 as under: -

"9. Discussion and Directions of DRP

9.1 Objection No. 7 to 8 relates to disallowance of ₹ 4,66,95,329/- made under section 4A r.w.r 8D. This issue has also come up before the Hon'ble DRP the immediately preceding year i.e. AY 2010-11 and the DRP has vide its order dated 11.012.2014 in Para 10.3 upheld the action of the Assessing Officer. In the said Para, the DRP has stated that the AO has correctly applied the rule 8D for working of the disallowance under section 14A of the I.T. Act, 1961. The facts and circumstances remaining the same in the current year also i.e. AY 2011-12, the disallowance made by the AO under section 14A amounting to ₹4,66,95,329/- is upheld."



12. We noted that the DRP has relied on the decision of earlier year i.e. AY 2009-10. We noted that the Tribunal in earlier assessment year i.e. AY 2010-11 in ITA No. 1666/Mum/2015 has already considered this issue and remand the matter back to the file of the AO for reconsideration of the disallowance in term of the decision of Maxopp Investment Ltd. vs. CIT [2018] 402 ITR 640 (SC) and Cheminvest Ltd. vs. CIT (2015) 378 ITR 33 (Delhi) of Delhi High Court by observing as under in Para 13, 14 and 15 as under: -

"13. We have heard the rival submissions also gone through the entire material on record. We notice that the Ld. DRP has upheld the action of the AO by following the direction issued by the Ld. DRP in the assessee's own case for the A.Y. 2009-10. We further notice that in the further appeal, the coordinate Bench set aside this issue to the file of AO for fresh determination in the light of the decision of the Hon'ble Delhi High Court in the case of CIT vs. Cheminvest Ltd.(supra) and further direction to exclude the amount of investment made in joint ventures subsidiaries and other companies as strategic investment for



computing the average amount of investment for the purpose of rule 8D.

14.The Hon'ble Supreme Court in the case of Maxopp Investment Ltd. vs. CIT 91 taxman.com 154 (SC)has held that only that expenditure which is in relation to earning dividends can be disallowed u/s 14A read with rule 8D. The dominant purpose for which investment into shares is made by the assessee may not be relevant as section 14 applies irrespective of whether shares are held to gain control or as stock in trade.

15.Hence, respectfully following the decisions of the coordinate Bench rendered in the assessee's own case for the A.Y. 2009-10, we set aside this ground of appeal to the file of AO for determined the disallowance afresh in the light of the law laid down by the Hon'ble Delhi High Court in the case of Cheminvest Ltd.(supra) and the Hon'ble Supreme Court in the case of Maxopp Investments Ltd.(supra) after giving a reasonable opportunity of being heard to

the assessee. Hence, these grounds are allowed for statistical purposes.”

13. We noted that as far as disallowance under Rule 8D(2)(i) of the Rules, the return on investment in TACO in the form of dividend would be taxable income from the company as against exempt income. Hence, once there is no exempt income out of the alleged investment, no disallowance can be made under Rule 8D(2)(i) of the Rules, being direct expenses. Hence, we direct the AO to delete the disallowance.

14. As regards to the disallowance under Rule 8D(2)(ii) of the Rules, we noted that the assessee contended that the finance cost attributable to manufacturing or allied activities should be excluded which generates taxable income for the company while computing disallowance under Rule 8D(2)(ii) of the Rules. The AO can verify which finance cost has been invested in the tax free yielding income and the same can be disallowed only. Hence, this matter is restored back to the file of the AO.

15. As regards to the disallowance under Rule 8D(2)(iii) of the Rules, we noted that the assessee has reasonably estimated the administrative expenses attributable to exempt income amounting to ₹19,48,750/- which comprises of salary of treasury persons who look after investment functions. The AO/DRP could not find fault with the suo moto disallowance made by the assessee and there is no satisfaction recorded qua this.



Hence, we delete the disallowance and allow this issue of assessee's appeal.

