

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

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER AND  
SHRI PAWAN SINGH, JUDICIAL MEMBER**

**ITA NO. 05/MUM/2019 : A.Y : 2011-12**

M/s. Voltas Limited, vs. Dy. CIT, Range – 8(3)(2), Mumbai.  
Voltas House – A, 4<sup>th</sup> floor, (Respondent)  
Dr. Babasaheb Ambedkar Road,  
Chinchpokli, Mumbai 400 033.  
**PAN : AAACV2809D (Appellant)**

**ITA NO. 710/MUM/2019 : A.Y : 2011-12**

Dy. CIT, Range – 8(3)(2), Mumbai. vs. M/s. Voltas Limited,  
(Appellant) Voltas House – A, 4<sup>th</sup> floor,  
Dr. Babasaheb Ambedkar Road,  
Chinchpokli, Mumbai 400 033.  
**PAN : AAACV2809D (Respondent)**

**Assessee by : Shri Nitesh Joshi**  
**Revenue by : Shri Michael Jerald**

**Date of Hearing : 06/02/2020**

**Date of Pronouncement : 13/07/2020**

**ORDER**

**PER SHAMIM YAHYA, ACCOUNTANT MEMBER**

These are cross-appeals by assessee and Revenue arising out of the order of learned CIT(A) dated 27.11.2018 pertaining to assessment year 2011-12.

2. One issue raised in Revenue's appeal relates to the direction of learned CIT(A) to not consider the asset which did not yield income for computation of average value of investment under Section 14A of the Income Tax Act, 1961 (in short 'the Act'). The assessee is also aggrieved by the further disallowance under Section 14A of the Act. The assessee's contention is that assessee had on its own offered Rs. 20 lacs as disallowance under Section 14A being operating and administrative expenses, which could be considered towards earning exempt dividend income. The assessee contends that learned CIT(A) has disallowed 0.5% of average investment excluding investment which did not earn taxable income is unwarranted.

3. We have heard both the counsel and perused the records. The learned counsel for the assessee submitted that identical issue was decided by the Tribunal in assessee's own case for the earlier assessment year. He submitted that Tribunal in the said decision had remitted the matter to the file of Assessing Officer. *Per contra*, the learned Departmental Representative did not dispute the proposition that same issue was considered by the Tribunal.

4. We note that in earlier year, ITAT in assessee's own case for assessment year 2010-11 has noted that in the earlier order Tribunal has directed the Assessing Officer to examine the sufficiency or correctness of allowance made by the assessee having regard to assessee's accounts and explanations. The Tribunal had further noted that to maintain the consistency, the matter was being remitted to the file of Assessing Officer with same direction. The Tribunal also directed to take into account the order of Tribunal Special Bench in the case of *ACIT vs Vireet Investments (P) Ltd.*

5. We find on the same issue, the Tribunal in assessee's own case, has remitted the matter to the file of Assessing Officer and also directed to take into account the decision of Special Bench of Tribunal as aforesaid. Following the aforesaid precedent, we also remand this issue to the file of Assessing Officer with same direction.

6. Another issue raised in Revenue's appeal relates to correctness of learned CIT(A)'s order deleting interest charged of Rs.2,76,20,400/- on the share application money given by the assessee to the Associated Enterprise by the Transfer Pricing Officer (TPO).

7. We note that this issue is also covered by the ITAT order in assessee's own case for assessment year 2010-11. With respect to the same amount given to the Associated Enterprise, which were in shape of share application money, the Assessing Officer has applied interest on the amount advanced treating it as share application money. This was deleted by the learned CIT(A). On cross-appeal by the assessee and Revenue, Tribunal had held that the undisputed position that emerges is the fact that assessee has advanced share application money to one of its Associated Enterprise to acquire further stake in that entity. That the Associated Enterprise has become wholly-owned subsidiary of the assessee-company during the month of January, 2009. That the financial health of the Associated Enterprise was not good and the money was advanced in view to infuse further capital in the Associated Enterprise with a view to acquire controlling stake. The money was utilised by the Associated Enterprise for the purpose of business and to meet working capital requirement. The Tribunal further noted that ultimately the shares have been allotted to the assessee during December, 2015 after getting the desired

regulatory approvals. The Tribunal accepted that the delay was genuine and was substantiated. In these facts, ITAT agreed with the view that the amount cannot be treated as loan transaction. In this regard, the Tribunal also referred to the decisions of Hon'ble Bombay High Court in the case of *Pr. CIT vs Aegis Ltd.* It also referred to the decision of Madras Bench of Tribunal in the case of *Parle Biscuits Ltd.* Accordingly, ITAT held that the transfer pricing adjustment in this regard, proposed by the TPO, was to be deleted.

8. We find that since on the same transaction during the current assessment year, TPO has made an adjustment of Rs.2,76,20,400/-, the learned CIT(A) has correctly deleted the same by noting that on the same transaction of share application money to the Associated Enterprise, on which interest was charged, the Tribunal had deleted the addition. In these circumstances, in our considered opinion, there is no infirmity in the order of learned CIT(A). Hence, we uphold the same.

9. Another issue raised in assessee's appeal relates to interest on outstanding amount to the Associated Enterprise. At the outset, in this regard the learned counsel for the assessee contended that he shall not be pressing the ground raised in this regard.

10. Accordingly, we dismiss this ground raised as not pressed.

11. Before parting, we note that this appeal was heard on 06.02.2020. The pronouncement is delayed due to lockdown in view of Covid-19 pandemic. The pronouncement is as per Rule 34(5) of Appellate Tribunal Rules and Hon'ble Bombay High Court decision vide order dated 15.04.2020 extending the time bound periods specified by Hon'ble High Court by removing the

period under lockdown. This aspect is also dealt with in detail in ITAT Mumbai order in case of *DCIT vs JSW Steel* vide order dated 15.05.2020.

12. In the result, the appeals by the assessee and Revenue stand allowed for statistical purposes.

Order pronounced in the court on 13<sup>th</sup> July, 2020 as per Rule 34(4) by placing the pronouncement list on notice board.

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

Sd/-  
**(SHAMIM YAHYA)**  
**ACCOUNTANT MEMBER**

Mumbai, Date : 13<sup>th</sup> July, 2020

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Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT(A) concerned
- 4) The CIT concerned
- 5) The D.R, "J" Bench, Mumbai
- 6) Guard file

By Order

Dy./Asstt. Registrar  
I.T.A.T, Mumbai