

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "D", MUMBAI**

BEFORE SHRI SAKTIJIT DEY (JM) & SHRI RAJESH KUMAR (AM)

**ITA No. 1417/MUM/2020
Assessment Year: 2015-16**

Dy. Commissioner of Income Tax, Central Circle 1(4), 902, 9 th Floor, Prathishtha Bhavan, Old C.G.O. Bldg., (Annexe), M.K. Road, Mumbai - 400020	Vs.	M/s D.B. Realty Limited, D.B. House, Yashoham, Gen. A.K. Vaidya Marg, Goregaon (E), Mumbai - 4000063 PAN: AACCD5174F
(Appellant)		(Respondent)

Revenue by : Smt. Sunita Billa (DR)

Assessee by : Ms. Hema Kataria (AR)

Date of Hearing : 20/09/2021

Date of Pronouncement: 18/11/2021

ORDER

PER SAKTIJIT DEY, JM

Captioned appeal by the revenue arises out of order dated 12.12.2019 of learned Commissioner of Income Tax (Appeals)-47, Mumbai for the assessment year 2015-16.

2. The dispute in the present appeal is confined to deletion of disallowance made under section 14A of the Income Tax Act, 1961 r.w.r. 8D, both, under the normal provisions as well as while computing book profit under section 115JB of the Act.

3. Briefly the facts are, the assessee is a resident company and is engaged in the business of real estate and infrastructure development. For the assessment year under dispute, assessee filed its return of income on

13.09.2015 declaring loss of Rs. 31,63,39,334/-. In course of assessment proceedings, the assessing officer (AO) noticed that the assessee has made investment worth Rs. 1,70,97,98,720/- in unquoted preference shares. Being of the view that income from such shares would be exempt under the act, the AO called upon the assessee to explain why disallowance under section 14A r.w.r. 8D should not be made. In its reply to the show cause notice, the assessee submitted that no dividend income was received on the investment made in shares. However, the assessee submitted that it has received exempt income by way of share in the profit of a partnership firm amounting to Rs. 2,26,58,326/-. The assessee submitted, since, it had surplus interest free funds, disallowance under rule 8D(2)(ii) cannot be made. The assessee also made without prejudice submission that disallowance, if any, can be made only under rule 8D(2)(iii) and the assessee computed such disallowance at Rs. 79,37,164/-. The AO, however, did not accept the claim of the assessee and proceeded to compute disallowance under rule 8D(2)(iii) at Rs. 36,67,42,096/-. Further, the AO also made identical disallowance while computing book profit under section 115JB of the Act.

4. Assessee contested the aforesaid disallowance before learned Commissioner (Appeals). After considering the submissions of the assessee in the context of facts and materials on record, learned Commissioner (Appeals) directed the AO to compute the disallowance under section 14A r.w.r. 8D(2)(ii) and (iii) only on those investments which have yielded exempt income during the year. After verifying the computation furnished by the assessee on such disallowance, learned Commissioner (Appeals) ultimately directed the AO to

restrict the disallowance to Rs.55,802/-. Further, learned Commissioner (Appeals) also held that no disallowance under section 14A r.w.r. 8D can be made while computing book profit under section 115JB of the Act. Being aggrieved, revenue is before us.

5. We have considered rival submissions and perused the materials on record. Undisputedly, the AO has computed disallowance under section 14A r.w.r. 8D by considering all the investments made by the assessee including those investments on which the assessee did not receive any exempt income during the year. Whereas, learned Commissioner (Appeals) has directed the AO to compute disallowance by considering only those investments which have yielded exempt income during the year under consideration. In principle, we agree with the aforesaid direction of learned Commissioner (Appeals), as, it is in accordance with the ratio laid down by the ITAT Delhi Special Bench in the case of ACIT vs. Vireet Investments Pvt. Ltd. 165 ITD 27. Further, we are in agreement with the view expressed by learned Commissioner (Appeals) that while computing book profit under section 115JB of the Act, no disallowance can be made by importing the provisions of section 14A r.w.r. 8D. This is in view of the ratio laid down by the ITAT Delhi Special Bench, ACIT vs. Vireet Investments Pvt. Ltd. (supra). However, as has been held by the Special Bench of the ITAT in the aforesaid decision, the AO has power to make disallowance under Explanation-1(f). Of course, that will be possible only when the AO can demonstrate that the expenditure is directly relatable to the exempt income earned. In our view, before accepting the disallowance computed by the assessee, factual verification is required. Therefore, we direct the AO to

factually verify the correctness of disallowance computed by the assessee by considering only those investments which have yielded exempt income during the year and in case it is found to be correct, the disallowance has to be restricted to that amount. Accordingly, we set aside the order of learned Commissioner (Appeals) and restore the issue to the AO.

5. In the result, appeal is partly allowed for statistical purposes.

Order pronounced in the open court on 18th November, 2021.

Sd/-
(RAJESH KUMAR)
ACCOUNTANT MEMBER

Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated: 18/11/2021

Alindra, PS

आदेश 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 (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai