

**IN THE INCOME TAX APPELLATE TRIBUNAL “D”, BENCH MUMBAI  
BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER  
&  
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER**

**ITA No.4956/Mum/2018  
(Assessment Year: 2015-16)**

Rehab Housing Pvt.Ltd. Gitaneel Arcade 5 <sup>th</sup> Floor,85, Hill Road, Bandra(W) Mumbai-400 050	Vs.	DCIT,CC-2(3) Room No.803, 8 <sup>th</sup> Floor Old CGO Building Pratishtha Bhawan M.K.Road Mumbai-400 020
<b>PAN/GIR No.AABCR6883Q</b>		
<b>Appellant)</b>	..	<b>Respondent)</b>

Revenue by	Smt. Jyothilakshmi Nayak, DR
Assessee by	Shri Dilip Lakhani Shri Dinesh Wagh,AR's
<b>Date of Hearing</b>	<b>23/01/2020</b>
<b>Date of Pronouncement</b>	<b>29/01/2020</b>

**आदेश / O R D E R**

**PER G.MANJUNATHA (A.M):**

This appeal filed by the assessee is directed against, the order of the Ld. Commissioner of Income Tax (Appeals)–48, Mumbai, dated 22/06/2018 and it pertains to Assessment Year 2015-16.

2. The assessee has raised the following grounds of appeal:-

1. *On the facts & circumstances of the case and in law the Learned Commissioner of Income Tax (Appeals) has erred in confirming the disallowances of Rs, 13,56,550/- U/s 14A r.w.r fr 8D. The appellant prays that the disallowance made by the Learned Assessing Officer and confirmed by the Commissioner of Income Tax (Appeals) is not justified and be deleted.*

2. *On the facts and circumstances of the case and m law the Learned Commissioner of income Tax (Appeals) has totally ignored the fact that*

*the appellant has not received any exempt income from most of the investments during AY 2015-16 and hence no disallowance should be made U/s 14A r.w.s 8D(2)(iii) for those investments.*

*3. On the facts and circumstances of the **case** and in law the Learned CIT(A) has not considered the facts that the learned Assessing Officer has rejected the explanation offered by the appellant during the assessment proceedings without giving any specific findings as to why and how he is not satisfied with The explanation offered for the appellant. The learned Assessing Officer cannot invoke provision of section 14A r.w,r 8D unless he views a clear finding as to why the explanation offered by the appellant is not correct. Based on this aspect the appellant prays that the addition made by the Learned Assessing Officer and confirmed by the Commissioner of Income Tax (Appeals) u/s 14A r.w.r. 8D amounting to Rs 956,550/- -may be deleted.*

*4. On the facts and circumstances of the case and in law the appellant prays that the Learned Commissioner of Income Tax (Appeals) has erred in confirming the disallowance made by Learned Assessing officer of Rs.Rs.9,56,550 u/s.i4A r.w.r.S8(2) while computing the total income under the normal provisions is contrary to the provisions of the act and the same may be deleted.*

*5. On the facts and circumstances of the case and in law the appellant prays that the additions made by Learned Assessing officer confirmed by the Learned Commissioner of Income Tax (Appeals) u/s 14A r.w.r. 8D(2) at Rs.9,56,550/- while computing the total book profit u/s 115JB is contrary to the provisions of the act and the same may be deleted.*

*6. On the facts and circumstances of the case and in law the appellant denies the liability for payment of interest u/s. 234B and prays that the interest levied u/s. 234B amounting to Rs.3,98,718/- by the Learned Assessing Officer and confirmed by the Learned Commr. of Income Tax (Appeals) may be deleted.*

*7. On the facts and circumstances of the case and in law the appellant denies the liability for payment of interest u/s. 234C and prays that the interest levied u/s. 234C amounting to Rs,4,77,612/- by the Learned Assess'ng Officer and confirmed by the Learned Commr. of Income Tax (Appeals) may be deleted.*

