

**IN THE INCOME TAX APPELLATE TRIBUNAL
“B”BENCH: BANGALORE**

**BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT
AND
SHRI B.R. BASKARAN, ACCOUNTANT MEMBER**

ITA Nos.1704/Bang/2017
Assessment Year:2008-09

GMR Infrastructure Ltd. No.25/1, Skip House, Museum Road Bangalore 560 025 PAN NO :AABCG8880P	Vs.	Deputy Commissioner of Income-tax Central Circle -2(2) Bangalore
APPELLANT		RESPONDENT

ITA Nos.1740/Bang/2017
Assessment Year:2008-09

ACIT,Central Circle-2(2) Bangalore	Vs.	GMR Infrastructure Ltd. Bangalore-560 025
APPELLANT		RESPONDENT

C.O. No.110/Bang/2017 (Arising out of ITA No.1740/Bang/2017) Assessment Year : 2008-09
--

GMR Infrastructure Ltd. No.25/1, Skip House, Museum Road Bangalore 560 025	Vs.	ACIT Central Circle -2(2) Bangalore
APPELLANT		RESPONDENT

Appellant by	:	Shri Yogesh Thar, A.R.
Respondent by	:	Dr. Majunath Karkihalli, D.R.

Date of Hearing	:	03.02.2022
Date of Pronouncement	:	07.02.2022

ORDER

PERB.R. BASKARAN, ACCOUNTANT MEMBER:

The cross appeals filed by both the parties and the Cross objection filed by the assessee are directed against the order dated

30-05-2017 passed by Ld CIT(A)-11, Bangalore and they relate to the assessment year 2008-09. All the grounds urged in the above said appeals relate to the disallowance made u/s 14A of the Income-tax Act,1961 ['the Act' for short].

2. This is second round of proceedings. Earlier, the appeal filed by the assessee against the addition made u/s 14A of the Act was disposed of by the Tribunal, vide its order dated 28-08-2014 passed in ITA No.1522 (Bang) 2012. In the above said order, the Tribunal restored the issue of disallowance of interest expenditure under Rule 8D(2)(ii) and the administrative expenses u/r 8D(2)(iii) to the file of the AO with the following observations:-

“8. No doubt, in the case before us, assessee had made a suo-motu disallowance for interest expenditure after netting the interest receipts, without taking aid of Rule 8D. Nevertheless, it had also raised a contention before the AO that its investments were much less than own funds. There is no dispute that the increase in its own funds for the previous year was Rs.3964.78 Crores. Additional investment made by the assessee during the relevant previous year was 3423.67 crores. Total investment of the assessee as on 31.3.2008 was Rs.4753.34 crores whereas own funds as on that date was Rs.5604.57 crores. The AO has taken a view that assessee had given loans/advances to interested or related parties apart from the above mentioned investment during the relevant assessment year. In other words, increase in the aggregate of investment and loan/advances would come to Rs.4478 crores viz., including increase in loan and advances of Rs.1042 crores to subsidiary companies. Or in other words, AO has disputed the claim of the assessee that increase in investments were only Rs.3436.00 crores as projected by the assessee. According to him, loans and advance of Rs.1054.00 crores given to subsidiary companies, would also qualify as investment that could result in tax free income. Nevertheless, we find that this analysis made by the AO has never been put to the assessee. AO did not call for explanation with regard to his finding that the investments included loans/advances given to subsidiary companies. In addition the AO also not recorded the satisfaction with regard to the claim of the assessee that own funds were sufficient to meet the increase of investments. Decision of the Co-ordinate Bench in the case of Reliance Utilities & Power Ltd. (supra) would definitely

come to the aid of the assessee. Nevertheless, whether such own funds were sufficient to cover the additional investments when aggregated with the advances given to subsidiary companies, and whether the latter could be considered as investments giving rise to tax free income requires a fresh look by the AO. Similarly, whether Rule 8D has to be applied with regard to the claim of indirect expenditure also requires a fresh look by the AO. We therefore, set aside the orders of the authorities below and remit the issue regarding disallowance u/s 14A of the Act, back to the file of the AO for consideration afresh in accordance with law.”

3. The assessee had earned exempt income of Rs.75,13,12,159/- and voluntarily disallowed Rs.5,21,55,605/- consisting of interest disallowance of Rs.4,96,55,605/- and expenditure disallowance of Rs.25,00,000/-.

