

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“F” BENCH, MUMBAI**

**BEFORESHRI AMARJIT SINGH, JUDICIAL MEMBER &  
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

**ITA No.3991/Mum/2019 (A.Y 2014-15)**

The Dy. Commissioner of Income Tax -9(3)(2), Room No. 418, 4 <sup>th</sup> Floor Aayakar Bhawan, Churchgate Mumbai – 400 020	Vs.	M/s Future Enterprises Ltd. Knowledge House, Off. Jogeshwari Vikhroli Link Road, Shyam Nagar, Jogeshwari (E) Mumbai 400 060
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. :AAACP6317L		
Respondent	..	Appellant

ITA No. 4342/Mum/2019 (A.Y 2014-15)

Future Enterprises Ltd. Knowledge House Shyam Nagar, Off Jogeshwari Vikhroli Link Road, Jogeshwari (E) Mumbai – 400 060	Vs.	ACIT, Ward 9(3)(2) Aayakar Bhawan, M.K. Road, Mumbai- 400 020
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACP6317L		
Appellant	..	Respondent

Appellant by :	Dinkle Hariya
Respondent by :	Achal Sharma

Date of Hearing	17.01.2022
Date of Pronouncement	28.01.2022

आदेश / O R D E R**PER AMARJIT SINGH, AM:**

Since both the appeals of the revenue and assessee are based on similar facts and identical issue are directed against the order of the Ld. CIT(A)-16, Mumbai, therefore for the sake of convenience both the appeals are adjudicated together in this order.

**ITA No.3991/Mum/2019 (Appeal of the Revenue):**

- “1. *Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was right in restricting the disallowance u/s. 14A to the extent or exempt income earned by the assessee which was computed as per Rule 8D of I.T. Rules 1961 on the basis of CBDT Circular no. 5/2014 dated 11.02.2014 which clearly states that it is not necessary to earn exempt income in a particular year in which the disallowance is made?*
2. *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was right in restricting the disallowance u/s. 14A to the extent of exempt income earned by the assessee which is contrary to CBDT Circular No. 5/2014 which clarifies that the Rule 8D r.w.s. 14A of the Act provides for disallowance of the expenditure even where taxpayer in a particular year has not earned any exempt income.”*

2. The fact in brief is that the return of income declaring loss of Rs.362,17,84,357/- was filed on 30.11.2014. The case was subject to scrutiny and notice u/s 143(2) of the Act was issued on 31.08.2015. During the course of assessment on the perusal of the balance sheet the A.O noticed that the assessee has made investment of Rs.13,49,52,00,000/- in the shares and made only disallowance of Rs.30,90,210/- u/s 14A of the Act. After taking into consideration the submission of the assessee, the assessing officer has computed disallowance u/s 14A r.w.rule 8D to the amount of Rs.83,57,11,253/- and added to the total income of the assessee.

3. Aggrieved the revenue carried the matter in appeal before the CIT(A). The ld. CIT(A) has partly allowed the appeal of the revenue by restricting the disallowance u/s 14A to the extent of exempt of income of Rs.2,65,13,891/-.

4. Heard both the sides on the issue and perused the material available on record. Without retreating the facts as elaborated above we consider that ld. CIT(A) has rightly restricted the disallowance to the extent of exempt income earned by the assessee after following the decision of Hon'ble Supreme Court in the case of PCIT Vs. State Bank of Patiala (99 taxmann 286) (SC) and Joint Investment Pvt. Ltd. Vs. CIT (372 ITR 694) (Delhi High Court), wherein it is held that disallowance u/s 14A cannot exceed the exempt income. Further, the ld. CIT(A) has also placed reliance on the decision of the Daga Global Chemical Pvt. Ltd. Vs. ACIT (ITA No.5592/Mum/2012) wherein it is held that disallowance u/s 14A cannot exceed exempt income. Respectfully, following the decision of Hon'ble Supreme Court and High Court's as discussed above we don't find any infirmity in the decision of ld. CIT(A) therefore, this ground of appeal of the revenue stand dismissed.

