

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
MUMBAI BENCH "E", MUMBAI**

**BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER  
AND  
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER**

**ITA No.2509/M/2012  
Assessment Year: 2008-09**

ACIT 2(3), Room No.552, 5 <sup>th</sup> Floor, Aayakar Bhavan, M.K. Marg, Mumbai - 400020	Vs.	M/s. Trent Ltd., Bombay House, 24, Homi Mody Street, Fort, Mumbai – 400 001 <b>PAN: AAACL 1838J</b>
(Appellant)		(Respondent)

**ITA No.3423/M/2012  
Assessment Year: 2009-10  
&  
ITA No.1500/M/2018  
Assessment Year: 2013-14**

M/s. Trent Ltd., Bombay House, 2 <sup>nd</sup> Floor, 24, Homi Mody Street, Fort, Mumbai – 400 001 <b>PAN: AAACL 1838J</b>	Vs.	ACIT(OSD) 2(3) / ITO, Ward-2(3)(3), Room No.556, Aayakar Bhavan, M.K. Road, Churchgate, Mumbai - 400020
(Appellant)		(Respondent)

**Present for:**

Assessee by : Shri Nitesh Joshi, A.R.  
Revenue by : Shri B.K. Bagchi, D.R.

Date of Hearing : 02.03.2022  
Date of Pronouncement : 22.03.2022

**ORDER****Per Kuldip Singh, Judicial Member:**

Aforesaid cross appeals have been recalled by the Tribunal vide order dated 05.01.2022 passed in MA No.20/M/2021 arising out of ITA No.2509/M/2012 for A.Y. 2008-09, MA No.21/M/2021 arising out of ITA No.3423/M/2012 for A.Y. 2009-10 & MA No.22/M/2021 arising out of ITA No.1500/M/2018 for A.Y. 2013-14 to decide the grounds which the Tribunal omitted to decide due to inadvertence.

2. For the sake of brevity aforesaid cross appeals bearing common question of law and facts are being disposed of by way of composite order.

3. Appellant M/s. Trent Ltd. (hereinafter referred to as the assessee) and appellant ACIT 2(3), Mumbai (hereinafter referred to as the Revenue) by filing aforesaid cross appeals sought to set aside the impugned orders dated 09.01.2012, 19.04.2012, 29.01.2018 for A.Y. 2008-09, 2009-10 & 2013-14 respectively passed by Commissioner of Income Tax

(Appeals) [hereinafter referred to as the Ld. CIT(A)], on the grounds inter alia that:

**ITA No.2509/M/2012 (Revenue's appeal)**  
**for A.Y. 2008-09**

*“On the facts and in the circumstances of the case and in law, the learned CIT(A) has erred in allowing relief to the assessee to the extent impugned in the grounds enumerated below:*

- 1. On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in restricting the disallowance u/s.14A r.w.r. 8D ignoring the fact that Rule 8D is applicable from A.Y. 2007-08.*
- 2. On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in treating interest on margin money, interest on loans to employees, interest on day to day balance with bank in current account, interest on blocked amount and as business income without appreciating the fact that the same were not immediately linked to the business of the assessee.*
- 3. For these and other grounds that may be urged at the time of hearing, the decision of the CIT(A) may be set aside and that of the AO restored.”*

**ITA No.3423/M/2012 (Assessee's appeal)**  
**for A.Y. 2009-10**

*The Appellant submits that each of the following grounds of appeal is independent of and without prejudice to one another:*

- 1) The Commissioner of Income Tax (Appeals) [CIT(A)] erred in confirming the disallowance made by Assessing Officer (AO) for depreciation claim of Rs.210,938/- on intangible assets -non-compete fees.*

2) *The CIT (A) erred in confirming the disallowance of Rs.147,635/- (i.e. 1/5th of Rs.738,189/-) incurred towards preferential issue of shares claimed u/s 35D of the Act.*

3) *The CIT(A) erred in confirming the disallowance of Rs.185,640/- (i.e. 1/5th of Rs.928,198/-) towards warrant issue claimed u/s 35D of the Act.*

4) *The CIT(A) erred in confirming the disallowance of Rs.20,95,679/- (i.e. 1/5th of Rs.10,478,393/-) incurred in AY 2008-09 towards issue of equity shares on right basis claimed u/s 35D of the Act.*

