

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

**BEFORE SHRI R.C. SHARMA (ACCOUNTANT MEMBER) AND  
SHRI PAWAN SINGH (JUDICIAL MEMBER)**

**ITA No. 7275/MUM/2018  
Assessment Year: 2008-09**

M/s Baroda Industries Ltd.,  
2<sup>nd</sup> floor, Bajaj Bhavan 226,  
Jammalal Bajaj Marg, Mumbai-  
400021.

**PAN No. AAACB2428A**

**Appellant**

Vs. The Income Tax Officer Circle-  
3(1)(2),  
Aayakar Bhavan, M.K. Road, 6<sup>th</sup>  
floor, Mumbai-400020.

**Respondent**

Assessee by : Mr. M. A. Gohel, AR

Revenue by : Mr. Mohammed Rizwan, DR

Date of Hearing : 04/03/2020

Date of pronouncement: 04/03/2020

**ORDER**

**PER PAWAN SINGH, JUDICIAL MEMBER:**

This appeal by assessee is directed against the order of Id. CIT(A)-8, Mumbai dated 17.09.2018 for Assessment Year 2008-09. The assessee has raised the following grounds of appeal:

1.1 On the facts and in the circumstances of the case and in law, the learned Commissioner of Income-tax (Appeals) [CIT(A)] erred in confirming the disallowance of Rs.8,53,822/- made by the learned Assessing Officer by invoking provisions of Section 14A of the Act read with Rule 8D as against a sum of Rs.3,15,118/- worked out by the appellant in this behalf.

1.2 It is submitted that the disallowance under Section 14A of the Act computed by the learned Assessing Officer and confirmed by the CIT(A) is excessive/unreasonable and unwarranted.

2. Brief facts of the case are that initially the assessment for AY 2008-09 completed under section 143(3) on 30.11.2010. The Assessing Officer while passing assessment order noted that the assessee has shown dividend income of Rs.3,26,17,910/- received on account of dividend, Rs.56,01,342/- received on mutual fund. The assessee has made suo moto disallowance of Rs.50,000/- as estimated expenditure for earning exempt income. The Assessing Officer invoked the provision of Rule 8D and made disallowance of Rs.8,53,822/-.

3. On appeal before CIT(A) was affirmed. However, on appeal before Tribunal, the matter was restored back to the file by Assessing Officer for passing the order afresh. In setting aside proceedings, The Assessing Officer made disallowance of Rs.5,38,704/- under section 14A. On further appeal before Id CIT(A), the action of Assessing Officer was affirmed. Thus further aggrieved the assessee has filed present appeal before the Tribunal.

4. We have heard the submissions of the parties and perused the record. The Ld. AR of the assessee submits that in assessee's own case for AYs 2004-05, 2005-06 and 2007-08, reasonable disallowance was made and the same may be allowed in the year under consideration. In the alternative submission the Ld. AR of the assessee submits that as per the decision of Special Bench of the Tribunal in ACIT v. Vireet Investment (P.) Ltd. 82 taxmann.com 415 (Delhi) (SB) only those investments are to be considered for computing the average value of investment which yielded exempt income. The Ld. AR submits that

the short controversy in these cases that Assessing Officer made disallowance of Rs.5,38,704/-. However, the disallowance in accordance with the decision of Vireet Investment (P.) Ltd. (supra) worked out by assessee comes to Rs.4,40,025/- and the same may be accepted.

5. On the other hand, the Ld. DR for the Revenue supported the order of lower authorities. The Ld. DR submits that for the year under consideration i.e. AY 2008-09 provision of Rule 8D are applicable. Therefore, the assessee cannot take plea that in AYs 2004-05, 2005-06 and 2007-08 reasonable disallowance was approved by the Tribunal. On the alternative submission of the assessee that only those investments which yielded the exempt income can be considered for making or computing average value of investment should be considered. The Ld. DR submits matter be sent back to the AO with the direction to make the afresh computation accordingly by following the order of Special Bench in Vireet Investment (P.) Ltd (supra) .

6. We have considered the submission of both the parties. In view the short question for adjudication is the quantum of disallowance under section 14A r.w.r. 8D. The Ld. AR submits that in AYs 2004-05, 2005-06 and 2007-08 reasonable disallowance for approved by the Tribunal. This plea of assessee is not acceptable to us. As Rule 8D is applicable for year under consideration. Therefore, this argument/plea of assessee is rejected. However, we accept the alternative plea of the assessee that only those investments which yielded exempt income are to be considered for computing average value of investment. Therefore, we direct the Assessing Officer to follow the decision of Special Bench of Tribunal in Vireet Investment (P.) Ltd. (supra) and consider only those investment for computing the average value of investment yielded

the exempt income during the year and made the fresh computation of disallowance under section 14A.

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

**Order pronounced in the open Court on 4<sup>th</sup> March 2020.**

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

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

Mumbai;

Dated:

*Rahul Sharma, Sr. 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.

//True Copy//

BY ORDER,

(Assistant Registrar)  
**ITAT, Mumbai**