**ITA No. 4342/Mum/2019 (Appeal of the Assessee):**

**Additional Ground of appeal:**

**(Addition u/s 115JB on account of Disallowance u/s 14A r.w.Rule 8D)**

- “3.1 It is submitted that in the facts and the circumstances of the case, and in law, no adjustment in book profit, by way of making disallowance u/s. 14A, was permissible u/s. 115JB of the Income-tax Act, 1961.
- 3.2 Without prejudice to the above, assuming - but not admitting - that some disallowance was called for, it is submitted that the computation of the disallowance made by the A.O. is arbitrary, excessive and not in accordance with the law.”

6. During the course of assessment, the A.O has added the amount of Rs.83,57,11,253/- disallowance u/s 14A of the Act for computing book profit u/s 115JB of the Act. We have admitted the additional ground of appeal filed by the assessee to decide the issue on merit.

7. Heard both the sides and perused the material on record. We consider that the special bench of the ITAT Delhi in the case of ACIT Vs. Vireet Investment Pvt. Ltd. (ITA No. 502/Del/2012) that such disallowance cannot be added for computing the book profit u/s 115JB of the Act. Therefore, we direct the A.O to exclude such disallowance from computing the book profit u/s 115JB of the Act. Accordingly, this appeal of the assessee is allowed.

### **Other Ground of appeal of the assessee:**

#### **1. DISALLOWANCE U/S. 14A**

- 1.1 *The Learned Commissioner of Income - tax (Appeals) - 16, Mumbai ["Ld. CIT (A)"] erred in confirming the action of the A.O. in making disallowance u/s. 14A of the Income - tax Act, 1961 ["the Act"] to the extent of Rs. 2,65,13,8917-, being the amount of dividend income earned by the Appellant.*
- 1.2 *While doing so, the Ld. CIT (A) erred in:*
  - (i) *Not adjudicating various other issues raised by the Appellant on merits of the case;*
  - (ii) *Failing to appreciate that, in the facts and the circumstances of the case, and in law, the case of the Appellant was not covered by section 14A of the Act; and*
  - (iii) *Failing to appreciate that the A.O. had failed to discharge his onus u/s 14A of the Act, in terms of the law laid down by the Apex Court and the jurisdictional High Court.*
- 1.3 *It is submitted that in the facts and the circumstances of the case, and in law, no such disallowance.*
- 1.4 *Without prejudice to the above, it is submitted that assuming - but not admitting - that some disallowance was required to be made under section*

*14A of the Act, the calculation of the disallowance is not in accordance with the law, is arbitrary and is excessive.”*

8. Without retreating the facts as discussed above in the appeal of the revenue during the course of assessment the assessing officer has made his observation on the correctness of the disallowance u/s 14A computed by the assessee. The assessing officer has pointed out in para 5.1 of the assessment order that assessee has made huge investment of Rs.13,49,52,00,000/- in shares and also incurred interest expenditure approximately to the amount of Rs.5,67,52,00,000/- but had made disallowance u/s 14A to the extent of Rs.30,90,210/- only. The A.O had also pointed out that the assessee has not established that no part of interest bearing funds were deployed in equity shares and mutual funds on which the assessee has earned exempt income. The assessing officer has categorically stated in assessment order that in the present market conditions making and managing the investment in various mutual funds share need constant analysis and efforts which also requires incurring of substantial expenditure.

However, during the course of appellate proceedings before us the ld. Counsel has filed a copy of the written note of the assessee dated 13.12.2021 addressed to the ITAT, Mumbai 'F' Bench stating that because of huge amount of loss if the department appeal gets dismissed and the additional ground of appeal filed by the assessee is found acceptable, the assessee is not to press the other ground of the assessee's appeal.

Since as supra vide para 4 this order, we have dismissed the appeal of the Revenue and adjudicated the additional ground filed by the assessee vide para 6 in favour of the assessee, therefore after taking into

consideration the above referred submission of the assessee, the other grounds of appeal of the assessee are dismissed as not pressed.

8. Accordingly, the appeal of the Revenue is dismissed and the appeal of the assessee is partly allowed.

Order pronounced in the open court on 28.01.2022

Sd/-  
(AMARJIT SINGH)  
JUDICIAL MEMBER

Sd/-  
(AMARJIT SINGH)  
ACCOUNTANT MEMBER

Mumbai, Dated 28.01.2022  
Rohit, PS

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

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

आदेशानुसार / BY ORDER,  
सत्यापित प्रति // True  
Copy//

( Asst. Registrar)  
ITAT, Mumbai