

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

**BEFORE SHRI C.N. PRASAD, HON'BLE JUDICIAL MEMBER AND
SHRI M. BALAGANESH, HON'BLE ACCOUNTANT MEMBER**

ITA NO. 4471/MUM/2018 (A.Y: 2012-13)

Dy. Commissioner of Income-Tax Circle - 14(1)(2) Room No. 475, 4 th Floor Aayakar Bhavan, M.K. Road Mumbai – 400 020	v.	M/s. Citicorp Finance (India) Ltd., 5 th Floor, Plot C-61 Bandra Kurla Complex, G-Block Bandra (E), Mumbai – 400 079 PAN: AABCA3223B
(Appellant)		(Respondent)

CO.NO. 172/MUM/2019

[ARISING OUT OF ITA NO. 4471/MUM/2018 (A.Y: 2012-13)]

M/s. Citicorp Finance (India) Ltd., 5 th Floor, Plot C-61 Bandra Kurla Complex, G-Block Bandra (E), Mumbai – 400 079 PAN: AABCA3223B	v.	Dy. Commissioner of Income-Tax Circle - 14(1)(2), Room No. 475, 4 th Floor Aayakar Bhavan, M.K. Road Mumbai – 400 020
(Appellant)		(Respondent)

Assessee by	:	Shri Madhur Agarwal
Department by	:	Shri Kumar Padmapani Bora
Date of Hearing	:	06.02.2020
Date of Pronouncement	:	30.09.2020

ORDER**PER C.N. PRASAD (JM)**

1. This appeal and cross objection are filed by the Revenue and Assessee for the A.Y. 2012-13 against the order of the Learned Commissioner of Income Tax (Appeals) – 22, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 05.04.2018.
2. Revenue challenged the order of the Ld.CIT(A) in deleting the disallowance made under Rule 8D(2)(ii) of I.T. Rules in respect of interest and also deleting the disallowance made u/s. 14A r.w. Rule 8D of I.T. Rules, while computing the book profits u/s. 115JB of the Act.
3. Ld. DR vehemently supported the orders of the Assessing Officer.
4. We have heard the rival submissions, perused the orders of the authorities below. In so far as, interest disallowance under Rule 8D(2)(ii) of I.T Rules is concerned, we find that Ld.CIT(A) following the decision of the Hon'ble Jurisdictional High Court in the case of CIT v. Reliance Utilities and Power Ltd. [313 ITR 340] and CIT v. HDFC Bank [49 taxmann.com 335] deleted the disallowance as the assessee has its own interest free funds by way of share capital reserves and surplus, far in excess of the investments made by it in equity shares which got yielded exempt income.

We do not find any infirmity in the order of the Ld.CIT(A). Thus, the grounds of the revenue on this issue are dismissed.

5. In so far as, disallowance u/s. 14A while computing book profits u/s.115JB of the Act is concerned, Ld.CIT(A) following the decision of Hon'ble Special Bench of Delhi in the case of ACIT *v.* Vireet Investments Private Limited [165 ITD 27] deleted the disallowance. The Hon'ble Special Bench of Delhi in the case of ACIT *v.* Vireet Investments Private Limited (supra) held that the computation under clause (f) of Explanation 1 to section 115JB(2) is to be made without resorting to the computation as contemplated u/s. 14A r.w. Rule 8D of the I.T Rules, 1962. Therefore, respectfully following the said decision we restore this issue to the file of the Assessing Officer who shall decide in accordance with the decision of the Special Bench and compute the book profits accordingly. Grounds on this issue are allowed for statistical purpose.

6. Coming to the cross objection filed by the assessee, it is the only submission of the assessee that applying ACIT *v.* Vireet Investments Private Limited (supra) only those investments which yielded dividend income should be considered for the purpose of computing disallowance under Rule 8D(2)(iii) of I.T. Rules. Respectfully following the decision of the Hon'ble Special Bench in the case of ACIT *v.* Vireet Investments

Private Limited (supra), we direct the Assessing Officer to compute the disallowance as per Rule 8D(2)(iii) of I.T. Rules by considering only those investments which yielded dividend income during the assessment year under consideration.

7. In the result, appeal of the Revenue is partly allowed and cross objection of the assessee is allowed for statistical purpose.

8. Before parting, we noticed that these appeals were heard on 06.02.2020 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 14.05.2020 in ITA.No. 6264/Mum/2018.

Order pronounced on 30.09.2020 as per Rule 34(4) of ITAT Rules by placing the pronouncement list in the notice board.

Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER
Mumbai / Dated 30/09/2020
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