

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

**BEFORE SHRI C.N. PRASAD, HON'BLE JUDICIAL MEMBER AND
SHRI S. RIFAUR REHMAN, HON'BLE ACCOUNTANT MEMBER**

ITA.NO. 700/MUM/2018 (A.Y: 2011-12)

Rajkumar Devansh (HUF) B-66/67, 6 th Floor, B-Wing Mittal Tower, Nariman point Mumbai – 400 021 PAN: AACHR1090M	v.	Addl. Commissioner of Income Tax Range – 12(2) {Now assessed with ACIT – 17(2)} 1 st Floor, Aayakar Bhavan M.K. Road, Mumbai – 400 020
(Appellant)		(Respondent)

Assessee by	:	Shri Dharmesh Shah Shri Dhaval Shah
Department by	:	Jothilakshmi Nayak
Date of Hearing	:	30.09.2019
Date of Pronouncement	:	28.11.2019

ORDER

PER C.N. PRASAD (JM)

1. This appeal is filed by the assessee against the order of the Ld. Commissioner of Income-tax (Appeals)- 28, Mumbai [hereinafter for short "Ld. CIT(A)] dated 08.12.2017 for the A.Y. 2011-12.
2. The first ground in the grounds of appeal of the assessee is in respect of disallowance made U/s. 36(1)(iii) of the Act.

3. At the outset, Ld. Counsel for the assessee submitted that assessee is having capital and reserves of ₹.37 Crores as on 01.04.2011 and assessee has sufficient interest free funds for making investments and there is no liability as on last date of the year. Therefore, no disallowance U/s. 36(1)(iii) is warranted. Reliance was placed on the decision of the Hon'ble Supreme Court in the case of Reliance Industries Ltd in CA.NO. 10 of 2019 dated 02.01.2019, decision of the Hon'ble Bombay High Court in the case of Reliance Utilities and Power Ltd [313 ITR 340].

4. On the other hand, Ld. DR strongly supported the orders of the authorities below.

5. We have heard the rival submissions and perused the orders of the authorities below. We have gone through the balance sheet and profit & loss account and find that there is merit in the submission of the Ld. counsel for the assessee. Therefore, in view of the submissions made we are of the view that this matter has to go back to the file of the Assessing Officer for denovo adjudication in the light of the decisions relied on by the assessee. Thus, we restore this issue to the file of the Assessing Officer for denovo adjudication after providing adequate opportunity of being heard to the assessee.

6. Coming to Ground No.2 of the Grounds of appeal it relates to the disallowance U/s. 14A r.w. Rule 8D(2)(iii) of I.T. Rules. Ld. Counsel for the assessee submitted that for the purpose of computing average value of investments only those investments which yield dividend income should be considered in view of the decision of the Special Bench of Delhi in the case of ACIT v. Vireet Investments Private Limited [165 ITD 27]. It is also submitted that Ld. CIT(A) held that even the investments sold should be considered in arriving at average value of investments when it is not specified in the provisions of Rule 8D(2)(iii) of I.T. Rules.

7. On the other hand, Ld. DR strongly supported the orders of the authorities below.

8. On hearing both the sides, we are of the view that this issue should go back to the file of the Assessing Officer and Assessing Officer shall compute the disallowance keeping in view the decision of the Special Bench of Delhi in the case of ACIT v. Vireet Investments Private Limited (supra). Further, we observe that apparently the provision of Rule 8D(2)(iii) of IT. Rules do not specify that the investments which were sold should also be considered for the purpose of computing the average value of investments. The provision specifies only the opening and closing investments but does not include the investments sold. Hence this finding

of the Ld. CIT(A) is contrary to the provisions of Rule 8D(2)(iii) of I.T. Rules. Thus, the issue is restored to the file of the Assessing Officer for re-computing the disallowance u/s. 14A r.w. Rule 8D(2)(iii) of I.T. Rules, keeping in view the decision of the Special Bench in the case of ACIT v. Vireet Investments Private Limited (supra).

9. In the result, appeal of the assessee is allowed for statistical purpose.

Order pronounced in the open court on the 28th November, 2019

Sd/-
(S. RIFAUR REHMAN)
ACCOUNTANT MEMBER
Mumbai / Dated 28/11/2019
Giridhar, Sr.PS

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

Copy of the Order forwarded to:

1. The Appellant
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