

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

**Before Shri S. Rifaur Rahman, Accountant Member  
and Shri Ravish Sood, Judicial Member**

**ITA No.5496/Mum/2018  
(Assessment Year: 2013-14)**

Star Chemicals (Bombay) Pvt. Ltd., 55/58,  
Jolly Maker Chambers No.2, Nariman Point,  
Mumbai 400 021

Vs.

D.C.I.T., 3(3)(2)  
Aaykar Bhavan, Mumbai,  
400 020.

PAN – AAACS7485E

**(Appellant)**

**(Respondent)**

Appellant by:	Mr. A.K. Thanawala, A.R
Respondent by:	Shri V.Vinod Kumar, Sr. D.R
Date of Hearing:	28.11.2019
Date of Pronouncement:	11.12.2019

**ORDER**

**PER RAVISH SOOD, JM**

The present appeal filed by the assessee is directed against the order passed by the CIT(A)-8, Mumbai, dated 20.08.2018, which in turn arises from the order passed by the A.O under Sec. 143(3) of the Income Tax Act, 1961 (for short 'Act'), dated 04.11.2015 for A.Y. 2013-14. The assessee has assailed the impugned order on the following grounds of appeal before us :-

- “1. On the facts and in the circumstances of the case and in law the CIT(A) erred in confirming the disallowance under sec. 14A read with Rule 8D of the Income Tax Act under normal provisions of the computation of Income under the Act.
2. The learned CIT(A) has erred in specifying, in para 3 page 12 of the Appellate Order, that fixed investment in Partnership Firm has to be excluded for the purpose of computing disallowance u/s 14A, when in his said Appellate Order in the same para he has clearly stated that the share of profit of Partnership firm cannot be taken as exempt income within meaning of S.14A and thus all the investments including current investment in Partnership firm has to be excluded for S.14A on the same analogy.

3. On the facts and in law CIT(A) erred in confirming disallowance u/s 14A Rule 8D under provisions of S.115JB.
4. The appellant crave leave to add alter or modify any ground of appeal at or before the date of hearing.”

2. Briefly stated, the assessee company which is engaged in the business of manufacturing and trading of allied derivatives of phosphorus, leasing and hire purchase etc., had e-filed its return of income for A.Y. 2013-14 on 19.09.2014, declaring its total income at Rs. 10,44,36,180/-. The ‘book profit’ of the assessee company under Sec. 115JB was shown at Rs. 13,54,20,052/-. Subsequently, the case of the assessee was selected for scrutiny assessment under Sec. 143(2) of the Act.

3. During the course of the assessment proceedings it was observed by the A.O that the assessee had claimed the following incomes as exempt from tax under Sec. 10 of the Act :

Sr. No.	Particulars	Amount (Rs.)
1.	Profit from Firm	6,00,94,458
2.	Long Term Capital Gain	5,84,685
3.	Tax Free Interests on Bonds	17,44,756
	Total	6,24,23,899

It was observed by the A.O that the assessee had suo motto worked out the disallowance under Sec. 14A at Rs. 35,206/-. The A.O not being persuaded to accept the disallowance offered by the assessee under Sec. 14A of the Act, therein computed the same in accordance with Rule 8D of the Income Tax Rules, 1962 at an amount of Rs. 27,97,250/-, as under :

I	Expenses directly attributable to exempt Nil	Rs. Nil
II	Formula : $A \times B / C$ A: Expenses not directly related to exempt income i.e. Nil B: Average value of investment of the opening and closing day of the previous year i.e. $(52,60,00,000 + 59,29,00,000) / 2 =$ Rs. 55,94,50,000 C: Average value of assets on the opening and closing day of the previous year i.e. .... Since, A is Nil this clause is not applicable	Rs. Nil
III	0.5% of average value of investments on the opening and closing day of the previous year i.e. 0.5% of B = RS. 55,94,50,000	Rs. 27,97,250/-
	Aggregate of I + II + III	Rs. 27,97,250/-

On the basis of his aforesaid deliberations, the A.O after inter alia working out the disallowance under Sec. 14A at Rs. 27,97,250/-, therein assessed the income of the assessee under the normal provisions at Rs. 10,71,98,230/-. Also, the A.O reworked the 'book profit' after making an upward adjustment/addition of the aforesaid disallowance under Sec. 14A at an amount of Rs. 13,81,82,096/-. Since the tax computed on the income under the normal provisions was more than the MAT liability as per the provisions of Sec. 115JB, therefore, the tax liability of the assessee was worked out as per the normal provisions.

4. Aggrieved, the assessee assailed the assessment order before the CIT(A). The CIT(A) directed the A.O to recompute the disallowance under Sec. 14A after taking cognizance of his observations viz. (i) that, the disallowance under Sec. 14A was not to exceed the amount of exempt income of Rs. 23,29,441/- earned by the assessee company during the year; (ii) that, the share of profit from the partnership firm was not to form part of the exempt income within the meaning of Sec. 14A; (iii) that, the fixed investment in the partnership firm was to be excluded for the purposes of computing the disallowance under Sec. 14A; and (iv) that, the investment in growth mutual funds was to be excluded as no dividends was earned from them, and the same being an investment in debt funds, the capital gain arising therefrom was exigible to tax. At the same time, the CIT(A) was not inclined to accept the claim of the assessee that the A.O was in error in revising the 'book profit' under Sec. 115JB by making an upward adjustment/addition of the amount of disallowance worked under Sec. 14A r.w. Rule 8D. The CIT(A) while concluding as hereinabove had drawn support from certain orders of the ITAT, Mumbai viz. (i) JSW Energy Ltd. (34 Taxmann.com 152, dated 30.04.2013); (ii) RBK Share Broking Pvt. Ltd. (37 Taxmann.com 128, dated 24.07.2013); and (iii) Viraj Profiles Ltd. (64 Taxmann.com 52, dated 24.10.2015). Accordingly, the CIT(A) was of the view that the disallowance under Sec. 14A to the extent the same survived under the normal provisions would also be applicable for working out the MAT liability of the assessee.

5. The assessee being aggrieved with the order of the CIT(A) has carried the matter in appeal before us. The Learned Authorized Representative (for short 'A.R') for the assessee at the very outset of the hearing of the appeal submitted that he was only pressing the ground of appeal no. 3. In the backdrop of the aforesaid concession of the Ld. A.R the **Grounds of Appeal No. 1, 2 & 4** are dismissed as not pressed. Adverting to the ground of appeal no. 3, it

was submitted by the Ld. A.R that the CIT(A) was in error in confirming the disallowance under Sec. 14A r.w. Rule 8D for the purpose of computing the 'book profit' of the assessee under Sec. 115JB of the Act. In sum and substance, it was the claim of the Ld. A.R that the disallowance worked out under Sec. 14A r.w. Rule 8D was not to be considered for computing the 'book profit' under the provisions of Sec. 115JB of the Act. In support of his aforesaid contention the Ld. A.R had relied on the order of the 'Special Bench' of ITAT, Delhi in the case of ACIT, Circle 17(1) Vs. Vireet Investment Pvt. Ltd. (ITA No. 502/Del/2012, dated 16.06.2017). Apart therefrom, it was submitted by the Ld. A.R that the issue was squarely covered by the orders of the coordinate benches of the Tribunal in its own case for A.Y. 2008-09 to A.Y. 2012-13 (copies placed on record). It was submitted by the Ld. A.R that the Tribunal in the assessee's own case for the aforementioned years, had after relying on the order of the 'Special Bench' of the Tribunal in the case of Vireet Investment Pvt. Ltd. restored the matter to the file of the A.O with a direction to recompute the 'book profit' under Sec. 115JB in conformity with the view taken by the 'Special Bench' in the aforementioned case.

6. Per contra, the Learned Departmental Representative (for short 'D.R') relied on the orders of the lower authorities.

7. We have heard the authorized representatives for both the parties, perused the orders of the lower authorities and the material available on record, as well the judicial pronouncements relied upon by them. As observed by us hereinabove, the sole grievance of the assessee is limited to the upward adjustment/addition of the disallowance worked out by the A.O under Sec. 14A r.w. Rule 8D for the purpose of working out the 'book profit' under Sec. 115JB of the Act. As is discernible from the assessment order, the assessee had made a suo motto disallowance of Rs. 35,206/- under Sec. 14A of the Act. In the course of the assessment proceedings, the A.O had reworked the disallowance under Sec. 14A r.w. Rule 8D at an amount of Rs. 27,97,250/-. Consequently, the A.O after considering the suo motto disallowance of Rs. 35,206/- offered by the assessee had restricted the upward adjustment/addition under Sec. 14A r.w. Rule 8D to an amount of Rs. 27,62,044/- [Rs. 27,97,250/- (-) Rs. 35,206/-]. On the basis of his aforesaid deliberations, the A.O while recomputing the income of the assessee under the normal provisions had made a further addition/disallowance under Sec. 14A r.w. Rule 8D of an amount of Rs. 27,62,044/- to the returned income of the assessee. Also, the A.O had

made an upward adjustment/addition under Sec. 14A r.w. Rule 8D amounting to Rs. 27,62,044/- while computing the 'book profit' of the assessee under Sec. 115JB. As observed by us hereinabove, the CIT(A) had diluted the disallowance under Sec. 14A r.w. Rule 8D in terms of the observations recorded by him in his order. However, the claim of the assessee that no upward adjustment/addition of the disallowance worked out under Sec. 14A r.w. Rule 8D could be made for computing the 'book profit' under Sec. 115JB of the Act, was rejected by the CIT(A).

8. We have given a thoughtful consideration and find that involving identical facts the coordinate benches of the Tribunal in the assessee's own case for A.Y(s). 2008-09 to 2011-12, and A.Y. 2012-13, had after considering the view taken by the 'Special Bench' of the ITAT in the case of ACIT, Circle 17(1) Vs. Vireet Investment Pvt. Ltd. (2017) 165 ITD 27 (Del) (SB), vide their respective orders, had restored the matter to the file of the A.O with a direction to recompute the 'book profit' under Sec. 115JB(2) with respect to the disallowance worked out under Sec. 14A r.w. Rule 8D, in terms of the detailed discussion in the aforesaid order of the 'Special Bench' in the case of Vireet Investment Pvt. Ltd. (supra). Infact, the Tribunal vide its consolidated order dated 07.07.2017 in the assessee's own case for A.Y(s). 2008-09 to 2011-12, in context of the aforesaid issue under consideration had observed as under :-

"15. Assessee is also aggrieved for disallowance u/s.115JB r.w.s. 14A and r.w.r 8D.

16. At the outset, learned AR placed on record the order of the ITAT Special Bench in case of Vireet Investment Pvt. Ltd., in ITA No.502/Del/2012 dated 16/06/2017, wherein issue has been decided in favour of the assessee. Our attention was also invited to page 48 para 6.22, wherein Tribunal observed as under:-

6.22 In view of the above discussion, we answer the question referred to us in favour of the assessee by holding that the computation under clause (f) of Explanation 1 to section 115JB(2), is to be made without resorting to the computation as contemplated u/s.14A read with Rule 8D of the Income Tax Rules, 1962.

17. In view of the decision of the Special Bench, we direct the AO to recompute the income u/s.115JB(2) with reference to the disallowance sought u/s.14A r.w.r.8D, in terms of the detailed discussion in the order of the Special Bench in the case of Vireet Investment Pvt. Ltd., in ITA No.502/Del/2012 dated 16/06/2017. We direct accordingly.

18. As the facts and circumstances in all the years under consideration are same, we direct the AO to recompute the income u/s.115JB in terms of our above discussion, following the proposition laid down by Special Bench of the Tribunal in case of Vireet Investment Pvt. Ltd., in ITA No.502/Del/2012 dated 16/06/2017."

Also, the Tribunal in the assesses own case for A.Y. 2012-13 had relied upon its earlier order for the aforementioned A.Y(s) 2008-09 to 2011-12, and had in terms of similar directions restored the matter to the file of the A.O for recomputing the 'book profit' under Sec. 115JB of the Act. As the facts and the issue involved in the present appeal of the assessee remains the same as was there before the coordinate benches of the Tribunal in the aforementioned preceding years viz. A.Y(s) 2008-09 to 2012-13, therefore, on the same terms we restore the matter to the file of the A.O, for the limited purpose of recomputing the 'book profit' under Sec. 115JB with respect to the disallowance worked out under Sec. 14A r.w. Rule 8D, in conformity with the view taken by the 'Special Bench' of the Tribunal in the case of ACIT, Circle 17(1) Vs. Vireet Investment Pvt. Ltd. ((2017) 165 ITD 27 (Del) (SB). Needless to say, the A.O shall in the course of the 'set aside' proceedings afford a reasonable opportunity of being heard to the assessee.

9. The appeal of the assessee is allowed for statistical purposes in terms of our aforesaid observations.

Order pronounced in the open court on 11.12.2019

Sd/-  
(S. Rifaur Rahman)  
ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक 11.12.2019

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**