

**IN THE INCOME TAX APPELLATE TRIBUNAL "G" BENCH, MUMBAI**  
**BEFORE SHRI M. BALAGANESH, AM AND SHRI AMARJIT SINGH, JM**

आयकर अपील सं/ I.T.A. No. 5347/Mum/2019  
(निर्धारण वर्ष / Assessment Year: 2016-17)

Skill Infrastructure Ltd. 209, Skill House, Bank Street Cross Lane, Fort, Mumbai-400023.	<b>बनाम/</b> Vs.	DCIT, Range Central Circle- 6(3) Room No. 1905, 19 <sup>th</sup> Floor, Air India Building, Nariman Point, Mumbai-400021.
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आयकर अपील सं/ I.T.A. No. 5656/Mum/2019  
(निर्धारण वर्ष / Assessment Year: 2016-17)

DCIT, Range Central Circle- 6(3) Room No.1905, 19 <sup>th</sup> Floor, Air India Building, Nariman Point, Mumbai-400021.	<b>बनाम/</b> Vs.	Skill Infrastructure Ltd. 209, Skill House, Bank Street Cross Lane, Fort, Mumbai- 400023.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAHCA5892		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
Revenue by:	Shri Jayant Jhaveri (DR)	
Assessee by:	None	

सुनवाई की तारीख / Date of Hearing: 01/12/2021  
घोषणा की तारीख /Date of Pronouncement: 24/02/2022

**आदेश / O R D E R**

**PER AMARJIT SINGH, JM:**

The assessee as well as revenue have filed the above mentioned appeals against the order dated 14.06.2019 passed by the Commissioner of Income Tax (Appeals) -54, Mumbai [hereinafter referred to as the "CIT(A)"] relevant to the A.Y. 2016-17.

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2. The assessee has filed the present appeal against the order dated 14.06.2019 passed by the CIT(A)-54, Mumbai relevant to the A.Y. 2016-17.
3. The assessee has raised the following grounds: -

*"1 On facts and in circumstances of the case and in law, the CIT(A) has erred in including Long Term Capital Gain of Rs.9.02 crores on sale of listed securities as exempt income for the purposes of section 14A. In doing so the CIT(A) has further erred in rejecting the arguments of the appellant, that it being a corporate assessee, Long Term Capital Gain u/s. 10(38) though exempt in normal computation is includable for the purposes of book profits under section 115JB of the Income Tax Act. The Assessing Officer therefore be directed to restrict the 14A disallowance at Rs.1.92 lakhs, which is to the extent of dividend income earned.*

*The appellant reserves his right to add, to amend, to alter, to withdraw, to modify and/or to substitute any or, all of the foregoing ground(s) of appeal."*

4. The brief facts of the case are that the assessee filed its return of income on 07.10.2016 declaring total loss to the tune of Rs.(-) 416,22,73,683/- for the A.Y.2016-17. The return was processed u/s 143(1) of the Act. The case was selected for scrutiny. Notices u/s 143(2) & 142(1) of the Act were issued and served upon the assessee. On verification, it was found that the assessee has earned the dividend income 1,92,177/- and Long Term Capital Gain of Rs.9,02,71,940/- which was claimed as exempt. The notice was issued and after the reply of the assessee, the AO assessed the



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expenditure to earn the exempt income to the tune of Rs.131,54,01,380/-. The income of the assessee was assessed at loss to the tune of Rs.(-) 2,03,00,331/-. Feeling aggrieved, the assessee filed an appeal before the CIT(A) who restricted the addition to the extent of 9.02 crores but the assessee as well as revenue were not satisfied, therefore, filed the above mentioned appeals before us.

### **ISSUE No. 1**

5. Under this issue the assessee has challenged the restriction of addition to the extent of 9.02 crores. We find that the issue has duly been covered and is to be decided in view of the decision of Special Bench in the case of ACIT Vs. Vireet Investments Pvt. Ltd., ITA. No. 502/Del/2012 dated 16.06.2017. However, on the other hand, the Ld. Representative of the Department has refuted the said contention. It is not in dispute that the assessee has earned the dividend income to the tune of Rs.1.92 lacs however, received the capital gain to the tune of Rs. 9,02,71,940/-. The matter of controversy is liable to be viewed in the decision of Special Benches ITAT Delhi Vireet Investment Pvt. Ltd. (Supra). Accordingly, we set aside the finding of the CIT(A) on this issue and restored the issue before the AO to decide the matter of controversy afresh in view of the decision in the case of Vireet Investment Pvt. Ltd. (Supra). Needless to say that an opportunity of being heard is liable to be given to the assessee in accordance with law.

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6. The revenue has filed the present appeal against the order dated 14.06.2019 passed by the CIT(A)-54, Mumbai relevant to the A.Y. 2016-17.
7. The revenue has raised the following grounds: -

*“ I) "Whether on the facts and in the circumstances of the case and in law, the ld. CIT(A) has erred in restricting the disallowance to Rs 9,04,64,117/- from the addition of Rs 117,37,00,000/- made by the A.O u/s 14A of the Income Tax Act, 1961, thereby granting relief of Rs.108,32,35,883/-, ignoring that the provisions of Section 14A apply even if whether the motive of the assessee in acquiring shares is to obtain controlling interest in the company?"*

*"Whether on the facts and in the circumstances of the case and in law, the ld. CIT(A) has erred in restricting the addition u/s 14A of the Income Tax Act, 1961 by ignoring the CBDT Circular No. 5/2014 dated 11.02.2014 wherein, it has been clarified that Rule 8D r.w.s 14A provides for disallowance of expenditure even where the assessee in particulars has not earned exempt income.”*

8. Since the facts of the present case are quite similar to the facts of the case mentioned above while deciding the appeal of the assessee bearing ITA. No.5347/Mum/2019, therefore, there is no need to repeat the facts of the case. In view of the above said finding, both the issues are hereby restore to the AO to decide the matter of controversy afresh in view of the decision in the case of Vireet Investment Pvt. Ltd. (Supra).



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9. In the result, the appeals filed by the assessee and revenue are allowed for statistical purposes.

Order pronounced in the open court on 24/02/2022

Sd/-  
(M. BALAGANESH)

लेखा सदस्य / ACCOUNTANT MEMBER  
मुंबई Mumbai; दिनांक Dated : 24/02/2022  
Vijay Pal Singh (Sr. PS)

Sd/-  
(AMARJIT SINGH)

न्यायिक सदस्य/JUDICIAL MEMBER

**आदेश की 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