

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

**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER**

ITA NO. 181/MUM/2019

A.Y : 2015-16

Reliance Capital Ltd.,
6th floor, North Wing,
Reliance Centre, Off Western
Express Highway, Santa Cruz (E),
Mumbai 400 055.

vs. DCIT, Circle – 3(3)(1),
Mumbai. (Respondent)

PAN : AAACR5054J (Appellant)

**Appellant by : Shri Jitendra Sanghavi &
Shri Amit Khatiwala**

Respondent by : Shri K. Madhusudan

Date of Hearing : 28/01/2020

Date of Pronouncement : 28/01/2020

ORDER

PER MAHAVIR SINGH, VICE PRESIDENT

This appeal is filed by the assessee against the order of CIT(A)-8, Mumbai dated 18.10.2018 for assessment year 2015-16, which in turn has arisen from order of Assessing Officer passed under Section 143(3) of the Income Tax Act, 1961 (in short 'the Act') dated 29.12.2017.

2. The first issue in this appeal of assessee is with regard to disallowance of expenses relatable to exempt income made by the Assessing Officer and confirmed by CIT(A) by invoking provisions of Section 14A of the Act read with

Rule 8D of the Income Tax Rules, 1962 (in short 'the Rules'). For this, assessee has raised the following grounds :-

"A. DISALLOWANCE U/S. 14A OF THE INCOME TAX ACT, 1961 ("the Act") R.W.R. 8D OF THE INCOME TAX RULES, 1962 ("the Rules")

- 1. On the facts and in circumstances of the case and in law, the Learned Commissioner of Income Tax (Appeals) – 8, Mumbai ["CIT(A)"] erred in confirming the action of the Deputy Commissioner of Income Tax, Circle – 3(3)(1), Mumbai ("Assessing Officer") in disallowing of Rs.49,96,22,344/- u/s. 14A of the Act r.w.r. 8D(2)(iii) of the Rules as against Rs.2,94,36,557/- worked out by the Appellant as expenditure attributable to exempt income and thereby confirming the disallowance of Rs.47,01,85,787/- (i.e. Rs.49,96,22,344/- less Rs.2,94,36,557/- suo-moto disallowed by the Appellant.)*

The appellant submits that the above disallowance u/s. 14A of the Act r.w.r. 8D(2)(iii) of the Rules is wrongly made and the same ought to be deleted.

- 2. On the facts and in circumstances of the case and in law, the Learned CIT(A) erred in confirming the action of the Assessing Officer in computing the disallowance under Rule 8D(2)(iii) of the Rules taking all investments including investments on which income was not received during the year.*

The Appellant submits that the Assessing Officer be directed to re-calculate the disallowance u/s. 14A of the Act r.w.r. 8D(2)(iii) of the Rules after excluding the investments that have not yielded any exempt income during the year under consideration."

- 3. At the outset, the learned counsel for the assessee made submissions that only those investments which yielded dividend income during the year should be considered for computing the disallowance under Rule 8D(2)(iii) r.w.s. 14A of the Act. In this regard, he relied on the decision of the Special Bench of the Tribunal in the case of ACIT vs Vireet Investment (P.) Ltd., [2017] 165 ITD 27 (Delhi - Trib.) (SB).*

4. When this fact was confronted to the learned Senior DR, Shri K. Madhusudan, he fairly agreed that the Assessing Officer can be directed that only those investments which yielded dividend income during the year should be considered for computing disallowance of expenses relatable to exempt income under Rule 8D(2)(iii) of the Rules.

5. We have heard the rival contentions and gone through the facts of the case. We noted that in assessment year 2008-09, in assessee's own appeal being ITA No. 4326/Mum/2012, the Tribunal vide order dated 13.09.2017 has, on identical facts, referred the matter back to the file of Assessing Officer. Respectfully following the said decision and also relying on the decision of Special Bench in the case of *Vireet Investment (P.) Ltd. (supra)*, we restore this issue back to the file of Assessing Officer with the direction to recompute the disallowance under Rule 8D(2)(iii) of the Rules r.w.s. 14A of the Act considering only those investments which yielded dividend income during the year for computation of disallowance of expenses relatable to exempt income. Thus, this ground of assessee's appeal is allowed for statistical purposes.

6. The next issue in this appeal of assessee is in respect of disallowance of expenses relatable to exempt income made under Section 14A of the Act r.w.r 8D(2) of the Rules while computing book profit under Section 115JB of the Act. We noted that this issue is covered by the decision of our co-ordinate Bench in assessee's own case being ITA No. 4326/Mum/2012 dated 13.09.2017 wherein it has been held as under :-

"8. We find that this issue also decided by the Coordinate Bench observing as under :-

“20. The second common ground of appeal is in respect of disallowance u/s. 14A while computing the book profit u/s 115JB of the Act.

21. This issue is also covered by the decision of the Special Bench Delhi in the case of ACIT v. Vireet Investments Private Limited (*supra*) wherein it has been held that 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 r.w. Rule 8D of I.T. Rules. Thus, respectfully following the said decision we direct the Assessing Officer to compute the book profits u/s 115JB of the Act in accordance with the directions of the Special Bench (*supra*). This common ground of appeal is allowed for statistical purpose.”

9. Thus, respectfully following the said decision we direct the Assessing Officer to compute the book profits in accordance with directions of Hon'ble Special Bench in the case of ACIT v. Vireet Investments Private Limited (*supra*).”

7. We noted that no disallowance can be made for expenses relatable to exempt income by invoking provisions of Section 14A of the Act r.w.r. 8D(2)(iii) of the Rules while computing book profit under Section 115JB of the Act in view of decision of Special Bench in the case of *Vireet Investment (P.) Ltd. (supra)*. Respectfully following the same, we direct the Assessing Officer to delete the disallowance. Thus, this issue of assessee's appeal is allowed.

8. In the result, appeal of assessee is partly allowed for statistical purposes.

Order pronounced in the open court on 28th January, 2020.

Sd/-
(MANOJ KUMAR AGGARWAL)
ACCOUNTANT MEMBER

Sd/-
(MAHAVIR SINGH)
VICE PRESIDENT

Mumbai, Date : 28th January, 2020

SSL

Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT(A) concerned
- 4) The CIT concerned
- 5) The D.R, "D" Bench, Mumbai
- 6) Guard file

By Order

Dy./Asstt. Registrar
I.T.A.T, Mumbai