

THE INCOME TAX APPELLATE TRIBUNAL  
“D” Bench, Mumbai  
Shri Shamim Yahya (AM) & Shri Pavan Kumar Gadale (JM)

I.T.A. No. 4693/Mum/2018 (Assessment Year 2008-09)  
I.T.A. No. 4694/Mum/2018 (Assessment Year 2009-10)  
I.T.A. No. 4695/Mum/2018 (Assessment Year 2010-11)

Mirah Hospitality & Food Solutions Pvt. Ltd. 208, Parvati Industrial Estate, Sunmill Compound, Lower Parel West, Mumbai-400 013.  PAN : AABCH0203Q (Appellant)	Vs.	DCIT, CC-2(1) Partishtha Bhavan 8 <sup>th</sup> Floor M.K. Road Churchgate Mumbai-400 020.  (Respondent)
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Assessee by	Shri Hiro Rai
Department by	Shri K. Madhusudan
Date of Hearing	17.09.2020
Date of Pronouncement	24.09.2020

ORDER

Per Shamim Yahya (AM) :-

This is second round of appeal before the ITAT in these cases against a common order of learned CIT(A) for A.Y. 2008-09, 2009-10 & 2010-11 dated 28.5.2018.

2. Brief facts of the case are that the assessee is engaged in the business of “Hotels & Resorts”, filed the return of income for the AY 2009-2010 declaring the total loss of Rs.43,15,534/- after set off of LTCG of Rs. 1,31,36,082/-. Assessee is a group concern of M/s. Twinkle Group. There was a search and seizure action on the said M/s. Twinkle Group u/s 132 of the Act. Accordingly, in response to the notice u/s 153A of the Act, assessee filed the return of income declaring the same total loss (Rs. (-) 43,15,334/-). AO completed the assessment u/s 143(3) r.w.s 153A of the Act determining the total loss of Rs. 3,82,977/- which include certain disallowances and Rs. 27,68,422/- is one

such disallowance made u/s 14A r.w. Rule 8D of IT Rules, 1962. The said order was confirmed by learned CIT(A).

3. Aggrieved by the said order assessee filed appeals before the ITAT. The ITAT remand the matter and gave following directions :-

“We have heard both the parties and perused the orders of the Revenue Authorities as well as the cited decisions of the Tribunal and the relevant material placed before us. On perusal of the facts of the case, we find, the issues involved in 4 this appeal are **(i)** whether the assessee used own and interest free funds for investment; **(ii)** whether the investments are only in the group concerns of the assessee for the purpose of acquiring strategic business stake or in any unrelated companies with a moto to earn exempt income and **(iii)** whether the disallowance u/s 14A r.w. Rule 8D can exceed the exempt income etc. Considering the precedents as well as the decisions of the Tribunal (supra) cited by the Ld Counsel for the assessee before us, we find, the issues involved in this appeal are settled in nature and therefore, in our opinion, the issues are required to be remanded to the file of the AO for deciding them afresh in the light of the above cited decisions and comparing the facts of the said cases with that of the instant appeal. We order accordingly and AO is directed to decide the issues afresh and grant relief to the assessee if the facts are identical. AO shall grant a reasonable opportunity of being heard to the assessee as per the principles of natural justice. Accordingly, grounds raised by the assessee are allowed for statistical purposes”.

4. In the second round of proceedings the Assessing Officer observed that provisions of section 14A read with Rule 8D, are attracted. Assessee was asked to furnish submissions. The assessee inter alia submitted that investment was not done towards earning exempt income. Investment was to acquire strategic stake. It was further submitted that provisions of section 14A and Rule 8D are applicable from A.Y. 2008-09 and subsequent assessment years only. It was further submitted that the company has sufficient reserves and internal accruals. However, the Assessing Officer placed reliance upon provisions of section 14A and confirmed all the additions.

5. Upon assessee's appeals learned CIT(A) also confirmed the action of the Assessing Officer.

6. Against this order the assessee has filed appeals before us.

7. We have heard both the counsel and perused the record. Learned Counsel of the assessee submitted the following proposition with the following citations :-

“No disallowance of interest under section 14A when own and non-interest bearing funds exceed investments

1. 366 ITR 505 (Bom.) CIT v. HDFC Bank Ltd.
2. 383 ITR 529 (Bom.) HDFC Bank Ltd. v. DCIT
3. 410 ITR 466 (SC) CIT v. Reliance Industries Limited

II Disallowance under section 14A cannot exceed exempt income

1. 372 ITR 694 (Del.) Joint Investment Pvt. Ltd. v. CIT
2. 286 CTR 457 (P&H) Pr. CIT v. Empire Package Pvt. Ltd
3. 96 CCH 87 (Madras) Tecpro Systems Ltd. v. UOI
4. 102 taxmann.com 438(Mum. - Trib.) ACIT v. Glenmark Pharmaceuticals Ltd.
5. 46 ITR(Trib) 70 (Mum. - Trib.) Daga Global Chemicals Ltd. v. ACIT
6. 181 TTJ 600 (Mum. - Trib.) Tata Industries Ltd v. ITO

