

**IN THE INCOME TAX APPELLATE TRIBUNAL
"H" Bench, Mumbai**

**Before Shri G. Manjunatha, Accountant Member
and Shri Ravish Sood, Judicial Member**

**ITA No. 1512/Mum/2019
(Assessment Year: 2013-14)**

KJMC Corporate Advisors (India)
Pvt. Ltd, 162, 16th Floor, Atlanta,
Nariman Point,
Mumbai – 400 021

Income Tax Officer, Circle-3(2)(3),
6th Floor, Aayakar Bhavan,
Vs. Mumbai – 400 020

PAN – AAACK9266B

(Appellant)

(Respondent)

Appellant by: Shri Sunil Nahta, A.R
Respondent by: Shri R. Bhoopathi, D.R
Date of Hearing: 26.02.2020
Date of Pronouncement: 28.02.2020

ORDER

PER RAVISH SOOD, JM

The present appeal filed by the assessee is directed against the order passed by the CIT(Appeals)-8, Mumbai, dated 20.01.2019, which in turn arises from the assessment framed by the A.O under Sec. 143(3) of the Income Act, 1961 (for short 'Act'), dated 29.12.2015 for A.Y. 2013-14. The assessee had assailed the impugned order on the following grounds of appeal before us:

"The under mentioned Grounds of Appeal are independent and are without prejudice to one another:

- 1(a) On the facts and in the circumstances of the case and in law, the learned Commissioner of Income Tax (Appeal) ("the CIT(A)") erred in confirming action of the Ld. Assessing officer of making disallowance to the extent of Rs. 10,67,730/- by invoking the provisions of section 14A read with Rule 8D of the Income Tax Rules, 1962 without appreciating that the Ld. Assessing Officer failed to recording, any reason for non-satisfaction with the correctness of the claim of Rs. 50,143/- suo-moto disallowed by the Appellant u/s. 14A and doing so is wrong & contrary to the facts of the case, provisions of the Act, and the Rules made thereunder.
- (b) The Id. CIT(A) ought to have restricted the disallowance u/s 14A to Rs. 50,143/- as computed by the appellant being fair and reasonable and correct claim

having regards to accounts of the appellant company and not doing so is wrong and contrary to the provisions of the Act, and the Rules made there under.

- (c) Without prejudice to the above Grounds of appeal, the Ld. CIT(A) ought to have not reckoned those investments which have not generated any exempt income for the purpose of calculating average value of investments in terms of section 14A r.w.r. 8D(2) and not doing so is wrong and contrary to the provisions of the Act, and the Rules made there under.
2. On the facts and in the circumstances of the case and in law, the Id. CIT(A) erred in confirming the action of Ld. Assessing Officer in making addition of Rs. 10,17,587/- over and above Rs.50,143/- being disallowance u/s 14A r.w.r 8D, to the book profit u/s 115JB and doing so is wrong and contrary to the facts of the case, provisions of the Act, and the Rules made thereunder.

The appellant craves leave to add, amend, alter, modify and/or delete any of the above grounds of appeal on or before the date of hearing.”

2. Briefly stated, the assessee company which is a merchant banker and also engaged in the business of project financing and providing advisory services had filed its return of income for A.Y.2013-14 on 30.09.2013, declaring nil income. Subsequently, the case of the assessee was selected for scrutiny assessment under Sec.143(2) of the Act. During the course of the assessment proceedings it was inter alia observed by the A.O that the assessee was in receipt of exempt dividend income of Rs.15,22,953/- on equity shares, which was claimed as exempt under Sec.10(34) of the Act. On a perusal of the computation of income, it was noticed by the A.O that the assessee had suo motto disallowed a sum of Rs.50,143/- as having been incurred for earning of the exempt dividend income. In the backdrop of the aforesaid fact, the A.O not being satisfied with the disallowance offered by the assessee under Sec. 14A of the Act, therein called upon it to explain as to why the same may not be worked out as per the methodology contemplated in Rule 8D of the Income-tax rules, 1962. In reply, it was submitted by the assessee that no part of the interest bearing funds were utilised for the purpose of making investments in the exempt income yielding shares. Also, it was submitted by it that a fair disallowance of the proportionate administrative expenses were already offered in the return of income. On a perusal of the details it was noticed by the A.O that the assessee had worked out the disallowance under Sec. 14A at an amount of Rs.50,143/-, as under:

Calculation of disallowance u/s.14A		
Salary		Amount in Rs.
0.5% of the salary costs of management personnel		
0.5% of Salary of VP – Accounts	4,729	
0.5% of Salary of Accounts Executive		
1% of the salary costs of Executive Director	17,280	

Total	22,009	
Total salary debited to P/L	86,87,983	
Ratio of Salaries	0.0025	
Total salary to be disallowed		22,009
Direct Expenses:		
DMAT A/c. Maintenance Charges, DMAT Transfer charges etc.		18,254
Indirect Expenses:		
Ratio of Salary is applied to other indirect expenses:		
Other than those directly related to manufacturing, selling and distribution expenses		
Conveyance expenses	4,25,044	
Electricity expenses	3,52,509	
Infrastructural support services	5,10,275	
Insurance expenses	71,927	
Motor car expenses	3,23,508	
Miscellaneous expense	26,090	
Rent	16,82,000	
Telephone expenses	1,30,387	
Director's sitting fees	50,000	
Printing & stationery	3,28,102	
Total	38,99,842	
Ratio	0.0025	
Disallowance		9,880d
Expenses pertaining to Investment department		50,143

However, the A.O not being persuaded to accept the aforesaid working of disallowance under Sec.14A by the assessee reworked out the same under Sec. 14A r.w. Rule 8D at an amount of Rs.10,94,782/-, as under:

Particulars		
Disallowance under clause(i) Demat Charges		18,254
Disallowance under Clause (ii)		
Disallowance under Clause (iii)		
Average Value of Investments as on 01.04.2012	22,67,56,000	
Average Value of investments as on 31.03.2013	20,38,55,000	
Average value of Investments at the end of the year	21,53,05,500	
0.5% of the Total average value of investments		10,76,528
Total Disallowance u/s. 14A (i)+(ii)+(iii)		10,94,782
Less: Already disallowed by the assessee		50,143
Balance amount to be disallowed u/s. 14A		10,44,639

Observing, that the assessee had already offered a suo-motto disallowance of Rs.50,143/- u/s 14A, the A.O made a further disallowance of Rs.10,44,639/- [Rs.10,94,782/- (-) 50,143/-]. Also, the A.O for the purpose of computing the 'book profit' under Sec. 115JB added the disallowance that was worked out by him under Sec. 14A r.w. Rule 8D. On the basis of his aforesaid deliberations the A.O assessed the total income of the assessee company under the normal provisions at Rs.55,85,954/-.

3. Aggrieved, the assessee assailed the assessment framed by the A.O before the CIT(A). Observing, that the disallowance worked out by the A.O under Sec. 14A r.w. Rule 8D was in conformity with the judgment of the Hon'ble Supreme Court in the case of Maxopp Investment Ltd. Vs. CIT (2018) 402 ITR 640 (SC), the CIT(A) upheld the same. At the same time, the CIT(A) taking cognizance of a clerical mistake that had crept in the aforesaid calculation of disallowance, therein scaled down the same to Rs.10,67,730/-, as against that made by the A.O at Rs.10,94,782/-. Accordingly, on the basis of his aforesaid observations the CIT(A) principally upheld the disallowance worked out by the A.O under Sec.14A r.w. Rule 8D.

4. The assessee being aggrieved with the order of the CIT(A) has carried the matter in appeal before us. The Id. Authorized Representative (for short 'A.R') for the assessee at the very outset of the hearing of the appeal submitted that the A.O had wrongly assumed jurisdiction and re-worked out the disallowance under Sec.14A r.w. Rule 8D at an amount of Rs.10,94,782/-. Elaborating on his aforesaid contention, it was submitted by the Id. A.R that the A.O without recording his satisfaction as to why the disallowance under Sec. 14A offered by the assessee in its return of income was not to be accepted, had most erroneously dislodged the same. It was averred by the Id. A.R that as held by the Hon'ble Supreme Court in the case of Godrej & Boyce Manufacturing Company Limited Vs. DCIT (2017) 394 ITR 449 (SC) and Maxopp Investment Ltd. VS. CIT (2018) 402 ITR 640 (SC), the A.O as per the mandate of law was obligated to arrive at a satisfaction that having regard to the accounts of the assessee, as placed before him, it was not possible for him to generate the requisite satisfaction with regard to the correctness of the claim of the assessee. It was submitted by the Id. A.R, that the A.O only after arriving at the aforesaid satisfaction could thereafter take recourse to the provisions of Sec.14A(2) and (3) r.w. Rule 8D. On the basis of his aforesaid contention, it was vehemently submitted by the Id. A.R that the working of the disallowance under Sec. 14A r.w. Rule 8D by the AO, in the absence of arriving at a dissatisfaction as regards the correctness of the claim of the assessee could not be sustained and was liable to be vacated on the said ground itself. In support of his aforesaid contention the Id. A.R had relied on the order of the ITAT, "D" bench, Mumbai, in the case of Rajshree Production Pvt. Ltd. Vs. ACIT-16(1), Mumbai [ITA No. 3477 & 3478/Mum/2017, dated 28.02.2019]. Alternatively, it was submitted by the Id. A.R that the A.O while working out the disallowance under Sec. 14A r.w. Rule 8D(2)(iii) had erroneously included the investments which had not yielded any exempt income during the year, for the

purpose of computing the “average value” of investments. In order to drive home his aforesaid claim the Id. A.R took us through the details of the 11 exempt income yielding investments which had yielded the dividend income of Rs.15,22,953/- during the year. [Page 7 of the assessee's 'Paper book' (APB)]. Relying on the order of the ITAT 'Special Bench' in the case of ACIT Vs. Vireet Investments Pvt. Ltd. (165 ITD 27) (Del) (SB), it was submitted by the Id. A.R, that the Tribunal in the said case had observed that for the purpose of computing the “average value” of the investments, only those investments which had yielded exempt income during the year were to be considered. Lastly, it was submitted by the Id. A.R that the A.O while computing the 'book profit' under Sec. 115JB of the Act, had erroneously added the disallowance that was worked out by him as per Sec. 14A r.w. Rule 8D. In support of his aforesaid claim the Id. A.R relied on the order of the 'Special bench' of the ITAT, Delhi in the case of Vireet Investments Pvt. Ltd. (supra).

5. Per contra, the Id. Departmental Representative (for short 'D.R') relied on the orders of the lower authorities. It was submitted by the Id. D.R that the A.O had only after recording his dissatisfaction as regards the disallowance that was offered by the assessee under Sec. 14A, therein worked out the same as per the methodology contemplated in Sec. 14A r.w. Rule 8D. As regards the claim of the Id. A.R that the A.O was in error in adding the disallowance that was worked out by him as per Sec. 14A r.w. Rule 8D while computing the 'book profit' under Sec. 115JB of the Act, the Id. A.R fairly admitted that the said issue was covered by the order of the 'Special bench' of the ITAT in the case of ACIT Vs. Vireet Investments Pvt. Ltd. (165 ITD 27) (Del) (SB).

6. We have heard the authorized representatives for both the parties, perused the orders of the lower authorities and the material available on record, as well as the judicial pronouncements relied upon by them. As observed by us hereinabove, the assessee had assailed before us the disallowance worked out by the A.O under Sec. 14A r.w. rule 8D. We shall first advert to the claim of the assessee that the A.O without recording his dissatisfaction as regards the correctness of the suo motto disallowance that was made by the assessee under Sec. 14A in its return of income, had most erroneously dislodged and substituted the same by an amount that was arrived at by him as per Sec.14A r.w Rule 8D. As observed by the Hon'ble Supreme Court in the case of Godrej & Boyce Manufacturing Company Limited Vs.

DCIT (2017) 394 ITR 449 (SC), the A.O remains under a statutory obligation to arrive at a satisfaction that having regard to the accounts of the assessee, as placed before him, it is not possible for him to generate the requisite satisfaction with regard to the correctness of the claim of the assessee. As observed by the Hon'ble Supreme Court, it is only after recording of such satisfaction that the A.O can take recourse to the provisions of Sec.14A(2) and (3) r.w Rule 8D of the Rules. In fact, the aforesaid view was once again reiterated by the Hon'ble Supreme Court in the case of Maxopp Investment Ltd. VS. CIT (2018) 402 ITR 640 (SC). In the aforesaid case, it was once again observed by the Hon'ble Supreme Court that if the A.O was not satisfied with the disallowance that was offered by the assessee, then, he remained under a statutory obligation to record his dissatisfaction to the said effect, as it was only thereafter that he could assume jurisdiction and take recourse to and work out the disallowance as per sub-section (2) and (3) of Sec. 14A of the Act. Although, we are in agreement with the claim of the Id. A.R that in the absence of recording of the requisite satisfaction as regards the correctness of an assessee's claim of disallowance under Sec.14A, the A.O is divested of his jurisdiction to dislodge the suo-moto disallowance made by the assessee under Sec. 14A of the Act, but then, we find that there is no such infraction of the said statutory requirement by the A.O in the case before us. As is discernible from the assessment order, the A.O had after necessary deliberations observed that with reference to the accounts of the assessee, he was not satisfied with the correctness of its claim as regards the expenses which were attributed to earning of the income not forming part of the assessee's total income. Accordingly, we are of the considered view that the statutory requirement of arriving at a satisfaction by the A.O, as regards the correctness of the assessee's claim of disallowance under Sec. 14A can safely be held to have been satisfied on his part. As such, we are unable to persuade ourselves to subscribe to the claim of the Id. A.R that the A.O had without arriving at a satisfaction as regards the incorrectness of the claim of the disallowance under Sec. 14A of the assessee, disallowed the same by taking recourse to the provisions of Sec. 14A(2) and (3) r.w. Rule 8D. At the same time, we find substantial force in the claim of the Id. A.R that for the purpose of computing the disallowance under Sec. 14A r.w. Rule 8D(2)(iii) only those investments are to be considered for the purpose of computing the "average value" of such investments which had yielded exempt income during the year under consideration. It is the claim of the Id. A.R that the A.O while computing the disallowance under Sec. 14A r.w Rule 8D(2)(iii) had worked out the

“average value” of the investments at Rs. 21,53,05,500/-, that also included certain investments which had not yielded any exempt income during the year under consideration. In our considered view, there is substantial force in the aforesaid claim of the Id. A.R that the investments which had not yielded any exempt income during the year under consideration ought to have been excluded for the purpose of computing the “average value” of the investments while computing the disallowance under Rule 8D(2)(iii). Our aforesaid view is fortified by the order of the ‘Special bench’ of the ITAT, Delhi in the case of ACIT Vs. Vireet Investments Pvt. Ltd. (2017) 165 ITD 27 (Del) (SB). We find that the Id. A.R had furnished a ‘chart’ as per which the “average value” of the exempt income yielding investments would work at an amount of Rs.4,27,46,110/-, as under :

Sr. No.	Name of the company	Dividend Amount (in Rs.)	Closing balance as on 31.03.2013	Closing balance as on 31.03.2012
1.	BSE India Limited	2,81,892	1,87,92,800	1,87,92,800
2.	HBL Power Systems Limited	1,380	-	3,14,084
3.	ICICI Bank Limited	8,250	-	6,34,966
4.	Indiabulls Financial Services Limited	7,000	-	5,34,183
5.	Styrolution ABS (India) Limited	13,148	24,41,911	20,28,471
6.	KJMC Financial Services Limited	10,20,000	1,75,52,500	1,75,52,500
7.	Menon Bearing Limited	275	-	5,256
8.	Menon Piston Limited	1,88,549	-	63,33,437
9.	Reliance Industries Limited	170	17,188	17,188
10.	Reliance Infrastructure Limited	1,825	-	4,74,935
11.	Others	438		
	Total	15,22,953/-	3,88,04,399	4,66,87,820
	Average value of Investment		4,27,46,110	
	0.5% of Rs.4,27,46,110/- as per Rule 8D(2)(iii) of Income Tax Rules		2,13,730	

On the basis of his aforesaid claim, it is submitted by the Id. A.R that the disallowance under Sec. 14A r.w. Rule 8D(2)(iii) would work out at Rs.2,13,730/- [0.5% of Rs.4,27,46,110/-]. As observed by us hereinabove, the aforesaid contention advanced by the Id. A.R finds support from the order of the ‘Special bench’ of the ITAT, Delhi in the case of ACIT Vs. Vireet Investments Pvt. Ltd. (2017) 165 ITD 27 (Del) (SB). Accordingly, we restrict the disallowance under Sec. 14A r.w.Rule 8D(2)(iii) to the aforesaid amount of Rs.2,13,730/-. As such, the disallowance under Sec. 14A r.w Rule 8D is restricted to an amount of Rs.2,31,984/- viz. (i) U/rule 8D(2)(i): Rs.18,254/-; and (ii) U/rule 8D(2)(iii): Rs.2,13,730/-.

7. We shall now advert to the claim of the Id. A.R that the A.O had erred in making an addition of the disallowance worked out under Sec. 14A r.w.Rule 8D for the purpose of

computing the 'book profit' under Sec.115JB of the Act. On a perusal of the assessment order, we find that the A.O for the purpose of computing the 'book profit' under Sec. 115JB had made an addition of the disallowance of Rs. 10,94,782/- that was worked out by him under Sec. 14A r.w Rule 8D. We are unable to persuade ourselves to subscribe to the computing of the 'book profit' under Sec. 115JB by the A.O. As per the order of the 'Special bench' of ITAT, Delhi in the case of ACIT Vs. Vireet Investments Pvt. Ltd. (2017) 165 ITD 27 (Del) (SB), the computation under clause (f) of Explanation 1 to Sec. 115JB (2) is to be made without resorting to the computation as contemplated under Sec. 14A r.w Rule 8D. Accordingly, on the basis of our aforesaid observations we vacate the addition made by the A.O under Sec. 14A r.w Rule 8D for the purpose of computing the 'book profit' under Sec. 115JB of the Act. Order passed CIT(A) is modified in terms of our aforesaid observations.

8. Resultantly, the appeal filed by the assessee is partly allowed.

Order pronounced in the open court on 28.02.2020

Sd/-
(G. Manjunatha)
ACCOUNTANT MEMBER

Sd/-
(Ravish Sood)
JUDICIAL MEMBER

Mumbai;

Dated: 28/02/2020

Rohit, P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

BY ORDER,
//True Copy//
(Sr. Private Secretary)
ITAT, Mumbai