

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "F", MUMBAI
Before Shri Pawan Singh (JM) & Shri S.Rifaur Rahman (A.M.)
ITA No. 6710/Mum/2018(Assessment year : 2012-13)

M/s Visaria Securities Pvt Ltd, 3B2, CNeRGY Appasaheb Marathe Marg Prabhadevi, Mumbai-400 025 PAN : AAACV7721L	vs	The ACIT-4(2), Mumbai
APPELLANT		RESPONDEDNT

Appellant by	Shri Niraj Sheth AR
Respondent by	Miss. Samatha Mullamudi (Sr. DR)
Date of hearing	18-02-2020
Date of pronouncement	18-02-2020

ORDER

PER PAWAN SINGH, JM :

1. This appeal by assessee is directed against the order of CIT(A)-2, Mumbai dated 27-09-2018 for assessment year 2012-13. The assessee has raised the following grounds of appeal:-

Ground No. 1:

On the facts and in the circumstances of the case and in law, the learned CIT(A) grossly erred in confirming the disallowance made by the Assessing Officer of Rs. 39,84,277/- U/S.14A of the I.T.Act as against the suo moto disallowance made by the appellant at Rs.5,56,283/-. The suo moto disallowances made by the appellant on the similar facts as prevalent in AYs. 2008-09, 2009-10, 2010-11 and 2011-12 have been upheld by the Hon'ble ITAT, Mumbai. Since there is no material change in the facts, the Ld. CIT(A) following the said decisions of the ITAT ought to have accepted the suo moto disallowance made by the appellant. It is therefore prayed that the suo moto disallowance offered by the appellant may kindly be upheld and disallowance made by the AO may please be disallowed.

Ground No. 2:

On the facts and in the circumstances of the case and in law, and without prejudice to contentions as per Ground No.1, the Ld. AO erred in taking the value of the stock-in-trade while calculating the disallowance u/s.14A r.w.r. 8D. The stock-in-trade is a business asset and quite distinct and different from the investments and therefore, value of the stock-in-trade should not have been considered while calculating the disallowance under Rule 8D(2)(ii) and (iii) of I.T.Rules. Under this Rule, value of investment alone is considered for disallowance U/S.14A r.w.r. 8D and not stock-in-trade. It is therefore prayed that AO may be directed to exclude the value of stock-in-trade while calculating the disallowance U/S.14A r.w.r. 8D.

Ground No. 3:

On the facts and in the circumstances of the case and in law, and without prejudice to contentions as per Ground Nos. 1 and 2, the AO while calculating the disallowance u/s.14A r.w.r. 8D has taken into account interest expenditure of Rs.38,69,013/- without considering the fact that the appellant has interest income of Rs.41,77,612/-. Interest income is more than the expenditure. The AO should have considered netting of interest as held by various Courts before considering the disallowance under Rule 8D(2)(ii) and (iii) of I.T.Rules. It is prayed that AO may be directed to allow the netting of interest to the appellant while making the disallowance.

Ground No. 4:

On the facts and in the circumstances of the case and in law, it is prayed that the Ld., CIT(A) has not allowed the natural justice to the appellant and passed the appellate order in a hasty manner. The matter was fixed for hearing on 26.09.2018 which was adjourned to 28.09.2018 whereas the appellate order was passed on 27.09.2018. The Ld. CIT(A) should have considered the written submission of the appellant and an opportunity of being heard should have been given before passing the appellate order. This has not been done. Appropriate relief in the matter may kindly be allowed.

2. Further, vide application dated 17-02-2020, the assessee has raised the following additional grounds of appeal:-

“Ground No. 1:

On the facts and circumstances of the case and in law, the appellant submits that in computing the disallowance under section 14A read with Rule 8D, the investments on which dividend has not been received ought not to be taken into account.

Ground No. 2:

On the facts and circumstance of the case and in law, the appellant submits that no disallowance under section 14A of the Act read with clause (i) and (ii) of Rule 8D, can be made in the present case as the appellant's own funds are sufficient to cover the investments yielding tax free income.”

3. Brief facts of the case are that the assessee is engaged in the business of share broking and investment, filed its return of income for Assessment Year (AY) 2012-13 declaring Nil income. In the computation of income, the assessee has shown exempt income of Rs.37,47,996/-. The assessee made suo motu disallowance under section 14A of Rs.5,56,283/-. During the assessment, the AO issued show cause notice as to why disallowance u/s 14A be not made in accordance with Rule 8D. The AO made disallowance of Rs.29,31,010/- under Rule (u/r) 8D(2)(ii) of Rs. 29,31,010/- (interest disallowance) and disallowance u/r 8D(2)(iii) of Rs.16,09,550/- (indirect disallowance) . The AO, after granting set off of suo motu disallowance made, net disallowance of Rs.39,842,77/-. On appeal before CIT(A), the disallowance was restricted to the exempt income

i.e. Rs. 37,47,996. Thus, further aggrieved, the assessee has filed the present appeal before us.

4. We have heard the submission of learned authorised representative (Ld.AR) of the assessee and the learned departmental representative (Ld. DR) for the revenue and perused the material available on record. The Ld.AR of the assessee submits that the AO while passing the assessment order, made disallowance u/r 8D(2)(ii) of Rs.29,31,010/-. The Ld.AR for assessee submits that assessee has sufficient interest free funds available as on 31-03-2012. No interest bearing funds were utilised for making investment for earning exempt income. The Ld.AR of the assessee filed a copy of balance-sheet as on 31-03-2012. The share capital of assessee is Rs.3.00 crores and reserves and surplus of Rs.34,19,86,042/-. The ld. AR for the assessee submits that the reserves and surplus of the assessee is more than the investment made during the year. Thus, no interest disallowance is warranted. For other disallowance, i.e. disallowance u/r 8D(2)(iii), the Ld.AR submits that as per the decision of Special Bench of Delhi Tribunal in ACIT vs Vireet Investment (P) Ltd (2017) 82 taxmann.com 415 (Del)(SB), only those investments, are to be considered for computing average value of investments, which yielded exempt income during the year. The Ld.AR of the assessee submits that appropriate

direction may be given to the AO to make the fresh computation of disallowance under section 14A read with Rule 8D.

5. On the other hand, the Ld. Sr. DR for revenue supported the order of lower authorities. The Ld. DR further submits that assessee, for the first time, before the Tribunal, has raised an altogether new contention, therefore, the matter may be restored to the AO to decide the issue afresh.
6. We have considered the submissions of both the parties, perused the record. So far as disallowance u/r 8D(2)(ii) in respect of interest disallowance is concerned, we have noted that neither the AO nor the Ld.CIT(A) examined the issue as per the contention raised by the Ld.AR of the assessee that the assessee owns interest free funds which are in excess of investment made during the year. Similarly for indirect expenses u/r 8D(2)(iii), the assessee has raised an altogether contention by making reliance on the decision of Special Bench of Delhi Tribunal in ACIT vs Vireet Investment (P) Ltd (supra) that only those investments should be considered for computing average value of investments which yielded exempt income during the year. Therefore, considering the submission of Ld.AR of the assessee, the issue is restored back to the file of AO to examine the fact that in case the interest free funds are in excess of investments made by the

assessee for earning exempt income, then no interest disallowance be made. Similarly, for making disallowance of indirect expenditure, only those investments which yielded exempt income be considered for making computation. Needless to order before passing the order, the AO shall grant opportunity of hearing to the assessee. In the result, the grounds of appeal including additional grounds of appeal raised by the assessee are allowed for statistical purpose.

7. In the result, appeal of the assessee is allowed, for statistical purpose.

Order pronounced in the open court on 18-02-2020.

Sd/-

Sd/-

(S Rifaur Rahman)	(Pawan Singh)
ACCOUNTANT MEMBER	JUDICIALMEMBER

Mumbai, Dt : 18th February, 2019

Pk/-

Copy to :

1. Appellant
2. Respondent
3. CIT(A)
4. CIT
5. DR

/True copy/

By order

Asstt. Registrar, ITAT, Mumbai