III Qua book profit under section 115JB, no adjustment made regarding section 14A in original assessment. In remand proceedings pursuant to order of the Hon'ble Tribunal, Ld. AO has no jurisdiction to make the said adjustment

1. 234 ITR 548 (Bom.) MurlidharBhagwandas v. CIT
2. 19 ITR(Trib) 126 (Mum. - Trib.) Computree Infotech (P.) Ltd. v. ITO
3. 145 ITR 255 (All.) S. P. Kochhar v. ITO
4. 186 ITR 253 (All) Sri Vindhya Vasini Prasad Gupta v. CIT
5. 115 taxmann.com 288 (Guj.) Engineering Professional Co. (P.) Ltd. v. DCIT
6. 268 Taxman 213 (Madras) Neeta Suneel Shah Do. Ramesh Bhai Doshi v. ITO
7. 213 ITR 502 (Madras), Raja DV Seetharamaya v. WTO

8. Furthermore, learned Counsel of the assessee also filed additional ground for A.Ys. 2008-09 & 2009-10 that learned CIT(A) erred was not justified in dismissing the ground No. 2 raised before him as regards the addition of Rs. 15,62,856/- for A.Y. 2008-09 and Rs. 27,68,422/- for A.Y. 2009-10 in the book profit u/s. 115JB in respect of the disallowance u/s. 14A read with Rule 8D.

9. Upon hearing both the counsel and perusing the record, we find that the Tribunal has remanded the matter for the following proposition :-

“(i) whether the assessee used own and interest free funds for investment;

- (ii) whether the investments are only in the group concerns of the assessee for the purpose of acquiring strategic business stake or in any unrelated companies with a moto to earn exempt income and
- (iii) whether the disallowance u/s 14A r.w. Rule 8D can exceed the exempt income etc. whether the assessee used own and interest free funds for investment”.

10. In this regard we note that in the assessment order it is noted that the assessee has duly mentioned that the assessee has own and interest free fund for investment. This was rejected by the authorities below solely by invoking provisions of section 14A read with Rule 8D. we find that this issue is now settled in favour of the assessee by the decision of Hon'ble Jurisdictional High Court in the case of HDFC Bank Ltd. (366 ITR 505) and Reliance Industries Ltd. (410 ITR 466) for the proposition that if the assessee has sufficient interest free funds, no disallowance on account of investment is to be done u/s. 14A. Hence, we direct that the disallowance under rule 8D(2) be deleted.

11. Another direction, the ITAT has given whether the investments are only in the group concerns of the assessee for the purpose of acquiring strategic business stake.

12. We find that this issue is now squarely covered against the assessee by the decision of Hon'ble Supreme Court in the case of Maxopp Investment Ltd. Vs. CIT 402 ITR 640 (SC).

13. Last issue for which the Tribunal remanded the matter was whether the disallowance u/s 14A r.w. Rule 8D can exceed the exempt income. We find that this issue is covered in favour of the assessee by the decision of Hon'ble Jurisdictional High Court in the case of Delight Enterprises (ITA no. 110 of 2009), where Hon'ble Jurisdictional High Court has agreed the decision of in the case of Cheminvest Ltd. (378 ITR 33). The case laws referred by learned Counsel of the assessee in his submission are also germane.

14. Another proposition learned counsel canvassed that for the purpose of disallowance u/s. 14A under Rule 8D(3) only those investment should be considered which have yield exempt income. We find that though this issue is not the subject matter of remanded by the ITAT, the same is covered in favour of the assessee by the Special bench of the Tribunal in the case of Vireet Investments (165 ITD 27)(SB-Del).

15. Now we deal with the additional ground raised by the assessee that no adjustment can be done u/s. 115JB with regard to section 14A disallowance.

16. For this proposition learned Counsel of the assessee has placed reliance upon catena of decisions as referred above. We find that the additional ground is a legal ground and goes to the root of the matter and accordingly we admit the same. We find that this issue also stands covered in favour of the assessee in as much as it is now settled that disallowance under section 14A cannot be imported in the adjustment under section 115JB. This was duly expounded by the Special Bench in the case of Vireet Investments (supra) . Hence, we admit this ground and allow the same in favour of the assessee.

17. In terms of the above decision these appeals by the assessee are partly allowed.

Order pronounced under Rule 34(4) of the ITAT Rules on 24.9.2020.

Sd/-  
(PAVAN KUMAR GADALE)  
JUDICIAL MEMBER

Sd/-  
(SHAMIM YAHYA)  
ACCOUNTANT MEMBER

Mumbai; Dated : 24/09/2020

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.

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*Mirah Hospitality & Food Solutions Pvt. Ltd.*

BY ORDER,

(Assistant Registrar)  
ITAT, Mumbai

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