

## आयकर अपीलीय अधिकरण "A" न्यायपीठ मुंबई में।

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

श्री महावीर सिंह, उपाध्यक्ष एवं श्री एम. बालगणेश, लेखा सदस्य के समक्ष ।

BEFORE SRI MAHAVIR SINGH, VP AND SRI M. BALAGANESH, AM

आयकर अपील सं./ ITA No. 7329/Mum/2019  
(निर्धारण वर्ष / Assessment Year 2009-10)

आयकर अपील सं./ ITA No. 7330/Mum/2019  
(निर्धारण वर्ष / Assessment Year 2010-11)

आयकर अपील सं./ ITA No. 7331/Mum/2019  
(निर्धारण वर्ष / Assessment Year 2011-12)

आयकर अपील सं./ ITA No. 7360/Mum/2019  
(निर्धारण वर्ष / Assessment Year 2014-15)

आयकर अपील सं./ ITA No. 7361/Mum/2019  
(निर्धारण वर्ष / Assessment Year 2015-16)

आयकर अपील सं./ ITA No. 5261/Mum/2019  
(निर्धारण वर्ष / Assessment Year 2016-17)

The Dy. Commissioner of Income Tax, Central Circle-6(4), Room No.1925, 19 <sup>th</sup> Floor, Air India Building, Nariman Point Mumbai-400 021	बनाम/ Vs.	Smt. Archana Ajay Mittal 308, Level-3, Ceejay House, Dr. Annie Besant Road, Worli, Mumbai-400 018
(अपीलार्थी / Appellant)		(प्रत्यर्थी/ Respondent)
स्थायी लेखा सं./PAN No. AAGPM6545C		

आयकर अपील सं./ ITA No. 7773/Mum/2019  
(निर्धारण वर्ष / Assessment Year 2014-15)

आयकर अपील सं./ ITA No. 7774/Mum/2019  
(निर्धारण वर्ष / Assessment Year 2015-16)

Smt. Archana Ajay Mittal 308, Level-3, Ceejay House, Dr. Annie Besant Road, Worli, Mumbai-400 018	बनाम/ Vs.	The Dy. Commissioner of Income Tax, Central Circle- 6(4), Room No.1925, 19 <sup>th</sup> Floor, Air India Building, Nariman Point Mumbai-400 021
(अपीलार्थी / Appellant)		(प्रत्यर्थी/ Respondent)
स्थायी लेखा सं./PAN No. AAGPM6545C		

अपीलार्थी की ओर से/ Appellant by	:	Shri Rajeev Harit, CIT DR Shri Brajendra Kumar, AR
प्रत्यर्थी की ओर से/ Respondent by	:	Shri piyush Chajed, AR

सुनवाई की तारीख / Date of hearing:	24.06.2021
घोषणा की तारीख / Date of pronouncement:	31.08.2021

### **आदेश / ORDER**

महावीर सिंह, उपाध्यक्ष के द्वारा /

**PER MAHAVIR SINGH, VP:**

These cross appeals are arising out of the orders of the Commissioner of Income Tax (Appeals)-54, Mumbai, [in short CIT(A)], in appeal Nos. CIT(A)-54/IT-139/DC CC (4)/2016-17, CIT(A)-54/IT-138/DC CC 6(4)/2016-17, CIT(A)-54/IT-37/DC CC 6(4)/2016-17, CIT(A)-54/IT-10193/DC. CC.6(4)/2018-19, CIT(A)-54/IT-142/DC CC 6(4)/2016-17, CIT(A)-54/IT-143/DC CC 6(4)/2016-17 dated 13.09.2019, 15.09.2019. The assessments were framed by the Dy. Commissioner Tax Officer, Circle 6(4) (in short DCIT/ Assessing Officer) for the A.Ys. 2009-10, 2010-11, 2011-12, 2014-15, 2015-16, 2016-17 vide order dated 26.12.2016, 28.12.2018, 26.12.2018, under section 143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act').

#### **In ITA No.7329-7331/Mum/2019**

2. The only common issue in these three appeals of Revenue is as regards to the order of CIT(A) deleting the disallowance under section 14A read with Rule 8D of the Income-tax Rules, 1962 (hereinafter

referred to as 'Rules') made by Assessing Officer on account of expenses relatable to exempt income by holding that these are unabated assessments and there is no incriminating material found during the course of search. For this Revenue has raised the identically worded grounds in all the three appeals. Hence, we will take the facts and issue from Assessment Year 2009-10 in ITA No. 7329/Mum/2019. The relevant grounds reads as under:-

*"1. On the facts and in the circumstances of the case and in law, the learned CIT(A) has erred in deleting the disallowance u/s.14A read with Rule 8D, relying upon a decision of the Hon'ble Bombay High Court in the case of Continental Warehousing (NhavaSheva) Ltd despite the fact that the Hon'ble Supreme Court has admitted department's SLP vide order dated 12.10.2015 in Civil Appeal No.18506/2015 reported in 64 taxmann.com 34 (SC).*

*2. On the facts and in the circumstances of the case and in Law, the (earned CIT(A) has erred in holding that in unabated cases, addition(s) on any issue can be made only on the basis of incriminating material found during the search action."*

3. We noted that a search under section 132 of the Act was carried out in the case of Arshiya Limited and its group companies including assessee on 13.06.2014. The Assessing Officer issued notice under

section 153A of the Act and consequently, the assessment was framed under section 153A read with Section 143(3) of the Act and made disallowances of expenses relatable to exempt income by invoking the provisions of Section 14A of the Act read with Rule 8D (2) and 8D(2)(iii) of the Rules i.e. interest expenses at ₹1,82,23,519/- and administrative expenses i.e. half percent of the average value of investment at ₹15,59,750/-. We noted that the Assessing Officer has simplicitor applied Rule 8D and there is no incriminating material found during the course of search because there is no whisper about any search material relating to this addition in the assessment order. We noted that the CIT(A) has simply observed in Paras 5.3 and 5.4 as under:-

*"5.3 In this case, the addition made is only on account of disallowance u/s. 14A which has got no relation to the search. In fact, in the assessment order, the AO clearly writes "On perusal of the financial statements of the assessee for the year under consideration, it is observed that the assessee has earned dividend from shares amounting to Rs,2,46,99,090/- which has been claimed exempt u/s 10 of the IT Act. However, it is noticed that the assessee has not disallowed any expenditure attributable for earning of dividend income in his computation of income. It is evident that the basis for the additions the financial statements of the assessee which are a part of record and not any incriminating material found during the search.*

*5.4 In view of the above judicial precedents, as the addition made has no bearing with the search or any incriminating material found during the search, the addition made by the AO cannot be sustained. This ground of appeal is allowed."*

4. We find, even now before us, the learned Sr. DR could not point out any incriminating material found during the course of search on the basis of which this disallowance of expenses relatable to exempt income was made under section 14A read with Rule 8D (ii) & (iii) of the Rules. Even the grounds raised by Revenue states that the Revenue has filed SLP before Hon'ble Supreme Court against the decision of Hon'ble High Court of Bombay in the case of Continental Warehousing (NhavaSheva) Ltd and despite the fact that the Hon'ble Supreme Court has admitted department's SLP vide order dated 12.10.2015 in Civil Appeal No.18506/2015 reported in 64 taxmann.com 34 (SC) the CIT has deleted the disallowance. It means that Revenue admits that the issue is covered. Hence, we are of the view that the CIT(A) has rightly deleted the addition and we confirm the same. These appeals of Revenue are dismissed.

**In ITA Nos. 7360 & 7361/Mum/2019 of Revenue's appeal and Cross appeal by assessee in ITA Nos. 7773 & 7774/Mum/2019**

5. The only issue in these cross appeals is as regards to the order of CIT(A) restricting the disallowance of the expenses relatable to exempt income at ₹6,83,269/- as against the disallowance made by the Assessing Officer at ₹1,04,82,71,485/- in Assessment Year 2014-15. For this, assessee has raised the various grounds which need not to be

reproduced. As against the same, assessee has also raised only one ground. Similar are the facts in cross appeals for Assessment Year 2015-16 also. Hence, we will deal with the cross appeals relating to Assessment Year 2014-15 and will decide the issue.

6. We have heard the rival contentions and gone through the facts and circumstances of the case. Brief facts are that the assessee has earned exempt income on account of dividend at ₹42,11,663/- and exempt long term capital gain of ₹308,98,67,962/-. The Assessing Officer during the course of assessment proceedings invoked the provisions of section 14A read with Rule 8D of the Rules and made disallowance of interest expenses at ₹1,04,17,984/- under Rule 8D(2)(i) and administrative expenses being half percent of average value of investment at ₹75,53,501/- under Rule 8D(2)(iii) of the Rules. Thereby, the Assessing Officer made disallowance of ₹4,82,71,485/-. Aggrieved, assessee preferred the appeal before Commissioner of Income Tax (Appeals). The CIT(A) after hearing both the parties directed that in view of the decision of Special Bench of this ITAT in the case of ACIT vs. Vireet Investments (P.) Ltd. [2017] 58 ITR (AT) 313 (Delhi - Trib.) (SB), wherein it is held that the disallowance should be restricted to the extent of investment which gives exempt income and also directed that disallowance under 14A read with Rule 8D of the Rules cannot exceed the exempt income. The CIT(A) observed in Paras 5.2 and 5.3 as under:-

*"5.2 However, the special Bench of ITAT, Delhi in the case of ACIT vs. Vireet Investments Pvt. Ltd. 82 Taxman.com 415 held that "only those investments which have yielded exempt income*

*should be considered for working out the disallowance". The Hon'ble ITAT, Mumbai in the case of Brics Securities Ltd. Vs. DCIT ITA No. 187/Mum/2014 and ITA No. 382/Mum201 vide his order dated 02.11.2018 affirmed the above view of Special Bench of ITAT Delhi in the case of Vireet Investment Ltd. supra. Therefore, the Assessing Officer is directed to compute the disallowance considering only the investments which have yielded exempt income.*

*5.3 Further, the Hon'ble ITAT in the case of Daga Global Chemical Pvt. Ltd. vs. ACIT [ITA No. 5592/Mum/2012] has held that the disallowance should be restricted to and should not exceed the exempt income. Further, the jurisdictional ITAT in the case of Sandeep Bharat Singh Kothari vs. ACIT [ITA No. 8706/Mum/2011] followed the coordinate Bench in the case of Daga Global Chemical Pvt. Ltd. and held that the disallowance u/s. 14A read with rule 8D cannot exceed the exempt income. The Hon'ble Bombay High Court has, in the case of Nirved Traders Pvt. Ltd. vs. DCIT No. 149 of 2017, in its order dated 23.04.2019, held that disallowance u/s 14A cannot be in excess of exempt income earned by the assessee during the assessment year in question."*

7. The CIT(A) remand the matter back to the file of the Assessing Officer with the above directions.

Aggrieved, Revenue as well as assessee came in appeal before us.

8. At the time of hearing we pointed out that what is the difficulty in the direction of Commissioner of Income Tax (Appeals). Neither the learned Counsel for the assessee nor Revenue point out any difficulty as the CIT(A) following the decision of Vireet Investments (P.) Ltd. (supra) has directed the Assessing Officer to disallow the expenses relatable to the investment giving rise to exempt income. Hence, there is no infirmity in the order of CIT(A) and we confirm the same. Both, the appeals of Revenue as well as assessee are dismissed. Similar are the facts and circumstances in ITA No. 7361/Mum/2019 & 7774/Mum/2019 for Assessment Year 2015-16 and hence, both the appeals of Revenue as well as assessee are dismissed.

**In ITA No. 5261/Mum/2019**

9. The only issue in this appeal of Revenue is as regards to the order of CIT(A) deleting the disallowance of expenses relatable to exempt income made by Assessing Officer under section 14A read with Rule 8D of the Rules. For this, Revenue has raised the following ground:-

*"1. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was right in deleting disallowance made u/s. 14A r.w. Rule 8D by the AO?"*

10. We have heard the rival contentions and gone through the facts and circumstances of the case. We noted that the assessee has earned exempt income to the tune of ₹403 only (as noted in the order of CIT(A)). The Assessing Officer while computing the disallowance under section 14A of the Act read with Rule 8D of the Rules made disallowance under Rule 8D(2)(iii) at ₹3,89,03,954/- being disallowance of interest expenses and under Rule 8D(2)(iii) i.e. 0.5% of average value of investment being administrative expenses at ₹1,34,46,738/-. Thereby, the Assessing Officer made total disallowance of ₹5,23,50,692/-. The CIT(A) restricted the disallowance at ₹403/- being exempt income earned by assessee in view of the decision of Vireet Investments (P.) Ltd. (supra). We noted that the assessee has earned exempt income to the tune of ₹403/- only and in view of the decision of Hon'ble Supreme Court in the case of Maxopp Investment Ltd. vs. CIT [2018] 402 ITR 640 (SC), we find no infirmity in the order of CIT(A) who has rightly restricted the disallowance to the extent of exempt income i.e. 403/- only. We confirm the order of Commissioner of Income Tax (Appeals). The appeal of Revenue is dismissed.

11. In the result, all the appeals are dismissed.

Order pronounced in the open court on 31.08.2021.

Sd/-

(एम. बालगणेश / M. BALAGANESH)

(लेखा सदस्य / ACCOUNTANT MEMBER)

Sd/-

(महावीर सिंह / MAHAVIR SINGH)

(उपाध्यक्ष / VICE PRESIDENT)

मुंबई, दिनांक/ Mumbai, Dated: 31.08.2021

सुदीप सरकार, व. निजी सचिव/ Sudip Sarkar, Sr.PS



**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai