

**IN THE INCOME TAX APPELLATE TRIBUNAL
“F” BENCH, MUMBAI**

**BEFORE SHRI VIKAS AWASTHY, JM &
SHRI S. RIFAUR RAHMAN, AM**

आयकरअपीलसं./ I.T.A. No. 6851/Mum/2018
(निर्धारणवर्ष / Assessment Year: 2015-16)

M/s J. B. Boda Reinsurance Brokers Pvt. Ltd. 1, Sir, V. T. Marg, Mumbai-400 020	बनाम/ Vs.	ACIT 1(2)(1), Aayakar Bhavan, Mumbai-400 020
स्थायीलेखासं ./जीआइआरसं ./PAN No. AABCJ2372E		
(अपीलार्थी/Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Shri Madhudr Agrawal, AR
प्रत्यर्थीकीओरसे/Respondentby	:	Ms. Usha Gaikwad, DR
Virtual Date of Hearing	:	19.11.2020
Date of Pronouncement	:	10.12.2020

आदेश / ORDER

Per S. Rifaur Rahman, Accountant Member:

The present appeal has been filed by the assessee against the order of Ld. Commissioner of Income Tax (Appeals) - 2 in short referred as 'Ld. CIT(A)', Mumbai dated 05.10.2018 for Assessment Year (in short AY) 2015-16.

2. The brief facts of the case are, assessee filed its return of income for Assessment Year 2015-16 on 28.09.15 declaring total

income at Rs. 24,46,53,750/-. The return was processed u/s 143(1) of the I.T. Act. Later on, the case was selected for scrutiny under CASS and accordingly, notices u/s 143(2) and 142(1) were issued and served on the assessee. In response, AR of the assessee filed the relevant information as called for.

3. The assessee is engaged in the business of re-insurance broker and consultancy. During the assessment proceedings, assessee was asked to show cause as to why the disallowance u/s 14A should not be made in view of investment which yielded exempt income. In response, AR of the assessee submitted that assessee has not incurred direct expenditure except demat charges of Rs. 1500/- and administrative cost of Rs. 5,000/-. He further submitted that investments were made out of its own funds and no interest expenditure was incurred. Therefore, no disallowance u/s 14A was warranted.

4. After considering the submission of the assessee, AO rejected the contention of the assessee and by relying on the decision in the case of *Godrej and Boyce Mfg. Co. Ltd. vrs. CIT* (ITA No. 616 of 2010) determined the expenditure disallowable

u/s 14A of the Act by invoking rule 8D. Accordingly, he disallowed Rs. 1500/-, the amount spent directly on exempt income and applied rule 8D(2)(iii) of the rules and accordingly, disallowed Rs. 13,85,943/-. Since assessee has already disallowed Rs. 6,500/- and he disallowed net amount of Rs. 13,80,943/-.

5. Aggrieved with the above order, assessee preferred the appeal before Ld. CIT(A) and submitted before him that he has incurred only demat charges and suo-moto disallowed administrative cost of Rs. 5,000/- and assessee has not incurred any other expenditure for earning any such exempt income. Assessee further submitted that AO failed to record his satisfaction with the correctness of the claim of the assessee in respect of expenditure incurred for earning the exempt income, which is a pre-requisite condition in invoking rule 8D.

6. After considering the submission of the assessee, Ld. CIT(A) observed that AO has already recorded his satisfaction for invoking rule 8D (2) in the assessment order para 4.1. Therefore, the satisfaction for invoking rule 8D(2), AO has

already recorded in the assessment order itself and further AO has worked out disallowance as per rule 8D(2)(iii). He observed that during this year, assessee has earned exempt income in the form of dividend to the extent of Rs. 1,07,04,678/- and AO has disallowed Rs. 13,87,443/- which is much lesser to the actual dividend income earned by the assessee. Accordingly, he sustained addition made by the AO.

7. Aggrieved with the above order, assessee is in appeal before us raising following grounds of appeal:-

1. The Learned Commissioner of Income Tax(Appeals) erred in confirming disallowance of Rs. 13,80,943/- under the provisions of section 14A of the Income Tax Act, 1961 (ITA) read with Rule 8D(2)(iii) of the Income Tax Rules, 1962.

2. The Learned Commissioner of Income Tax(Appeals) failed to appreciate that there was no other expenditure incurred by the appellant company to earn the exempt income earned during the year under consideration except demat charges of Rs. 1,500/- and an administrative cost of Rs. 5,000/- which were suo moto disallowed by the appellant.

3. The appellant pays, leave to add, alter, amend or delete any of the above referred grounds of appeal. .

8. Before us, Ld AR appearing on behalf of the assessee submitted that assessee has suo moto disallowed Rs. 6,500 as the relevant expenditure incurred for earning of exempt income. Before invoking Rule 8D(2), AO should have recorded his satisfaction and the reasons for rejecting the computation of the assessee. He prayed that disallowance made by the AO may be deleted due to non-recording of satisfaction and at the same time, he made an alternate plea that Vireet Investment Pvt. Ltd. Vrs. ACIT (Spl. Bench of ITAT, New Delhi) may be followed.

9. On the other hand, Ld. DR brought to our notice para 4.1.2 of the order of Ld. CIT(A) and supported the finding of Ld. CIT(A) and AO.

10. Considered the rival submissions and material placed on record. We notice that assessee has disallowed Rs. 1,500/- towards demat charges which is directly relating to earning of exempt income and suo moto disallowed Rs. 5,000/- towards administrative cost. We notice that AO has discussed the above

expenditure in his order and he has explained the reasons for invoking rule 8D(2) in his order. Since, AO has clearly discussed the reason for invoking rule 8D(2), it clearly indicates that AO has applied his mind and accordingly rejected the contention of the assessee. In this regard, we are in agreement with the tax authorities that it is a fit case for invoking rule 8D(2) to calculate disallowance u/s 14A. Accordingly, AO has determined the disallowance under rule 8D(2)(iii) of the rules to disallow Rs. 13,85,943/-.

11. At the same time, we notice that AO has applied 0.5% on average value of investment in order to determine administrative cost and AO has taken average investment as per the Balance Sheet without going into the profile of the investment and not eliminated those investments which have not earned exempt income. As per rules, AO has to calculate the disallowance under rule 8D(2)(iii) by calculating 0.5% of the average investment which has earned exempt income. By relying on the decision in the case of Vireet Investment Pvt. Ltd. Vrs. ACIT (Spl. Bench of ITAT, New Delhi), we direct the AO to determine the disallowance u/s 14A by applying ratio of the said decision.

Accordingly, the ground of appeal raised by the assessee is **partly allowed.**

12. In the net result, the appeal filed by the assessee is **partly allowed.**

Order pronounced in the open court on 10.12.2020.

<i>Sd/-</i> (Vikas Awasthy) न्यायिकसदस्य / Judicial Member मुंबई Mumbai; दिनांक Dated : Sr.PS. Dhananjay	<i>Sd/-</i> (S. Rifaur Rahman) लेखासदस्य / Accountant Member 10.12.2020
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आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT- concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

**उप/सहायकपंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई/ ITAT, Mumbai**