5) *The CIT(A) erred in confirming the disallowance of Rs.163,225/- (i.e. 1/5th of Rs.816,129/-) incurred in AY 2008-09 towards issue of equity shares to promoters claimed u/s 35D of the Act.*

6) *The CIT(A) erred in confirming the disallowance of Rs.71,000/- (i.e. 1/5th of Rs.355,000/-) incurred in AY 2008-09 towards issue of warrants to promoters claimed u/s 35D of the Act.*

7) *The CIT(A) erred in not deleting the disallowance made by AO in respect of commission paid u/s 36(l)(ii) to the extent of Rs.9,359/- in case of Mr. K.N.Suntook, Director of the company on the ground that they hold equity shares of the company.*

8) *The CIT(A) erred in confirming the interest income of Rs.8,63,99,000/- would be taxed under the head income from other sources and not as business income as offered by the appellant.*

*The Appellant craves leave to add to, alter, amend, substitute and/or vary any of the above grounds of appeal before or during the course of hearing of the appeal.”*

**ITA No.1500/M/2008 (Assessee's appeal)**  
**for A.Y. 2013-14**

*“The Appellant Company submits that each of the following grounds of appeal is independent of and without prejudice to one another:*

*1) The Commissioner of Income Tax (Appeals) [CIT(A)] erred in confirming the disallowance made by Assessing Officer (AO) for depreciation claim of Rs.66,742/- on intangible assets - non-compete fees.*

*2) The CIT(A) erred in applying Rule 8D (2)(iii) towards disallowance of administrative expenses u/s 14A of the Act without giving any reasons for not accepting disallowance offered by Appellant towards 14A.*

*3) The CIT (A) erred in confirming disallowance of Rs.37,65,576/- (i.e. 1/5th of Rs.18,827,878/-) incurred in AY 2011-12 towards issue of CCPS on right basis claimed u/s 35D of the Act.*

*4) The CIT (A) erred in confirming disallowance of Rs.99,39,752/- (i.e. 1/5th of Rs.4,96,98,760/-) incurred in AY 2012-13 towards issue of CCPS on right basis claimed u/s 35D of the Act.*

*5) The CIT (A) erred in confirming the interest income of Rs.23,17,37,000/- being taxed under the head 'Income from other sources' and not as 'business income' as offered by the Appellant.*

*6) The CIT(A) erred in disallowing u/s 36(l)(ii) commission of Rs.4,00,000/- paid to Mr. K.Suntook director of the company.*

*The Appellant craves leave to add to, alter, amend, substitute and/or vary any of the above grounds of appeal before or during the course of hearing of the appeal.”*

**ITA No.2509/M/2012 for A.Y. 2008-09**

4. Tribunal has passed the order dated 05.01.2022 in MA No.20/M/2021 (supra) and recalled the appeal for limited purpose to dispose of additional ground No.2 raised by the Revenue, which are as under:

*“Ground No.2 – On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in treating interest on margin money, interest on loans to employees, interest on day to day balance with bank in current account, interest on blocked money and interest income on margin money / FDR as business income without appreciating the fact that the same were not immediately linked to the business of the assessee.”*

5. Assessing Officer (AO) during the scrutiny proceedings noticed from schedule No.3 forming part of the accounts that the assessee has credited inter alia the sums under the head “Other income” as under:

Sr.No.	Sub-head	Amount (Rs. In lacs)
1	Miscellaneous Income	150.49
2	Interest on loans & advances	228.24
3	Interest on bank deposits with banks	39.67

6. The assessee was showcaused to explain as to why the aforesaid sum should not be treated as income under the head “Income from other sources”.

7. Declining the contentions raised by the assessee the AO proceeded to treat the interest of Rs.2,28,24,000/- and

Rs.39,67,000/- on loans and advances and on bank deposits respectively as assessee's income from other sources.

8. Ld. CIT(A) decided this issue in favour of the assessee by returning the following findings:

***“9. Ground No.7 is regarding treating the interest income under the head ‘income from other sources’. This issue was examined in the appeal order for A.Y.2007-08 dated 15.07.2011 Para 9 to Para 9.3 Pages 5 to 8, following the same, the AO is directed to treat the interest on margin money at Rs.13.44 Lacs, interest on loans to employee at Rs.4.01 lacs, interest on day to day balance with bank in current account at Rs.53.23 lacs and interest on blocked account at Rs. 5.71 lacs as business income and the AO’s action to treat all other interests as ‘income from other sources’ is confirmed.”***

