

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

**BEFORE SHRI C.N. PRASAD, HON'BLE JUDICIAL MEMBER AND
SHRI MANOJ KUMAR AGGARWAL, HON'BLE ACCOUNTANT MEMBER**

ITA No. 6914/MUM/2018 (A.Y. 2015-16)

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| Dy. Commissioner of Income-tax Central Circle – 6(3) Room No. 1926, 19 th Floor Air India Building, Nariman Point Mumbai – 400 021 | v. | M/s. Tatva Global Environment Pvt. Ltd., Uniphos House, C.D. Marg 11 th Road, Nr. Madhu Park, Khar(W) Mumbai – 400 052 PAN: AAICS1718A |
| (Appellant) | | (Respondent) |

**C.O.NO. 191/MUM/2019
[ARISING OUT OF ITA No. 6914/MUM/2018 (A.Y. 2015-16)]**

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| M/s. Tatva Global Environment Pvt. Ltd., Uniphos House, C.D. Marg 11 th road, Nr. Madhu Park, Khar(W) Mumbai – 400 052 PAN: AAICS1718A | v. | Dy. Commissioner of Income-tax Central Circle – 6(3) Room No. 1926, 19 th Floor Air India Building, Nariman Point Mumbai – 400 021 |
| (Appellant) | | (Respondent) |

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| Assessee by | : | Ms. Saisudha Multani |
| Department by | : | Shri Amit Pratap Singh |
| | | |
| Date of Hearing | : | 12.12.2019 |
| Date of Pronouncement | : | 19.02.2020 |

ORDER

PER C.N. PRASAD (JM)

1. This appeal and cross objection are filed by the revenue and assessee against the order of the Learned Commissioner of Income Tax (Appeals)- 54, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 28.09.2018 for the A.Y. 2015-16.

2. The only issue in the appeal of the revenue is whether on the facts and in the circumstances of the case and in law, the Ld.CIT(A) erred in allowing an amount of ₹.4,88,67,927/- u/s. 14A as per rule 8D while computing the total income under normal provisions as well as book profits u/s. 115JB of the Act.

3. In the cross objection the assessee challenged the order of the Ld.CIT(A) in rejecting the contention of the assessee that the strategic investments made in group companies out of commercial expediency ought to be excluded while computing disallowance u/s. 14A of the Act since no expenditure is required to be incurred in respect of these investments.

4. Briefly stated the facts are that, the Assessing Officer while completing the assessment by invoking Rule 8D computed the disallowance u/s 14A of the Act at ₹.4,88,67,927/-. However, since the

assessee itself has suo motu disallowed an amount of ₹.44,77,905/- the balance of ₹.4,43,90,022/- has been disallowed u/s 14A of the Act. Similar disallowance has been made while computing book profits u/s.115JB of the Act.

5. On appeal the Ld.CIT(A) deleted the interest disallowance made under Rule 8D(2)(ii) observing that no interest was debited to P&L account for the A.Y. 2008-09 when the assessee made investments and directed the Assessing Officer to recompute the disallowance under Rule 8D(2)(iii) of I.T. Rules keeping in view the decision of the Special Bench in the case of CIT v. Vireet Investments Private Limited [165 ITD 27] by taking only those investments which have yielded exempt income during the year. In so far the disallowance u/s 14A of the Act while computing the book profits is concerned the Ld.CIT(A) directed the Assessing Officer to compute the disallowance keeping in view the judgment of Hon'ble Special Bench in the case of CIT v. Vireet Investments Private Limited (supra). Against this decision the revenue is in appeal before us.

6. Ld. DR strongly supported the orders of the Assessing Officer. Ld. Counsel for the assessee strongly relied on the order of the Ld.CIT(A).

7. We have heard the rival submissions and perused the orders of the authorities below. The Ld.CIT(A) observed that assessee has received

dividend of ₹.55,56,717/- during the year under consideration and claimed as exempt u/s.10(34) of the Act. Further the assessee itself suo moto made disallowance of ₹.44,77,905/-. The assessee submitted before the Ld.CIT(A) that though it had suo moto disallowed ₹.44,77,905/- the disallowance may be restricted to 2% of the dividend income in view of the decision of the coordinate bench in assessee's own case for the A.Ys. 2009-10 and 2010-11. The Ld. CIT(A) has given a finding that no interest was debited to P&L account for the A.Y. 2008-09 when the assessee has made investments during the Financial Year 2007-08 and assessee has not made any investments thereafter. Therefore, he concluded that no part of interest could be disallowed under Rule 8D(2)(ii) of I.T. Rules. We agree with the Ld.CIT(A) and there are no good reasons to disturb the findings of the Ld.CIT(A).

8. As far as the contention of the assessee that only 2% of the exempt income to be disallowed is concerned, he rejected the submission in view of the special bench decision in the case of CIT v. Vireet Investments Private Limited (supra) and directed the Assessing Officer to consider only those investments which have yielded the exempt income to be considered for disallowance. We find no valid reason to interfere with the findings of the Ld. CIT(A) and accordingly we sustain the order of the Ld.CIT(A) and reject the grounds raised by the Revenue.

9. Coming to the Cross objection filed by the assessee contending that the strategic investments should be excluded for the purpose of computation of disallowance u/s. 14A of the Act, we find that Hon'ble Supreme Court in the case of Maxopp Investment Ltd. v. CIT [402 ITR 640] held that provisions of section 14A would apply even for the strategic investments. Hon'ble Supreme Court held as under: -

“39) In those cases, where shares are held as stock-in-trade, the main purpose is to trade in those shares and earn profits therefrom. However, we are not concerned with those profits which would naturally be treated as ‘income’ under the head ‘profits and gains from business and profession’. What happens is that, in the process, when the shares are held as ‘stock-in-trade’, certain dividend is also earned, though incidentally, which is also an income. However, by virtue of Section 10 (34) of the Act, this dividend income is not to be included in the total income and is exempt from tax. This triggers the applicability of Section 14A of the Act which is based on the theory of apportionment of expenditure between taxable and non-taxable income as held in Walfort Share and Stock Brokers P Ltd. case. Therefore, to that extent, depending upon the facts of each case, the expenditure incurred in acquiring those shares will have to be apportioned.”

10. In view of the above, the contentions of the assessee in its cross objection are rejected.

11. In the result, appeal of the revenue as well as the cross objection of the assessee are dismissed.

Order pronounced in the open court on the 19th February, 2020

Sd/-
(MANOJ KUMAR AGGARWAL)
ACCOUNTANT MEMBER

Mumbai / Dated 19/02/2020
Giridhar, Sr.PS

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

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.

//True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mum