

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "G" MUMBAI**

**BEFORE SHRI C.N. PRASAD (JUDICIAL MEMBER) AND
SHRI N.K. PRADHAN (ACCOUNTANT MEMBER)**

**ITA No. 6062/MUM/2017
Assessment Year: 2014-15**

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| M/s Sunteck Realty Ltd., 5 th floor, Sunteck Centre, 37- 40, Subhash Road, Vile Parle (E), Mumbai-400051. PAN No. AAACI0336E Appellant | Vs. | Deputy Commissioner of Income Tax-3(4), Mumbai. Respondent |
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**ITA No. 6578/MUM/2017
Assessment Year: 2014-15**

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| Deputy Commissioner of Income Tax CC-3(4), Central Range-3, Mumbai. Appellant | Vs. | M/s Sunteck Realty Ltd., 5 th floor, Sunteck Centre, 37-40, Subhash Road, Vile Parle (E), Mumbai- 400051. PAN No. AAACI0336E Respondent |
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Assessee by : Mr. Rakesh Joshi, AR

Revenue by: Mr. Udaya Bhaskar Jakke, DR

Date of Hearing : 27/01/2020
Date of pronouncement: 29/01/2020

ORDER

PER N.K. PRADHAN, AM

The captioned cross appeals – one filed by the assessee and the other by Revenue- are directed against the order of the Commissioner of Income Tax (Appeals)-51, Mumbai [in short 'CIT(A)'] and arise out of the assessment order passed u/s 143(3) of the Income Tax Act 1961, (the 'Act').

2. The dispute here is the disallowance made by the Assessing Officer (AO) u/s 14A r.w. Rule 8D of the Income Tax Rules, 1962 (the Rules).

Briefly stated, the facts are that during the course of assessment proceedings, the Assessing Officer (AO) observed that the assessee has made investments in equity shares of private limited company and earned exempt income of Rs.1,25,30,48,116/-. In response to a query raised by the AO *vide* order sheet noting dated 22.12.2016 to explain as to why provisions of section 14A should not be invoked and disallowance should not be made as per Rule 8D, the assessee filed a reply *vide* its letter dated 26.12.2016 stating that (i) only investments appearing in the books of the assessee-company are investments in a private limited company ; this investment by the assessee-company was made with the sole intention to facilitate and promote business interest of the company and not to earn any dividend income ; the said investments are in the nature of business assets and accordingly the expenditure incurred in relation to such income would in fact be deductible as business expenses; (ii) there would be no interest expenses allocable towards investments made and in turn no disallowance would be called for on the basis of interest; (iii) the share capital and free reserves of the assessee-

company accumulated are more than enough for covering the amount invested in shares.

However, the AO was not convinced with the above explanation of the assessee for the reason that such investment has been made out of consolidated funds which include borrowed funds and requires day-to-day monitoring as well as appraisal of various facts including business strategies, day-to-day operation etc. and also earned divided income of Rs.1,12,50,000/- and share of profit from LLP of Rs.1,24,17,98,116/- aggregating to Rs.1,25,30,48,116/-, which is claimed as exempt. Thus the AO by following the order of the Hon'ble Bombay High Court in the case of *Godrej & Boyce Mfg. Co. Ltd.* (2010) 328 ITR 81 (Bom), computed the disallowance u/s 14A r.w. Rule 8D at Rs.1,76,52,682/-. The break-up is disallowance of Rs.1,35,34,248/- under Rule 8D(2)(ii) and Rs.41,18,434/- under Rule 8D(2)(iii) of the Rules. As the assessee had made a disallowance of Rs.7,567/-, the AO made an addition of the balance amount of Rs.1,76,45,115/- (Rs.1,76,52,682/- minus Rs.7,567/-).

3. Aggrieved by the order of the AO, the assessee filed an appeal before the Ld. CIT(A). We find that *vide* order dated 23.08.2017 the Ld. CIT(A) observed that the surplus interest free funds available at the disposal of the assessee as on 31.03.2014 is of Rs.507.17 crores, which comprises of share capital of Rs.12.59 crores and reserves and surplus of Rs.494.38 crores. On the other hand, the investments made by the assessee which resulted in exempt income is of Rs.247.6 crores only. Thus the Ld. CIT(A) by following the judgment of the Hon'ble Bombay High Court in *Reliance Utilities & Power Ltd.* 313 ITR 340 (Bom); *CIT v. HDFC Bank Ltd.* (ITA No. 330 of 2012) deleted the disallowance of Rs.1,35,34,248/- made by the AO under Rule 8D(2)(ii) of the Rules.

3.1 In respect of disallowance of Rs.41,18,434/- made by the AO under Rule 8D(2)(iii), the Ld. CIT(A) held that strategic investments to the extent of average value of Rs.30,44,44,970/- are to be considered while computing the disallowance u/s 14A out of administrative expenses. As per him, the disallowance under Rule 8D(2)(iii) in respect of strategic investment works out to Rs.15,22,225/- (0.5% x 30,44,44,970/-). Further, the total investments to be considered for the purpose of disallowance under Rule 8D(2)(iii), other than strategic investment are of Rs.22,17,080/-. Accordingly, the disallowance under Rule 8D(2)(iii) in respect of such non-strategic investment works out to Rs.11,085/- (0.5% x 22,17,080/-). Thus, the Ld. CIT(A) worked out the disallowance under Rule 8D(2)(iii) at Rs.15,33,310/-, comprising of disallowance of indirect expenses related to non-strategic investments of Rs.11,085/- and strategic investment of Rs.15,22,225/-.

3.2 Regarding the disallowance u/s 14A made by the AO of Rs.1,76,45,115/- to the book profit u/s 115JB, the Ld. CIT(A), by following the order of the Special Bench of the Tribunal in the case of *Vireet Investments P. Ltd.* (82 taxmann.com 415), deleted the said disallowance.

4. Before us, the Ld. counsel for the assessee submits that the CIT(A) has erred in restricting the action of the AO in disallowing the expenses of Rs.15,33,310/- u/s 14A, without considering the facts and circumstances of the case.

On the other hand, the Ld. Departmental Representative (DR) supports the order passed by the AO.

5. We have heard the rival submissions and perused the relevant materials on record. The reasons for our decisions are given below.

There are three issues in dispute in the instant appeal. The first issue is disallowance of Rs.1,35,34,248/- made by the AO under Rule 8D(2)(ii) of the Rules. The Ld. CIT(A) has specifically recorded at para 8.2.5 of his order that the surplus interest-free funds available at the disposal of the assessee as on 31.03.2014 is of Rs.507.17 crores, which comprises of share capital of Rs.12.59 crores and reserve and surplus of Rs.494.38 crores. On the other hand, the investments made by the assessee which result in exempt income is of Rs.247.60 crores only. There was no dispute on the above data during the course of hearing. In *HDFC Bank Ltd. vs. DCIT* [2016] 67 taxmann.com 42 (Bom), the Hon'ble Bombay High Court referring to the decision in *CIT vs. HDFC Bank Ltd.* [2014] 366 ITR 505 (Bom) and *CIT v. Reliance Utilities & Power Ltd.* [2009] 313 ITR 340 (Bom) held as under :

“15. It is clear that for the first time in the case of *HDFC Bank Ltd.* (supra) that this Court took a view that the presumption which has been laid down in *Reliance Utilities & Power Ltd.* (supra) with regard to investment in tax free securities coming out of assessee's own funds in case the same are in excess of the investments made in the securities (notwithstanding the fact that the assessee concerned may also have taken some funds on interest) applies, when applying Section 14A of the Act. Thus, the decision of this Court in *HDFC Bank Ltd.* (supra) for the first time on 23rd July, 2014 has settled the issue by holding that the test of presumption as held by this Court in *Reliance Utilities and Power Ltd.* (supra) while considering Section 36(1)(iii) of the Act would apply while considering the application of Section 14A of the Act. The aforesaid decision of this Court in *HDFC Bank Ltd.* (supra) on the above issue has also been accepted by the Revenue in as much as even though they have filed an appeal to the Supreme Court against that order on the other issue therein

viz. broken period interest, no appeal has been preferred by the Revenue on the issue of invoking the principles laid down in *Reliance Utilities & Power Ltd.* (supra) in its application to Section 14A of the Act.”

In view of the ratio laid down in the above decisions, the Ld. CIT(A) has rightly deleted the disallowance of Rs.1,35,34,248/- made by the AO under Rule 8D(2)(ii) of the Rules. We affirm it.

5.1 The second issue is disallowance of Rs.41,18,434/- made by the AO under Rule 8D(2)(iii) of the Rules. We find that the Ld. CIT(A) has rightly restricted the disallowance to Rs.15,33,310/- comprising of disallowance of indirect expenses related to non-strategic investments of Rs.11,085/- and strategic investments of Rs.15,22,225/-. As it is based on proper appreciation of facts and law, we affirm it.

5.2 The third issue is addition u/s 14A of Rs.1,76,45,115/- made by the AO to the book profit u/s 115JB of the Act. In *Vireet Investment (P.) Ltd.* (supra), the Special Bench of the Tribunal has held that computation under clause (f) of Explanation 1 to section 115JB(2) is to be made without resorting to computation as contemplated u/s 14A r.w. Rule 8D. We find that the Ld. CIT(A) has followed the above decision and deleted the addition made by the AO u/s 14A while computing book profit u/s 115JB of the Act. We affirm it.

6. In the result, the appeals are dismissed.

Order pronounced in the open Court on 29/01/2020.

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

Sd/-
(N.K. PRADHAN)
ACCOUNTANT MEMBER

Mumbai;

Dated: 29/01/2020

Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai