

**IN THE INCOME TAX APPELLATE TRIBUNAL (VIRTUAL COURT)  
"H" BENCH, MUMBAI**

**BEFORE SHRI C.N. PRASAD, HON'BLE JUDICIAL MEMBER AND  
SHRI RAJESH KUMAR, HON'BLE ACCOUNTANT MEMBER**

**ITA.No. 7004/MUM/2019 (A.Y: 2012-13)**

DCIT-6(3)(2) Room No. 576, 5 <sup>th</sup> Floor Aayakar Bhavan, M.K. Road Mumbai – 400 020	v.	M/s. Kohinoor Planet Constructions Pvt. Ltd., 3, Kohinoor Corporate Office Senapati Bapat Marg Dadar (W), Mumbai-400028  <b>PAN No: AABCR6994E</b>
<b>(Appellant)</b>		<b>(Respondent)</b>

<b>Assessee by</b>	<b>:</b>	<b>None</b>
<b>Revenue by</b>	<b>:</b>	<b>Shri Gurbinder Singh</b>
<b>Date of Hearing</b>	<b>:</b>	<b>02.06.2021</b>
<b>Date of Pronouncement</b>	<b>:</b>	<b>11.06.2021</b>

**ORDER**

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

1. This appeal is filed by the Revenue against order of the Learned Commissioner of Income Tax (Appeals) – 12, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 24.07.2019 for the A.Y. 2012-13.
2. Revenue has raised following grounds in its appeal: -

"1. On the facts and circumstances of the case and in law, the Ld.CIT(A) erred in deleting the addition of Rs. 2,19,23,040/- made U/S.14A r.w.r 8D of the I.T. Act, 1961.

2. "On the facts and circumstances of the case and in law, the Ld.CIT(A) erred in deleting the addition of Rs.4,02,01,540/- made U/S.14A r.w.r.8D of the IT. Act, 1961 by stating no adjustment can be made by the AO to the Book Profit computed u/s 115JB of the Act.

3. The appellant prays that the order of the Ld. CIT(A) on the above grounds be set aside and that of the AO be restored.

4. The appellant craves leave to amend or alter any ground or add a new ground which may be necessary."

**3.** Briefly stated, the assessee company which is engaged in the business of property development/power generation with the help of wind power convertor had filed its original return of income on 20.09.2012, declaring total Income/Loss at ₹.1,90,56,166/-. Subsequently the case of the assessee was selected for scrutiny assessment u/s. 143(2) of the Act. The Assessing Officer vide his order passed u/s. 143(3) of the Act, dated 31.03.2019 computed the disallowance u/s. 14A at ₹.4,02,01,540/- being interest of ₹.2,02,67,906/- under Rule 8D(2)(ii) and ₹.1,99,33,634/- under Rule Rule 8D(2)(iii) of the I.T. Rules. On appeal Ld.CIT(A) deleted the addition of ₹.2,19,23,040/- made u/s. 14A r.w. Rule 8D(2)(ii) of I.T. Rules being interest. In so far as the disallowance under Rule 8D(2)(iii) of I.T. Rules is concerned the Ld.CIT(A) restricted the disallowance to ₹.1,82,78,500/- as against ₹.1,99,33,634/- made by the Assessing Officer

as there is some mistake in working as pointed out by the assessee in the course of the appeal proceedings. Ld.CIT(A) further deleted the disallowance of ₹.4,02,01,540/-made u/s. 14A of the Act stating that no adjustment can be made by the Assessing Officer to the book profit computed u/s. 115JB of the Act. Against this order of the Ld.CIT(A) revenue is in appeal before us.

**4.** Assessee filed a letter dated 22<sup>nd</sup> April, 2021 and submitted that on the identical issue, in the assessee own case for the same assessment year, the Mumbai Tribunal in ITA No. 6342, 6343 & 6344/MUM/2019 dated 06.04.2021 has held that disallowances cannot be made u/s. 14A of the Act in the absence of the exempt income and requested to decide the case accordingly. Assessee further submitted that the issue is relating to the disallowance u/s. 14A of the Act to the book profit u/s. 115JB of the Act is a consequential in nature and relied on the decision of the Special Bench of Delhi Tribunal in the case of Vireet Investment (P) Ltd [82 taxmann.com 415] which clearly held that disallowance u/s. 14A of the Act cannot be made while computing the book profit u/s. 115JB of the Act.

**5.** Ld. DR vehemently supported the order of the Assessing Officer.

**6.** We have heard Ld. DR, perused the orders of the authorities below and the case laws relied on. Coming to the issue in respect of the disallowance made u/s. 14A of the Act r.w. Rule 8D(2)(ii) of I.T. Rules, the Ld.CIT(A) on examining the details filed by the assessee in respect of share capital, reserves and surplus and the investments made by the assessee as on 31.03.2012 and 31.03.2011 Ld.CIT(A) came to the conclusion that the assessee has own funds which were far in excess of the investments that are capable of yielding exempt income. Thus, the Ld.CIT(A) following the decisions of the Hon'ble Bombay High Court in the case of CIT *v.* HDFC Bank Ltd [366 ITR 505] and CIT *v.* Reliance Utilities and Power Ltd. [313 ITR 340] deleted the disallowance. Following the ratio of the decisions of the Hon'ble Bombay High Court that a presumption arises that when assessee is having own funds much more than the investments that are capable of yielding exempt income were made out of the own funds of the assessee and no interest bearing borrowed funds were utilized for the said purpose. Thus, we do not find any infirmity in the order passed by the Ld.CIT(A). Ground No. 1 of grounds of appeal of revenue is dismissed.

**7.** Coming to Ground No. 2 which is in respect of disallowance made u/s. 14A of the Act r.w. Rule 8D of I.T. Rules while computing book profits

u/s. 115JB of the Act, we observe that Ld.CIT(A) deleted the disallowance following the decision of the Special Bench of the Delhi Tribunal in the case of ACIT v. Vireet Investment (P.) Ltd., (supra) observing as under: -

*"4.2 I have carefully considered the facts of the case, the assessment order and the written submissions of the appellant. The appellant contended that the amount of disallowance u/s. 14A cannot be added while computing the book profit u/s. 115JB as the provisions of Sec. 14A are limited for the purpose of computation of Income and the same cannot be extended to MAT provisions u/s.115JB which is a self contained code. In this regard, the appellant placed reliance on the decision of ITAT Delhi Bench 'H' (Special Bench) in the case of ACIT Vs. Vireet Investment (P.) Ltd. 82 taxmann.com 415 wherein it was held that the " Computation under clause (f) of Explanation 1 to section 115JB(2) is to be made without resorting to computation as contemplated under section 14A read with Rule 8D."*

*4.3 On careful consideration, it is seen that the contention of the appellant is acceptable. The recent decision of the Special Bench of Hon'ble ITAT in the case of Vireet Investment (P) Ltd (supra) relied upon by the appellant has laid down the proposition that adjustment under clause (f) of Explanation 1 to section 115JB(2) is to be made without resorting to the computation as contemplated under section 14A read with Rule 8D. In rendering this decision, the Hon'ble ITAT took into consideration the decision of the Hon'ble Delhi High Court in the case of Bhushan Steel Ltd, wherein it was held as under:*

*"7. Question No. 6 concerns deletion of addition of Rs. 89,00,000/- made by the AO for computation of the income for the purpose of Minimum Alternate Tax('MAT') under section 115JB of the Act. This pertained to the expenditure incurred for earning exempt income under section 14A read with Ride 8D. The ITAT has rightly held that this being in ITAT cannot be faulted with. It is consistent with the decision in Apollo Tyres Ltd. v. Commissioner of Income Tax (2002) 255 ITR 273(SC) which held that "the Assessing Officer does not have the jurisdiction to go behind the net profit shown in the profit and loss account except to the extent provided in the*

*Explanation to Section 115J." The Court declines to frame a question of the above issue"*

*4.4 Respectfully following the same, it is held that no adjustment can be made to the Book profit computed u/s 115JB by the AO in respect of expenses incurred in relation to exempt income disallowed u/s 14A which was computed by invoking rule 8D. Hence, the A.O. is directed to delete the addition made to the book profit by way of the amount of disallowance computed u/s. 14A r.w.Rule 8D. This ground of appeal of the appellant is therefore **allowed.**"*

**8.** As could be seen from the above, Ld.CIT(A) deleted the disallowance u/s. 14A r.w. Rule 8D in computing book profits u/s. 115JB of the Act following the decision of the Special Bench of the Delhi Tribunal in the case of ACIT v. Vireet Investment (P.) Ltd., (supra). Thus, we do not find any infirmity in the order of the Ld.CIT(A). Ground No.2 of grounds of appeal of the revenue is rejected.

**9.** In the result, appeal of the Revenue is dismissed.

Order pronounced on 11.06.2021 as per Rule 34(4) of ITAT Rules by placing the pronouncement list in the notice board.

Sd/-  
**(RAJESH KUMAR)**  
**ACCOUNTANT MEMBER**

Mumbai / Dated 11/06/2021  
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**