16. The next ground in this appeal of assessee is ground No. 3 which read as under: -

"Ground No. 3 Erroneously invoking rule 8D whilst computing book profits under section 115JB of the Act.

Without prejudice to the above grounds, on the facts and circumstances of the case and in law, the Ld. AO/ Hon'ble DRP has erred in erroneously invoking the provisions of Rule 8D and thereby disallowing additional amount of ₹4,66,95,329/- whilst computing the book profits under section 115JB of the Act."

17. We noted that the Tribunal in earlier assessment year i.e. AY 2010-11 in ITA No. 1666/Mum/2015 has already considered this issue by observing as under in Para 16 and 17 as under: -

"16. Ground No. 12 pertains to application of rule 8D while computing book profits u/s 115JB of the Act. Without prejudice to Ground No. 9,10, and 11, the Ld. counsel for the assessee submitted that since the AO has computed the book profits u/s



115JB of the Act, the Ld. DRP ought to have directed the AO to compute the books of account without resorting to section 14A read with rule 8D. The Ld. counsel relying on the decision of the Special Bench of ITAT, Delhi in the case of AICT vs. Vireet Investment Pvt. Ltd. 82 taxman.com 415 (Del) submitted that the impugned order is erroneous therefore liable to be set aside. The Ld. DR relied on the order passed by the AO as per the directions passed by the Ld. DRP.

17. We notice that the directions of the Ld. DRP on the basis of which the AO has passed the final assessment order computing the book profit u/s 115JB of the Act by making addition of disallowance u/s 14A read with rule 8D, is erroneous in the light of the decision of the Special Bench of the Delhi Tribunal rendered in the case of ACIT vs. Vireet Investment Pvt. Ltd. (supra). In the said case the Special Bench of the ITAT, Delhi has held that computation under clause 'f' of the Explanation u/s 115JB is required to be made without resorting to



computation as contemplated u/s 14A read with rule 8D of the Income Tax Rules. Hence, we set aside this issue to the file of AO for computing the book profit u/s 115JB of the Act in accordance with the decision of the Special Bench in the case of ACIT vs. Vireet Investment Pvt. Ltd., (supra). Hence, this ground of appeal is allowed for statistical purposes.”

18. This issue is regarding the order of DRP confirming the disallowance of expenses relatable to exempt income by invoking the provisions of section 14A of the Act read with Rule 8D(2) of the Rules while computing book profit under section 115JB of the Act. The DRP noted that the AO has rightly disallowed expenses relatable to exempt income amounting to ₹4,66,95,329/- by invoking the provisions of section 14A of the Act read with Rule 8D of the Rules, while computing book profit under section 115JB of the Act in view of provision of clause (f) of explanation (1) to section 115JB of the Act. We noted that this issue is squarely covered by the decision of special bench of this tribunal in the case of ACIT vs. Vireet Investments (P.) Ltd. [2017] 58 ITR(T) 313 (Delhi - Trib.) (SB) wherein, it is held that the provisions of section 14A read with Rule 8D of the Rules does not apply while computing book profit under section 115JB of the Act. Hence, respectfully following Special Bench decision in the case of Vireet investment (supra), we delete the



disallowance and allow this issue of assessee's appeal.

19. In the result, appeal of the assessee is allowed and the appeal of Revenue is dismissed.

Order pronounced in the open court on 08.11.2019.

Sd/-

(राजेश कुमार / RAJESH KUMAR)

(लेखा सदस्य / ACCOUNTANT MEMBER)

मुंबई, दिनांक/ Mumbai, Dated: 08.11.2019.

सुदीप सरकार, व.निजी सचिव / Sudip Sarkar, Sr.PS

Sd/-

(महावीर सिंह / MAHAVIR SINGH)

(न्यायिक सदस्य/ JUDICIAL MEMBER)

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

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2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR,
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उप/सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai