

THE INCOME TAX APPELLATE TRIBUNAL
“E” Bench, Mumbai
Shri Shamim Yahya (AM) & Shri Pavankumar Gadale (JM)

I.T.A. No. 7157/Mum/2019 (Assessment Year 2016-17)

Thrill Park Limited 9 th Floor, Lotus Business Park, New Link Road Andheri West, Mumbai 400 053. PAN : AACCT7914M (Appellant)	Vs.	ITO Ward-11(3)(1) Aayakar Bhavan M.K. Road Mumbai-400 020. (Respondent)
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Assessee by	Shri Mahesh O. Rajora
Department by	Shri Vijay Kumar Menon
Date of Hearing	15.07.2021
Date of Pronouncement	28.09.2021

ORDER

Per Shamim Yahya (AM) :-

This appeal by the assessee is directed against the order of learned CIT(A) dated 30.9.2019 pertaining to assessment year (A.Y.) 2016-17.

2. Grounds of appeal read as under :

1. a) The Commissioner of Income Tax (Appeals) - 18, Mumbai [CIT(A)] erred in confirming the disallowance of Rs.23,30,891/- u/s 14A of the I. T. Act r.w.r. 8D of the I.T. Rule made by the AO as expenses attributable to investment activity giving rise to the exempt income.

The Appellant submits that it has not incurred any expenses in relation to earning of exempt income and hence no disallowance was called for.

b) The CIT(A) erred in confirming the action of AO in invoking rule 8D of the I.T. Rules for computing disallowance u/s 14A of the I.T. Act without recording sufficient reason and satisfaction for rejecting Appellant's contention for expenses incurred for earning exempt income

c) The CIT(A) erred in confirming the action of AO in considering average of total value of investments during the year for the purposes of disallowance as per Rule 8D of the Rules.

The Appellant submits that the AO ought to have considered average value of only those investments on which Appellant has earned the exempt income.

Your Appellant craves leave to add, to alter or to amend the aforesaid ground of appeal.

3. Brief facts of the case are that the assessee is engaged in the business of building and promoting amusement parks and tourist destination. The assessee filed its return of income for A.Y. 2016-17 on 28.09.2016 declaring total Income of Rs.7,310/-. The Assessment proceedings were completed with assessed Income of Rs.23,38,201/- under section 143(3) of the Income Tax Act, 1961, vide order dated 30.11.2018 by making disallowance of Rs.23,30,891/- u/s. 14A.

4. Upon assessee's appeal learned CIT(A) noted following submission of the assessee :-

"During the year under consideration, the appellant has earned dividend income of Rs. 25,96,678/- on mutual fund held as current investment (refer note 10 on page 19 of paper book] which have been claimed as exempt u/s 10(35) of the Act. During the course of assessment proceeding, the Appellant was asked to explain as to why disallowances should not be calculated as per section 14A of the Act r.w. Rule 8D of the Rules. The Appellant submitted that for the purpose of calculating the disallowance u/s 14 A r.w.r 8D(2)(ii) of the Rules, the Appellant has o moto disallowed Rs.36,129,410/- being expenses not incurred for business purpose and balance of Rs.4,55,798/- (Rs. 3,65,85,208 - Rs.3, 61,29,410) claimed business expenditure. Further the Appellant submitted that none of the expenses debited to profit and loss account have been incurred for earning exempt income; hence, no disallowance u/r 8D(2)(iii) of the Rules should be made. However, the AO did not accept the contention put forth by the Appellant and uorked out the disallowance of Rs. 23,30,891/- u/s 14A r.w.s. 8D(2)(iii) of the Rules.

"2.2 The Appellant at the very outset submits that for the purposes of calculating the disallowance under Rule 8D(2)(iii) of the Rules, only those investment has to be considered on which the Appellant has actually earned the exempt income. Your honour would appreciate that for the purposes of calculating the disallowances u/s 14 A of the Act 8D(2)(iii) of the I.T. Rules "average of value of investment, income from which does not or shall not form part of the total income" has to be considered and not all the investments as done by the AO. The Appellant, in rapport of the above contention, -rely on judgment of Hon'ble Delhi High Court in he case of ACB India Limited [374 ITR 108] wherein the Hon'ble Delhi High Court held as under:

"4. The AO, instead of adopting the average value of investment of which income is tot part of the total income i.e. the value of tax exempt investment, chose to factor n the total investment itself. Even though the CIT (Appeals) noticed the exact value of the investment

which yielded taxable income, he did not correct the error but chose to apply his own equity. Given the record that had to be done so to substitute the figure of 38,61,09,287/- with the figure of 3,53,26,800/- and thereafter arrive at the exact disallowance of .05%.

5. In view of the above reasoning, the findings of the IT AT and the lower authorities are hereby set aside. The appeal is allowed and the matter is remitted to work out the tax effect to the AO who shall do so after giving due notice to the party. "

2.3 The above view was reiterated by the Hon'ble Special Bench Delhi in the case of ACIT vs Vireet Investment Pvt Ltd [(2017) 188 TTJ 1(Delhi)(SB)] wherein Hon'ble Special Bench has held that the for the purposes of computing the disallowance as per Rule 8D only those investment shall be considered on which Appellant has actually earned the exempt income.

Identical view was taken in the following judicial pronouncements:

- Edelweiss Finance and Investment Limited vs Addl. CIT (ITA No 6610/M/2011)
- DCIT vs Edelweiss Financial Services Limited (ITA No 2249 M/2012)
- Piramal Enterprises Limited vs Addl CIT (ITA No 5471/M/2017)
- Edelweiss Securities Limited vs DCIT (ITA 7235/M/2011)
- Edelweiss Capital Limited vs Addl. CIT (ITA No 6608/M/2011)
- Edelweiss Securities Limited vs CIT(A) (Asstt Year 13-14)

2.4 The Appellant submits that applying the said principle to the present case before Your Honour, the disallowance works out to Rs. 2,194/- which is tabulated as under:

Name of Scrip	Amount	Invst. As on 31.03.2016	Invst. As on 31.03.2015
HDFC Cash Management Fund-Savings Plan-Daily Dividend	25,96,678	8,77,654	
Total	25,96,678	8,77,654	-
Average investment (8,77,654 + 0) / 2			4,38,827
Disallowance as per Rule 8D(2)(iii) of the Rules [Rs. 4,38,827 X 0.5%]			2,194

In the tight of above facts and judicial pronouncements, the Appellant submits that the disallowance made by the AO shall be deleted."

5. However, in adjudication learned CIT(A) did not adjudicate this issue. On the issue of application of Special Bench decision in Vireet Investment Pvt. Ltd. (188 TTJ 1)(SB) he held that several case laws provide that the disallowance

cannot exceed exempt income. Since the Assessing Officer's disallowance was within the exempt income earned. He upheld the addition. Before us learned Counsel of the assessee submitted that the above decision of Hon'ble Special bench should be directed to be followed.

6. Upon hearing both the counsel, we find that Hon'ble Special Bench in the case of Vireet Investment Pvt. Ltd. (supra) has held that for disallowance under rule 8D(2)(iii) only those investment should be considered which have earned exempt income. Hence, this issue is remitted to the file of the Assessing Officer to follow Vireet Investment Pvt. Ltd. (supra) on the issue of disallowance under rule 8D(2)(iii).

7. In the result, appeal is partly allowed.

Pronounced in the open court on 28.9.2021.

Sd/-
(PAVANKUMAR GADALE)
JUDICIAL MEMBER

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai; Dated : 28/09/2021

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai

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