4. Before AO, the assessee submitted that the own funds available with it as on 31.3.2008 was Rs.5,604.57 crores, while the investment made was Rs.4,753.34 crores. Accordingly it was contended that the interest disallowance is not called for. However, the AO noticed that the loans and advances given by the assessee to its subsidiary companies have not been considered by the assessee. The AO noticed that the loans and advances stood at Rs.170.04 crores as on 31.3.2007 and the same has increased to Rs.1211.77 crores. The AO aggregated both the investments and Loans & advances and then noticed that there was net increase of own funds to the tune of Rs.3,964.78 crores, while the net increase in both investments and Loans & Advances was Rs.4,478.01 crores. Accordingly, the AO held that the assessee is not having sufficient own funds. With regard to the disallowance of Rs.25.00 lakhs made by the assessee towards expenses, the AO held that the above said disallowance is not sufficient. The AO worked out disallowance at Rs.34,92,36,737/- consisting of interest disallowance of Rs.19,61,28,191/- u/r 8D(2)(ii) and Expenditure disallowance of

Rs.15,31,08,546/- u/s 8D(2)(iii). Accordingly, after setting off the voluntary disallowance made by the assessee, the AO added the amount of Rs.29,70,81,132/- to the total income and also while computing book profit u/s 115JB of the Act.

5. The Ld CIT(A) has prepared following chart showing details of own funds, investments and Loans and advances:-

<i>Sl.No.</i>	<i>Details of own funds and non-interest bearing funds</i>	<i>As on March 31st 2008 (Rs.in crorese)</i>	<i>Details of investments</i>	<i>As on March 31st 2008 (Rs. in crores)</i>
1	Share capital (a) Equity (b) Preference	364.13 0	Investment in subsidiaries, other companies and units of Mutual fund which yield dividend/capital gains	4753.34
2	Reserves and surplus	5240.44	Investment in securities which yield taxable income	26.96
3	Depreciation reserves	1.03	Sub total (I)	4780.31
			Loans to Subsidiary	85.89
			Advance for investments	1054.16
			Sub Total (II)	1140.05
	Total	5605.60	Grand Total	5920.36

He noticed that the loans to subsidiaries amounting to Rs.85.89 crores and Advance for investments (share application money) amounting to Rs.1054.16 crores do not give rise to any tax free income. In the case of Aban Investments (P) Ltd vs. DCIT (22 taxmann.com 44)(Chennai- Trib), it has been held that the amount of share application money, till the time allotment is made, is in the nature of debt and hence, the same cannot be considered for purpose of disallowance u/s 14A of the Act. In the case of Rainy Investments (P) Ltd vs. ACIT (2013)(30 taxmann.com 169), Mumbai bench of ITAT had also expressed the view that the Share

Page 5 of 9

application money should be excluded in working out disallowance u/r 8D. Accordingly, the Ld CIT(A) held that the assessee's own funds of Rs.5605.60 crores should be compared with the value of investments of Rs.4,780.31 crores. Accordingly, following the decision rendered by jurisdictional High Court in the case of CIT vs. Microlabs Ltd (383 ITR 490) and the decision rendered by Hon'ble Bombay High Court in the case of CIT vs. HDFC Bank Ltd (366 ITR 505), the Ld CIT(A) deleted the disallowance of interest made u/s 8D(2)(ii) of I T Rules. The Ld CIT(A), however, confirmed the disallowance of expenses made u/r 8D(2)(iii) of IT Rules. Aggrieved by this decision of Ld CIT(A), the revenue has filed this appeal.

6. We heard the parties on this issue and perused the record. From the table extracted in the preceding paragraph, it can be noticed that the own funds available with the assessee would become lower, only if the value of investments and the amount of Loans and advances are aggregated together. If we compare the own funds with the value of investments, then the own funds is more. Hence the ratio laid down by the jurisdictional High Court in the case of Microlabs Ltd (supra) to the effect that, in such kind of cases, the presumption would be that the investments have been made out of own funds, would squarely apply to the facts of the present case. The only point of difference between the AO and Ld CIT(A) relates to the amount of Rs.1140.05 crores relating to "Advance for investments", which was stated to be "Share Application Money". In the case of Aban Investments (P) Ltd (supra) and Rainy Investments (P) Ltd (supra), the Tribunal has held that the Share Application Money should not be included in the value of investments. Hence for the purpose of computing disallowance u/s 14A of the Act, the Share Application Money should be excluded. Hence the Ld CIT(A) was justified in excluding