3. The brief facts of the case are that the assessee company is engaged in the business of real-estate development and construction, filed its return of income for AY 2015-16 on 30/09/2015, declaring total income of Rs. 4,24,47,528/-. The case was selected for scrutiny and during the course of assessment

proceedings, the Ld. AO noticed that the assessee has earned dividend income of Rs. 75,80,950/-, which is claimed as exempt u/s 10(34) of the Act, however, disallowed a sum of Rs. 4 Lacs, towards expenditure incurred, in relation to exempt income u/s 14A of the Act. Therefore, he called upon the assessee to explain as to why disallowances contemplated u/s 14A shall not be determined by invoking provisions of Rule 8D of I.T.Rules, 1962. In response to show cause notice, the assessee vide letter dated 15/11/2017 submitted that considering nature of investments and amount of dividend income earned for the year, *suo-moto* disallowances of Rs. 4 Lacs, made at the time of filing return of income is in accordance with law, because, the assessee has considered only those investments, which yield exempt income for the year to determine the average value of investments, in order to compute disallowances as prescribed under Rule 8D(2)(iii) of I.T.Rules, 1962. The Ld. AO did not find merit in the contention of the assessee and after considering relevant fact and also, taken support from certain judicial precedent has invoked Rule 8D and determined total disallowances of Rs. 13,56,550/- under Rule 8D(2)(iii) and after reducing *suo-moto* disallowances made by the assessee of Rs. 4 Lacs, the balance amount has been disallowed u/s 14A r.w.Rule 8D of I.T.Rules, 1962. The assessee carried the matter in appeal before the Ld.CIT(A), but did not succeed. The Ld.CIT(A), for the detailed reasons recorded in his appellate order, dated 22/06/2018 had confirmed additions made by the Ld. AO towards disallowances of expenditure u/s 14A r..w. Rule 8D of I.T.Rules, 1962. Aggrieved by the Ld.CIT(A) order, the assessee is in appeal before us.

4. The Ld. AR for the assessee, at the time of hearing submitted that this issue is squarely covered in favour of the assessee by the decision of ITAT, Mumbai 'D' bench in assessee own case for AY 2012-13 in ITA No. 1157/Mum/2017, vide order dated 24/09/2018, where under identical set of facts, the Tribunal held that for the purpose of computation of average value of investments, only those investments, which yield exempt income needs to be considered. The Ld. DR, on the other hand fairly accepted that the issue is covered in favour of the assessee.

5. We have heard both the parties, perused the material available on record and gone through orders of the authorities below. We find that the issue involved in the present appeal, whether for the purpose of computation of average value of investments in order to determine disallowances of expenditure, in relation to exempt income u/s 14A r.w.Rule 8D (2)(iii), shall be computed by taking into account only those investments, which yield exempt income for the year is no longer a *res-integra*. The co-ordinate bench of ITAT, Mumbai 'D' bench in assessee's own case for AY 2012-13 had considered an identical issue and after considering relevant facts and also, by following its earlier order for AY 2010-11 and 2011-12, held that for the purpose of computation of average value of investments, only those investments, which yield exempt income needs to be considered. We further noted that this proposition is further supported by the decision of ITAT Special bench in the case of ACIT vs Vireet investments Pvt.Ltd. (165 ITD 27). Therefore, we are of the considered view that the Ld. AO, as well as the Ld.CIT(A) were erred in determining disallowances of expenditure incurred, in relation to exempt income u/s 14A r.w..Rule 8D(2)(iii) by taking into

account total investments, including investments, which do not yield exempt income for the year. Hence, we direct the Ld. AO to include only those investments, which yield exempt income for the year under consideration to determine disallowances of expenditure u/s 14A of the I.T.Act, 1961.

6. In the result, appeal filed by the assessee is allowed.

Order pronounced in the open court on this 29/01/2020

**Sd/-**  
**(SAKTIJIT DEY)**  
JUDICIAL MEMBER

**Sd/-**  
**(G. MANJUNATHA)**  
ACCOUNTANT MEMBER

Mumbai; Dated 29/01/2020  
Thirumalesh Sr.PS

**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.

सत्यापित प्रति //True Copy//

BY ORDER,

(Asstt. Registrar)  
ITAT, Mumbai