

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

**BEFORE SHRI C.N. PRASAD, HON'BLE JUDICIAL MEMBER AND
SHRI S. RIFAUR RAHMAN, HON'BLE ACCOUNTANT MEMBER**

ITA NOs. 7404 MUM/2017 (A.Y: 2013-14)

M/s. Tata Investment Corporation Ltd., C/o. Kalyaniwalla & Mistry LLP., Esplanade House, 2 nd Floor 29, Hazarimal Somani Marg Fort, Mumbai – 400 001 PAN: AA ACT4120F	v.	Dy. CIT – 2(3)(1) Room No. 552, 5 th Floor Aayakar Bhavan M.K. Road Mumbai – 400 020
(Appellant)		(Respondent)

ITA NOs. 7405/MUM/2017 (A.Y: 2014-15)

M/s. Tata Investment Corporation Ltd., C/o. Kalyaniwalla & Mistry LLP., Esplanade House, 2 nd Floor 29, Hazarimal Somani Marg Fort, Mumbai – 400 001 PAN: AA ACT4120F	v.	Asst. CIT – 2(3)(2) Room No. 552, 5 th Floor Aayakar Bhavan M.K. Road Mumbai – 400 020
(Appellant)		(Respondent)

**ITA. NOs. 57 & 58/MUM/2018
(A.Ys: 2013-14 & 2014-15)**

Asst. CIT – 2(3)(1) Room No. 552, 5 th Floor Aayakar Bhavan M.K. Road Mumbai – 400 020	v.	M/s. Tata Investment Corporation Ltd., C/o. Kalyaniwalla & Mistry LLP., Esplanade House, 2 nd Floor 10, Veer Nariman Road, Fort Mumbai – 400 001 PAN: AA ACT4120F
(Appellant)		(Respondent)

Assessee by	:	Shri M.M. Golvala & Shri Amey Wagle
Department by	:	Shri Amit Pratap Singh
Date of Hearing	:	09.01.2020
Date of Pronouncement	:	20.07.2020

ORDER

PER C.N. PRASAD (JM)

1. These appeals are filed by the assessee and Revenue against different orders of the Ld. Commissioner of Income Tax (Appeals)-6, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 23.10.2017 for the A.Ys.2013-14 and 2014-15.

2. Assessee has raised following common grounds for the A.Y.2013-14 and A.Y. 2014-15: -

"1) *The learned Commissioner of Income Tax (Appeals) erred in not following the decision of the Special Bench in the case of ACIT vs. Vireet Investment (P) Ltd. (165 ITD 27) while computing the addition to be made under Clause (f) of Explanation 1 to Section 115JB(2).*

2) *Without prejudice to Ground No.1 above, the learned Commissioner of Income Tax (Appeals) ought to have held that the addition made by the appellant in its Return of Income was the correct basis of computing the addition under Clause (f) of Explanation 1 to Section 115JB(2).*

3) *The appellant submits both lower authorities erred in considering the entire profit on sale of investments, appearing on the income side of Profit and Loss Account, as being required to be taken into account while computing book profits under section 115JB. The*

appellant submits that only those Long Term Capital Gains which are computed under section 45 read with section 48 of the Act (i.e. on the basis of indexed cost of acquisition) be considered while computing book profits under section 115JB (MAT)."

3. At the outset, Learned Counsel for the assessee submitted that Ground No. 3 of grounds of appeal is not pressed and also endorsed and signed to that extent. Thus, Ground No. 3 is dismissed as not pressed.

4. Briefly stated the facts are, the Assessing Officer while completing the assessments for these two assessment years computed the disallowance u/s. 14A r.w. Rule 8D of I.T. Rules and the same was disallowed while computing even the book profits u/s. 115JB of the Act.

5. At the outset, Ld. Counsel for the assessee submitted that this issue has been decided in favour of the assessee by the Tribunal for the A.Y.2012-13 in ITA.No. 2332/Mum/2016 dated 28.06.2018 wherein the Tribunal accepted the disallowance as computed by the assessee for the purpose of computation u/s. 115JB of the Act. The method of allocation of expenses has been consistently followed by the assessee and therefore the disallowance as computed as per Rule 8D shall not be made applicable for computing the book profits u/s. 115JB of the Act. The Ld. Counsel for the assessee submitted that the Special Bench of the Delhi Tribunal in the case of ACIT v. Vireet Investments Private Limited [165 ITD 27] held that

computation under clause (f) of Explanation 1 to section 115JB(2) is to be made without resorting to provisions of Rule 8D of I.T Rules.

6. We have heard the rival submissions, perused the orders of the authorities below. We find that the issue is squarely covered by the decision of Tribunal in assessee's own case for the A.Y. 2012-13 in ITA.No.2332/Mum/2016 dated 28.06.2018 wherein it has been held as under: -

"3. We have heard the parties and perused the record. The assessee is an investor company and it earned exempt income of `665150 lakhs by way of dividend and `5172 lakhs by way of interest on tax free bonds and `4696.06 lakhs by way of long term capital gain. The assessee computed the disallowance under Section 14A of the Act at `745.46 lakhs. for computing total income under normal provisions of the Act. The assessee also worked the expenses relating to exempt income for the purpose of computation of book profit under Section 115JB of the Act at `552.93 lakhs. The AO noticed that the amount disallowable as per Rule 8D of the I.T. Rules actually worked out to `587.78 lakhs. Since the assessee himself has disallowed a sum of `745.46 lakhs under Section 14A, the AO did not disturb the working made by the assessee. The AO also accepted the working of expenses relating to exempt income made by the assessee for computing books profit under Section 115JB of the Act.

4. In appellate proceedings the learned CIT(A) held that the amount worked out for disallowance under Section 14A of the Act has to be adopted while computing the book profit under Section 115JB of the Act. In this regard the learned CIT(A) placed reliance on the decision rendered by the Mumbai Bench of the Tribunal in the case of Godrej Consumer Products Ltd. vs. Addl. CIT 48 taxmann.com 293. Accordingly he directed the AO to add the amount computed under Section 14A of the Act for the purpose of Section 115JB of the Act.

5. *It is pertinent to note that the income computed under Section 115JB of the Act was assessed as total income in the hands of the assessee for the year under consideration, since the total income computed under the normal provisions of the Act was lower than the book profit. Hence the issue that requires adjudication is whether the learned CIT(A) was justified in directing the AO to adopt the disallowance computed under Section 14A of the Act for the purpose of computing book profit under Section 115JB of the Act.*

6. *The learned A.R. placed reliance on the decision rendered by the Special Bench in the case of Vireet Investment P. Ltd. (2017) 165 ITD 27 (Del) wherein it was held that the addition under clause (f) of Explanation 1 to Section 115JB(2) relating to exempt income should be computed without resorting to computation contemplated under Section 14A read with Rule 8D of the I.T. Rules. The learned A.R. submitted that an identical issue was considered by the Coordinate Bench in assessee's case for A.Y. 2011-12 in ITA No. 1569/Mum/2015 and the Tribunal, vide its order dated 09.02.2018 held that the disallowance worked out under Section 14A of the Act should not be adopted for the purposes of Section 115JB of the Act.*

7. *We have heard the learned D.R. on this issue and perused the record. In view of the decision rendered by the Special Bench in the case of Vireet Investment P. Ltd., the direction of the learned CIT(A) to adopt the disallowance made under Section 14A of the Act for the purpose of computing book profit under Section 115JB is liable to be set aside. The assessee also took us to the working made by it for ascertaining the expenses relating to exempt income for the purpose of computation of book profit under Section 115JB of the Act. We noticed that the assessee has allocated expenses in the ratio of taxable income and exempt income and the said method was determined by the Department in A.Y. 2000-01. It is stated that the same method is being followed for A.Y. 2000-01 onwards by the assessee. Since a consistent method is being followed by the assessee for more than 10 years and since the allocation of expenses is on the basis of exempt income and taxable income, we are of the view that the computation made by the assessee for determining expenses relating to exempt income for the requirement of provisions of Section 115JB of the Act does not require disturbance. Accordingly we set aside the order of the learned CIT(A) on this issue*

and direct the AO to accept the computation made by the assessee for the purpose of sec. 115JB of the Act.

7. Respectfully following the said decision, we direct the Assessing Officer to accept the computation of disallowance u/s. 14A of the Act as worked out by the assessee for the purpose of computing the book profits u/s. 115JB of the Act for A.Ys. 2013-14 and 2014-15.

8. Coming to the appeals filed by the Revenue we notice that revenue has challenged the order of the Ld.CIT(A) in directing the Assessing Officer to exclude the investments which have not yielded any exempt income during the year, grounds reads as under: -

1. "On the facts and the circumstances of the case and in law, the Ld.CIT(A) has erred in directing the A.O. to exclude those investments which have not yielded any exempt income during the year under consideration but yielding exempt income in other years for the same it would have deployed certain amount of administrative resources which required disallowance as being incurred for earning exempt expenses."

2. "On the facts and the circumstances of the case and in law, the Ld.CIT(A) has erred in not appreciating the fact that as per clause (f) of explanation 1 of section 115JB(2) "the book profit means the net profit as shown in the profit and loss account for the relevant previous year prepared under sub-section (2), as increased by the amount or amounts of expenditure relatable to any income to which (section 10(other than the provisions contained in clause (38) thereof)or section 11 or section 12 apply and all the relevant expenditure has to be added back to income for MAT computation."

9. On hearing both the parties, we find that this issues are squarely covered by the decision of the Special Bench of the Delhi Tribunal in the

case of ACIT *v.* Vireet Investments Private Limited [165 ITD 27]. Thus, we sustain the order of the Ld.CIT(A) and reject the grounds raised by the Revenue.

10. In the result, appeals of the assessee are allowed and appeals of the Revenue are dismissed.

11. Before parting, we noticed that this appeal was heard on 09.01.2020 and the pronouncement is delayed due to lockdown in view of COVID-19 pandemic. The pronouncement is as per Rule 34(5) of Income Tax Appellate Tribunal Rules, 1963 and Hon'ble Bombay High Court decision vide orders dated 15.04.2020 and 15.06.2020 extending the time bound periods specified by Hon'ble High Court by removing the period under lockdown. This aspect was also dealt with in detail by the Mumbai Bench of the Tribunal in case of DCIT *v.* JSW Steel Vide order dated 15.05.2020.

Order pronounced on 20.07.2020 as per Rule 34(4) of ITAT Rules by placing the pronouncement list in the notice board.

Sd/-
(S. RIFAUH RAHMAN)
ACCOUNTANT MEMBER
Mumbai / Dated 20/07/2020
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