Page 6 of 9

the same from the value of investments, following the decision rendered by jurisdictional Hon'ble Karnataka High Court in the case of Microlabs Ltd (supra). Accordingly, we do not find any reason to interfere with the order passed by Ld CIT(A) on this issue. Accordingly, the disallowance of interest expenses enhanced by the AO is set aside. Accordingly, we reject the appeal filed by the revenue.

7. In the cross objection, the assessee has raised five grounds. We found that these grounds are not related to any specific view. The Ld A.R, however, submitted that the assessee's prayer through these grounds is that the disallowance u/s 14A is not warranted. He submitted that, since the interest disallowance u/r 8D(2)(ii) of I T Rules is being considered in the appeal of the revenue, he will confine himself in the Cross Objection with the disallowance of expenses made u/r 8D(2)(iii) of I T Rules.

8. We heard the parties on the issue of disallowance made u/r 8D(2)(iii) of IT Rules. We noticed earlier that the assessee had made disallowance of Rs.25 lakhs, while the AO determined the disallowance at Rs.15,31,08,546/-. At the time of hearing, the Ld A.R took us to the various types of expenses incurred by the assessee and submitted that most of the expenses are not related to the earning of exempt income. When the bench proposed that this issue may be restored to the file of the AO to re-determine the disallowance by excluding the value of investments which did not yield exempt income while computing average value of investments, as per the decision rendered by Delhi Special bench of ITAT in the case of Vireet Investments (P) Ltd (165 ITD 27)(SB)(Delhi), he agreed to the same. The Ld D.R also agreed to the above said suggestion. Accordingly, we set aside the order passed by Ld CIT(A) on this

Page 7 of 9

issue and restore the same to the file of AO with the direction to follow the ratio of decision rendered by the Special bench in the case of Vireet Investments P Ltd (supra).

9. We shall now take up the appeal filed by the assessee. The Ld A.R submitted that the issue relating to disallowance u/s 14A of the Act has been addressed in the appeal filed by the revenue and the cross objection filed by the assessee. Accordingly, the Ld A.R submitted that the only surviving issue in the appeal of the assessee relates to the addition made while computing book profit u/s 115JB of the Act. The Ld A.R submitted that the AO has added the amount of disallowance computed by him u/s 14A r.w.r 8D to the net profit while computing book profit u/s 115JB of the Act. He submitted that this is contrary to the decision rendered by the Special bench in the case of Vireet Investments (P) Ltd (supra), wherein it was held that the disallowance made u/s 14A of the Act cannot be imported in sec.115JB of the Act.

10. The Ld D.R, on the contrary, submitted that the assessee is raising this issue for the first time before ITAT. He further submitted that the total income has been computed in the hands of the assessee under normal provisions of the Act and hence this issue is academic in nature. On the contrary, the Ld A.R submitted that this is a legal issue and further the principles should be correctly followed by the AO.

11. We heard the parties on this issue and perused the record. The issue urged by the assessee is a legal issue and the same has since been settled by the Special bench in the case of Vireet Investments (P) Ltd (supra), wherein it was held that the disallowance made u/s 14A of the Act cannot be imported in

Page 8 of 9

sec.115JB of the Act, meaning thereby, the disallowance required to be made under clause (f) of Explanation 1 to sec.115JB should be computed separately without having regard to Rule 8D of IT Rules. Even though the AO has not computed the total income u/s 115JB of the Act, yet there is merit in the contention of Ld A.R that the correct legal principles should have been followed. Accordingly, we restore this issue to the file of AO with the direction to compute the addition to be made under clause (f) of Explanation 1 to sec.115JB of the Act independently on the basis of financial statements of the assessee.

12. In the result, the appeal of the revenue is dismissed. The appeal of the assessee and the cross objection of the assessee are treated as allowed.

Order pronounced in the open court on 7th Feb, 2022.

Sd/-
(N.V. Vasudevan)
Vice President

Sd/-
(B.R. Baskaran)
Accountant Member

Bangalore,
Dated 7th Feb, 2022.
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore.