



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

**BEFORE SHRI R.C. SHARMA, ACCOUNTANT MEMBER  
& SHRI PAWAN SINGH, JUDICIAL MEMBER**

**ITA NO.6554/MUM/2018 : A.Y : 2013-14**

**Smt. Usha Samani  
10, Parijat, N.S.Road  
Marine Drive  
Mumbai – 400020**

**vs. ITO 17(3)(5)  
Room No.219, 1<sup>st</sup> Floor  
Aayakar Bhavan  
Mumbai - 400020**

**PAN NO: APBPS2174R**

**Assessee by : Shri Navin Mishra  
Revenue by : Shri Sarish Chandra Rajore**

**Date of Hearing : 24/02/2020  
Date of Pronouncement : 25/02/2020**

**ORDER**

**PER R.C. SHARMA, ACCOUNTANT MEMBER**

This is an appeal filed by the assessee against the order of the CIT(A)-28, Mumbai dated 14/09/2018 for A.Y.2013-14 in the matter of order passed u/s.143(3) of the Income Tax Act.

2. In this appeal assessee is aggrieved for disallowance of Rs.11,06,965/- made u/s.14A r.w.r. 8D of the IT Act.

3. Facts in brief are that assessee is engaged in trading in shares and securities, investment in mutual funds etc., During the year assessee claimed exemption in respect of dividend income. During the course of scrutiny proceedings, AO found that the assessee has shown dividend income of Rs.20,61,345/- and has claimed the same as exempt u/s. 10(34) of the Act. However, the assessee has not made any disallowance on account of expenses incurred towards earning such exempt income, in

view of section 14A of the I.T. Act, 1961. Accordingly AO computed disallowance u/s.14A r.w.r. 8D at Rs.11,06,965/-. By the impugned order CIT(A) confirmed the disallowance. As per the Id. AR, the AO has not excluded the investment on which assessee has not earned any exempt income, while applying rule 8D. Id. AR also placed on record the order of the Tribunal in assessee's own case for the immediately preceding A.Y.2012-13 dated 13/06/2019, wherein exactly similar issue was decided by the Tribunal and AO was directed to exclude the investment on which assessee did not yield any exempt income. The precise observation of the Tribunal in its order dated 13/06/2019 was as under:-

*“ Upon careful consideration, I note that claim of the assessee in this case is that the assessee has also not earned dividend income on some of investment and it is the plea of the assessee that the same should not be considered for disallowance u/s. 14A. I find that this proposition is duly supported by the order of Special bench of the ITAT in the case of Vireet Investment Pvt. Ltd. (58 ITR 313). Hence I direct that investment which had not yield any dividend income should not be taken into account for the purpose of computation of disallowance.”*

4. As the facts and circumstances during the year under consideration are same, we restore the matter back to the file of the AO for excluding investment on which the assessee has not received any exempt income, while computing disallowance u/s.14A.

**5. In the result, appeal of the assessee is allowed for statistical purposes.**

Order pronounced in the open court on this 25/02/2020

**Sd/-  
(PAWAN SINGH)  
JUDICIAL MEMBER**

**Sd/-  
(R.C.SHARMA)  
ACCOUNTANT MEMBER**

Mumbai; Dated 25/02/2020  
Karuna 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**