

आयकर अपीलिय अधिकरण, 'बी' न्यायपीठ, चेन्नई  
IN THE INCOME-TAX APPELLATE TRIBUNAL 'B' BENCH, CHENNAI  
श्री धुव्वुरु आर.एल रेड्डी, न्यायिक सदस्य एवं श्री जी. मंजुनाथा, लेखा सदस्य के समक्ष  
Before Shri Duvvuru RL Reddy, Judicial Member &  
Shri G. Manjunatha, Accountant Member

आयकर अपील सं./I.T.A. Nos. 41 and 42/Chny/2019  
निर्धारण वर्ष/Assessment Years: 2013-14 & 2014-15

M/s. XS Real Properties P. Ltd.,  
No. 12, South Mada Street,  
Srinagar Colony, Saidapet,  
Chennai 600 015.

**[PAN:AAACX0030G]**

The Assistant Commissioner of  
Vs. Income Tax, Corporate Circle 3(2),  
Chennai.

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Shri N. Arjunraj, C.A. for  
: Shri S. Sridhar, Advocate  
प्रत्यर्थी की ओर से/Respondent by : Shri G. Johnson, Addl. CIT  
सुनवाई की तारीख/ Date of hearing : 02.09.2021  
घोषणा की तारीख /Date of Pronouncement : 16.09.2021

**आदेश / O R D E R**

**PER DUVVURU RL REDDY, JUDICIAL MEMBER:**

Both the appeals filed by the assessee are directed against different orders of the Id. Commissioner of Income Tax (Appeals) 7, Chennai, both dated 28.09.2018 relevant to the assessment years 2013-14 and 2014-15. Since the assessee has raised common grounds, both the appeals were heard together and are being disposed of by this common order.

2. Brief facts leading to the grounds raised by the assessee are that as per the balance sheet of the assessee as on 31.03.2013 and 31.03.2013, the Assessing Officer found that the assessee has invested in equity shares

and mutual funds and the amount of investment as on 31.03.2012 and 31.03.2013 amounted to ₹.30,11,36,563/- and ₹.28,63,06,563/- respectively. The assessee earned dividend income at ₹.7,51,15,949/- during the year under consideration and claimed the same as exempted under section 10(34) of the Act. Since, the assessee has not admitted any expenditure to earn the dividend income, after considering the submissions of the assessee and by invoking the provisions of section 14A r.w. Rule 8D, the Assessing Officer determined the disallowance of ₹.91,71,174/- under normal provision and also disallowed the same while computing book profits under section 115JB of the Act for the assessment year 2013-14. Similarly, for the assessment year 2014-15 also, the Assessing Officer determined the disallowance of ₹.67,89,631/- under section 14A r.w. Rule 8D and brought to tax. On appeal, the Id. CIT(A) confirmed the disallowance for both the assessment years.

3. On being aggrieved, the assessee is in appeal before the Tribunal. By referring to the balance sheet filed in the form of paper book, the Id. Counsel for the assessee has submitted that the assessee has sufficient own funds for making investments and no part of the borrowed funds were used by the assessee for making investments and prayed for deleting the disallowance of expenditure for the assessment year 2013-14. Further, by relying on the decision in the case of ACIT v. Vireet Investment Pvt. Ltd. 82 taxmann.com

415 Delhi ITAT (SB), it was further submission that if at all any disallowance has to be made, only those investments are to be considered for computing the average value of investment which yielded exempt income during the year.

4. On the other hand, the Id. DR strongly supported the orders of authorities below.

5. We have heard both the sides, perused the materials available on record and gone through the orders of authorities below including the paper books filed by the assessee. Against the investments in equity shares and mutual funds for the year ending 31.03.2012 and 31.03.2013 of ₹.30,11,36,563/- & ₹.28,63,06,563/- respectively, the assessee earned dividend income at ₹.7,51,15,949/- during the year under consideration and claimed the same as exempted under section 10(34) of the Act. However, the assessee has not admitted any expenditure for earning the exempt income. Accordingly, by invoking the provisions of section 14A r.w. Rule 8D, the Assessing Officer determined the expenditure attributable for earning such exempt income by applying Rule 8D(2)(ii) at ₹.77,02,566/- and Rule 8D(2)(iii) at ₹.14,68,608/- totalling to ₹.91,71,174/- and brought to tax. Before the Id. CIT(A), the assessee has contended that the investments in the acquisition of shares were from its own interest free funds. After considering

the submissions of the assessee, the Id. CIT(A) confirmed the disallowance. Before us, the Id. Counsel for the assessee has submitted that the assessee has sufficient own funds for making investments and no part of the borrowed funds were used by the assessee for making investments and prayed for deleting the disallowance of expenditure for the assessment year 2013-14. Either in the assessment order or in the appellate order, the authorities below have not mentioned anything as to whether the assessee has sufficient own funds for making investments or borrowed funds were used by the assessee for making investments. Thus, we set aside the order of the Id. CIT(A) and remit the matter back to the file of the Assessing Officer to verify as to whether the assessee was having sufficient own funds on the date of investments and decide the issue afresh relating to the disallowance under Rule 8D(2)(ii). Further, the Assessing Officer is directed to consider only those investments for computing average value of investment which yielded exempt income during the year under consideration as per Rule 8D(2)(iii) in view of the Delhi Special Bench of the Tribunal in the case of ACIT v. Vireet Investment (P) Ltd. (2017) 165 ITD 27 (Delhi)(SB) and to pass detailed order on both counts. Thus, the ground raised by the assessee is allowed for statistical purposes for the assessment year 2013-14.

6. As far as issue of disallowance under section 14A of the Act vis-à-vis computation of book profits under section 115JB of the Act is concerned, the

issue is now settled by the decision of Special Bench of Delhi Tribunal in the case of ACIT v. Vireet Investment Private Limited reported in (2017) 165 ITD 27(Delh-trib.)(SB) is relevant, wherein, it is held at para 6.22 that computation 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 of the 1962 Rules. It further held that the disallowance of actual expenditure incurred for earning exempt income is required to be made under clause (f) of section 115JB(2) of the Act. Accordingly, the matter is remitted back to the file of the Assessing Officer to compute the books profits under section 115JB of the Act on the direct expenditure incurred for earning exempt income under clause (f) of Explanation to section 115JB(2) of the Act.

7. With regard to the disallowance under section 14A r.w. Rule 8D for the assessment year 2014-15 is concerned, the Assessing Officer has observed that the investment balance as on 01.04.2013 was ₹.28,92,23,093/- and as on 31.03.2014 was ₹.31,09,97,504/-. As per the financials of the assessee, the Assessing Officer has observed that the assessee had made an investment of ₹.24,18,46,375/- in equity shares and earned dividend income of ₹.3,01,21,594/- Since the assessee has paid interest charges and claimed expenses in its profit and loss account, the Assessing Officer was of the opinion that the assessee could not have earned exempt income from the

said investments without incurring any expenditure and accordingly determined the expenditure attributable for earning such exempt income by applying section 14A r.w. Rule 8D of ₹.88,21,550/- and disallowed ₹.67,89,631/- after reducing the voluntary disallowance made by the assessee of ₹.20,31,919/-. On appeal, the Id. CIT(A) confirmed the disallowance.

7.1 We have considered the rival submissions. In this case, against the investments in equity shares, the assessee has earned dividend income of ₹.3,01,21,594/- and voluntarily disallowed ₹.20,31,919/- as expenditure for earning the dividend income. Before us, by raising specific ground, the Id. Counsel for the assessee has vehemently argued that without recording appropriate satisfaction on the quantification of the disallowance voluntarily by the assessee, the Assessing Officer was not justified in making disallowance of ₹.88,21,550/-. We find force in the arguments of the Id. Counsel. In this case, we find that the assessee has voluntarily disallowed ₹.20,31,919/- as expenditure for earning the dividend income and the Assessing Officer has not recorded any satisfaction. Thus, in view of the decision in the case of Maxopp Investment Ltd. v. CIT [2018] 402 ITR 640, wherein, the Hon'ble Supreme Court has held that "once the assessee itself *suo motu* made a disallowance under section 14A of the Act, the Assessing Officer has to record proper satisfaction as to why the quantum of *suo-motu*

disallowance is not correct, whereas, in this case, the Assessing Officer has not at all recorded any satisfaction before invoking the provisions of section 14A of the Act.

7.2 Moreover, various courts have held that when the assessee claimed that it had sufficient funds to cover investments in tax free securities which was corroborated by the financial audited report for various assessment years and the entire interest expenditure on borrowing fund was incurred in connection with the operating revenue which had been offered to tax, no disallowance is required to be made under section 14A of the Act [CIT v. Bharti Televenture Ltd. (2011) 331 ITR 502 (Del), CIT v. Reliance Utilities & Power Ltd. (2009) 313 ITR 340 (Bom), PCIT v. Sintex Industries Ltd. (2018) 403 ITR 418 (Guj), etc.].

7.3 In view of the above facts and circumstances, we are of the considered opinion that the Assessing Officer cannot make disallowance under section 14A r.w. Rule 8D in any count. Accordingly, we direct the Assessing Officer to delete the addition made towards the disallowance under section 14A of the Act.

8. The next ground raised in the appeal of the assessee for the assessment year 2014-15 relates to confirmation of addition of ₹.15,64,589/- being the corporate sponsorship/fee paid to Tennis Academy. On perusal of

the books of accounts of the assessee, the Assessing Officer has observed that the assessee has claimed a sum of ₹.15,64,589/- towards membership and subscription charges. From the details produced by the AR of the assessee, the Assessing Officer noticed that the assessee company has paid the above amount towards membership and subscription fee for Managing Director's son's Tennis academy, which is personnel in nature and is not connected to the business of the assessee. Accordingly, the above claim of expenditure was disallowed under section 37 of the Act and brought to tax. On appeal, the Id. CIT(A) confirmed the addition.

8.1 We have considered the rival submissions, perused the materials available on record and gone through the orders of authorities below. Since the membership and subscription fee of ₹.15,64,589/- for Managing Director's son's Tennis academy, which is personnel in nature and is not connected to the business of the assessee, the Assessing Officer disallowed the claim of expenditure. On appeal, it was the submission of the assessee before the Id. CIT(A) that the company paid the impugned amount as sponsorship fees grouped under membership & subscription with a view to get brand ambassadorship and also help development of sports. After considering the submissions of the assessee, the Id. CIT(A) has observed that various judicial forums have held that as long as an expense is incurred, wholly and exclusively for the purpose of the business earned out by the

assessee, it ought to be, ordinarily, allowed under section 37 of the Act. As the assessee has not demonstrated so, the Id. CIT(A) confirmed the addition. Before us also, the assessee could not able to demonstrate as to how the above expenditure incurred by the assessee was wholly and exclusively for the purpose of its business of real estate earned out. Thus, we find no infirmity in the order passed by the Id. CIT(A). Accordingly, the ground raised by the assessee stands dismissed.

9. In the result, the appeal in I.T.A. No. 41/Chny/2019 filed by the assessee is partly allowed for statistical purposes and I.T.A. No. 42/Chny/2019 is partly allowed.

Order pronounced on the 16<sup>th</sup> September, 2021 in Chennai.

Sd/-  
(G. MANJUNATHA)  
ACCOUNTANT MEMBER

Sd/-  
(DUVVURU RL REDDY)  
JUDICIAL MEMBER

Chennai, Dated, 16.09.2021

Vm/-

आदेश की प्रतिलिपि अग्रेषित/Copy to: 1. अपीलार्थी/Appellant, 2. प्रत्यर्थी/ Respondent, 3. आयकर आयुक्त (अपील)/CIT(A), 4. आयकर आयुक्त/CIT, 5. विभागीय प्रतिनिधि/DR & 6. गार्ड फाईल/GF.