

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

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

ITA.NO. 5886/MUM/2019 (A.Y: 2014-15)

M/s. Fine Estate Pvt. Ltd., 4 th Floor, Kalpataru Heritage 127, M.G. Road, Fort Mumbai -400001 PAN: AAACF2738F	v.	ACIT – Circle – 2(1)(2) Room No. 552, 5 th Floor Aayakar Bhavan, M.K. Road Mumbai - 400020
(Appellant)		(Respondent)

ITA.NO. 6861/MUM/2019 (A.Y: 2014-15)

DCIT – Circle – 2(1)(2) Room No. 561, 5 th Floor Aayakar Bhavan, M.K. Road Mumbai - 400020	v.	M/s. Fine Estate Pvt. Ltd., 4 th Floor, Kalpataru Heritage 127, M.G. Road, Fort Mumbai -400001 PAN: AAACF2738F
(Appellant)		(Respondent)

Assessee by	:	Shri Apurva Gandhi
Department by	:	Shri Rajesh Yadav
Date of Hearing	:	22.06.2021
Date of Pronouncement	:	17.09.2021

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

1. Both these appeals are filed by the assessee and revenue against the order of the Learned Commissioner of Income Tax (Appeals)-4, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 06.08.2019 for the Assessment Year 2014-15.

2. Assessee in its appeal has raised following grounds: -

"Ground No. 1:

On the facts and circumstances of the case and in law, the Hon'ble CIT(A) erred in confirming the action of A.O. in concluding that additional disallowance u/s 14A r. w. r. 8D is attracted for earning exempt income. The appellant prays that the said action of the learned AO may kindly be deleted.

Ground No.2:

Without prejudice to the above, on the facts and in the circumstances of the case and in law, the Hon'ble CIT(A) erred in confirming the action of the A.O. of disallowing additional amount of Rs. 2,68,32,566/- u/s 14A by applying Rule 8D on account of the interest expenditure attributable to earning the exempt income under the normal provisions of the Act. The appellant prays that the disallowance of ₹.2,68,2,566/- may kindly be deleted."

3. Ld. Counsel for the assessee, at the outset, submits that the issue in assessee's appeal is squarely covered by the decision of the Coordinate Bench in assessee's own case for the A.Y. 2013-14 in ITA.No. 1627/Mum/2018 and ITA.No. 1979/Mum/2018 dated 31.07.2019. Learned Counsel for the assessee submitted that provisions of Rule 8D

were invoked by the Assessing Officer without recording any satisfaction as to why the suo moto disallowance made by the assessee was incorrect in regard to Books of Accounts and before invoking provisions of Rule 8D of I.T. Rules. Ld. Counsel for the assessee submits that identical issue came up before the Tribunal for immediately preceding assessment year wherein the Tribunal following the decision of the Hon'ble Supreme Court in the case of Maxopp Investment Ltd. v. CIT [402 ITR 640] directed the Assessing Officer to delete the addition made towards interest expenses under Rule 8D(2)(ii) of I.T. Rules.

4. Ld. DR vehemently supported the orders of the authorities below.

5. We have heard the rival submissions, perused the orders of the authorities below and the decision relied on. On a perusal of the orders of the lower authorities and the decision of the Tribunal in assessee's own case for the A.Y. 2013-14 we noticed that identical issue came up before the Tribunal and the Tribunal directing the Assessing Officer to delete the disallowance made under Rule 8D(2)(ii) of I.T. Rules held as under: -

"6. The first issue that came up for consideration before us from the assessee as well as the Revenue appeal is disallowance of interest expenditure under section 14A read with Rule 8(2)(D)(ii) of the Income Tax Rules, 1962. The facts with regard to impugned dispute are that the assessee has earned dividend income and claimed exempt under section 10(34) of the Income Tax Act, 1961. The assessee has also made suo moto disallowance of expenses in

relation to exempt income of Rs. 18,57,056/-, however it has disallowed direct expenses in relation to exempt income under Rule 8D(2)(i), but did not worked out interest disallowances under Rule 8D(2)(iii) of Income Tax Rules, 1962. The AO has disallowed interest expenses on the ground that the assessee has borrowed funds and the same has been used for investments in shares and securities which yielded exempt income. Therefore, interest income needs to be disallowed and accordingly, determined interest disallowance of Rs. 80,66,204/-. On appeal, the Id. CIT(A) rejected all arguments advanced by the assessee and allowed partial relief in respect of disallowances by taking net interest expenses only for the purpose of determination of disallowances.

7. The Id. AR for the assessee, referring to the decision of Hon'ble Supreme Court in the case of **Maxopp Investment Limited vs. CIT (2018) 91 taxmann.com 154 (SC)** submitted that before invoking Rule 8D(2), the AO is required to record satisfaction that having regard to the kind of the assessee suo moto disallowances under section 14A was not correct, therefore in absence of any satisfaction, the AO cannot simply invoke Rule 8D(2) to determine disallowances. The Id AR further submitted that the Hon'ble High Court of Bombay in the case of **Godrej and Boyce Manufacturing Company Limited vs. CIT (Supra)** had considered identical issue and held that before invoking provisions of section 14A read with Rule 8D(2), the AO shall record satisfaction having regard to the books of accounts of the assessee that suo moto disallowances worked out by the assessee is incorrect. In this case, the AO failed to record satisfaction that suomoto disallowances worked out by the assessee is incorrect, therefore further disallowances of expenses over and above su-moto disallowances determined by the assessee cannot be made.

8. The Id. DR, on the other hand, strongly supported the orders of the CIT(A) in respect of satisfaction as required under section 14A(2) and submitted that although the CIT(A) was right in upholding the action of the AO in disallowance of interest expenses, but erred in taking net interest expenses, when no such netting off of interest is permissible as per provisions of section 14A of the I.T. Act, 1961.

9. We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. There is no dispute with regard to applicability of provisions of section 14A read with Rule 8D(2) of the I.T. Rules, 1962. Infact, the assessee itself has determined suo moto disallowance to expenses under Rule 8D(2)(i) and (iii) of I.T. Rules, 1962. The only dispute is with regard to disallowance of interest expenditure, under Rule 8D(2)(ii) of the I.T. Rules, 1962. According to the assessee, provisions of rule 8D(2)(ii) is not applicable, because no interest-

bearing funds has been used for making investments in shares and securities. The AO has disregarded explanation offered by the assessee and invoked Rule 8D(2)(ii) and determine interest disallowance of Rs. 80,66,204/-. The main contention of the assessee in the light of decision of Hon'ble Supreme Court in the case of **Maxopp Investment vs. CIT** (supra) that in absence of any satisfaction as required under section 14A(2) that having regard to the kind of the assessee, suo moto disallowances under section 14A was not correct, and it will be in those cases where the assessee in his return of income has himself apportioned, but the AO has not accepting such apportionment, in that eventuality, it will have to record its satisfaction to this effect, the AO cannot determine disallowance by applying rule 8D of IT, Rules 1962. In this case, there is no dispute with regard suo moto disallowances worked out by the assessee. It is also an admitted fact that the AO did not accepted disallowances worked out by the assessee, but while rejecting suo moto disallowances worked by the assessee, the AO has failed to record satisfaction as required under section 14A(2), that having regard to the kind of the assessee suo moto disallowances under section 14A was not correct. Unless, the AO records a clear satisfaction as required under section 14A(2), he cannot proceed to determination of disallowance under Rule 8D(2), of IT Rules, 1962. This legal proposition is supported by the decision of Hon'ble Supreme Court in the case of **Maxopp Investment vs. CIT** (supra) where in paragraph 41, the Court held as under:-

"41. Having regard to the language of Section 14A(2) of the Act, read with Rule 8D of the Rules, we also make it clear that before applying the theory of apportionment, the AO needs to record satisfaction that having regard to the kind of the assessee, suo moto disallowance under Section 14A was not correct. It will be in those cases where the assessee in his return has himself apportioned but the AO was not accepting the said apportionment. In that eventuality, it will have to record its satisfaction to this effect. Further, while recording such a satisfaction, nature of loan taken by the assessee for purchasing the shares/making the investment in shares is to be examined by the AO."

10. In this view of the matter and respectfully following the decision of Hon'ble Supreme Court in the case of **Maxopp Investment vs. CIT** (supra), we are of the considered view that the AO was erred in invoking Rule 8D(2)(ii) to determine interest expenses disallowances without recording satisfaction as required under section 14A(2) of the Income Tax Act, 1961. Hence, we direct the AO to delete additions made towards interest expenses under Rule 8D(2)(ii) of Income Tax Rules, 1962."

6. Facts being identical, respectfully following the said decision, we direct the Assessing Officer to delete the interest disallowance made under Rule 8D(2)(ii) of I.T. Rules.

ITA.NO. 6861/MUM/2019 (A.Y: 2014-15) (Revenue appeal)

7. Coming to the revenue's appeal, following ground is raised: - -

"1. "On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in allowing relief to the assessee relying on the decision of the Hon'ble Special Bench of ITAT Delhi in the case of ACIT vs. Vireet Investment (P) Ltd. [2017] 58 ITR (AT) 313 (Delhi-Trib.), without appreciating the fact that the issue has not reached to its finality and Department is in further appeal against the said decision."

8. The Assessing Officer while computing the income under book profits u/s. 115JB of the Act made disallowance u/s. 14A of the Act. On appeal the Ld.CIT(A) deleted the said disallowance following the Special Bench of Delhi Tribunal in the case of Vireet Investment (P) Ltd [82 taxmann.com 415] , against which the revenue is in appeal before us.

9. On a perusal of the order of the Tribunal in assessee's own case for the A.Y. 2013-14 we noticed that this issue was also decided in favour of the assessee holding as under: -

"11. The next issue that came up for our consideration from ground no. 2 of Revenue appeal is re-computation of book profit under section 115JB of Income Tax Act, 1961 in respect of disallowance of expenses under section 14A read with Rule 8D(2) of

the IT. Rules, 1962. We, find that the Id. CIT(A) has deleted adjustment made by the AO to book profit by following the special Bench decision of ITAT, in case of ACIT vs. Vireet Investment Pvt. Ltd., 2017 82 taxmann.com 415 (Del) (Tri) (SB), where it was held 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(2) of Income Tax Rules, 1962.

Therefore, we are of the considered view that there is no error in the findings of the Id. CIT(A) and hence, we are inclined to uphold the findings of the Id. CIT(A) and reject ground taken by the Revenue.”

10. As the Ld.CIT(A) followed the decision of the Special Bench of Delhi Tribunal in the case of Vireet Investment (P) Ltd (supra) we do not see any valid reason to interfere with the findings of the Ld.CIT(A). Ground raised by the revenue is dismissed.

11. In the result, appeal of the assessee is allowed and the appeal of the Revenue is dismissed.

Order pronounced on 17.09.2021 as per Rule 34(4) of ITAT Rules by placing the pronouncement list in the notice board

Sd/-
(MANOJ KUMAR AGGARWAL)
ACCOUNTANT MEMBER
Mumbai / Dated 17/09/2021
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