9. At the very outset, it is brought to the notice of the Bench by the Ld. A.R.s for the parties to the appeal that there is no impact of this addition on the assessed income of the assessee. This issue is academic one, hence not pressed by the Ld. A.R. for the assessee. The identical issue was there in assessee's own case for A.Y. 2007-08 decided in ITA No.5775/M/2011 vide order dated 15.07.2020 by returning the following findings:

***“73. Coming to Ground No. 11 of grounds of appeal relating to confirming the interest disallowance on the loans given to subsidiaries, interest on Income-tax refund and interest on warrants conversion, application money, taxed under the income from other sources instead of business income. Ld. Counsel for the assessee submitted***

*that this ground is not pressed as there is no impact on the assessed income and hence academic. In view of the submissions of the Ld. Counsel for the assessee this ground is treated as not pressed. Further, we keep the issue open and the decision taken for this assessment year shall not be treated as precedent for later years. This ground is dismissed as indicated above.”*

10. So in view of the matter, we are of the considered view that since the income under consideration is tax neutral and assessee has not pressed this ground being academic in nature, the same is dismissed. However, this issue is kept open and the decision taken for the year under consideration shall not be treated as precedent for the later years.

**ITA No.3423/M/2012 A.Y. 2009-10**

11. Tribunal has passed the order dated 05.01.2022 in MA No.21/M/2021 (supra) and recalled the appeal for limited purpose to dispose of additional grounds No.1 & 2 raised by the Revenue, which are as under:

*“Additional Ground 1: The Hon'ble Commissioner of Income-tax (Appeals) erred on facts and in law in upholding the action of the learned Assessing Officer in making upward adjustment of disallowance computed under section 14A of the Act, read with Rule 8D of the Rules, while computing 'book profit' under section 115JB of the Act.*

***Additional Ground 2: On the facts and in the circumstances of the case and in law, considering that the disallowance computed under section 14A of the Act read with Rule 3D of the Rules does not represent actual expenditure incurred for earning exempt income,, the same should not be added back while computing 'book profit' under section 115JB of the Act”.***

12. The Ld. CIT(A) made upward adjustment of disallowance made by the assessee computed under section 14A of the Act read with Rule 8D of the Income Tax Rules (for short ‘the Rules) while computing the book profit under section 115JB of the Act which is under challenge before the Tribunal by way of raising additional grounds.

13. The Ld. A.R. for the assessee contended that when the computation made by the assessee for the purpose of disallowance under section 14A of the Act read with rule 8D of the Rules has been accepted by the Tribunal while deciding ground No.1 & 2 in the first round of litigation vide order dated 15.07.2020 passed in the present appeal upward adjustment of the disallowance computed under section 14A read with Rule 8D while computing the book profit under section 115JB of the Act is not sustainable as has already been held by the Tribunal in assessee’s own case in the earlier years.

14. Undisputedly, the Tribunal while deciding ground No.1 & 2 has accepted the computation made by the assessee for making disallowance under section 14A by returning the following findings:

***“80. We have heard the rival submissions, perused the orders of the authorities below. The Ld. CIT(A) restricted the disallowance to the suomoto disallowance made by the assessee observing as under: -***

***“3.2. I have gone through the order of the AO which contains detailed submission of the appellant and also detailed submission from pages 3 to 14 of the written submission filed vide letter dated 30.12.2011.***

***3.2.1. The appellant has considered the entire salary of Investment Manager of 15.8 lacs, 10% of salary of General Manager at 3.89 lacs, entire sitting fee paid to Investment Committee at 55,000/-, 5% of MD Remuneration at ₹.7.68 lacs, 5% commission paid to none executive directors ₹.1.53 Lacs, 5% of directors' fee at ₹.28,900/-, other administrative expense at T 3.25 lacs and interest expense at ₹. 3.73 Lacs totaling ₹.35,90,326/-. As may be seen from Para 3.2 of the assessment order quoted above, the AO has not given any cogent reason for not being satisfied with the claim of the appellant. The AO had further erred in disallowing employees' cost and miscellaneous expense at ₹.1.86 Crores over and above the disallowance computed as per Rule 8D, specially on account of the fact that Rule 8D (iii) itself provides for disallowance of administrative expense in form of 0.5% of the average value of investment. As the appellant's computation of disallowance u/s.14A is satisfactory, the disallowance u/s,14A is restricted to ₹.35,90,326/- and the disallowance by the AO is deleted.”***

***81. We also further noticed from the Assessment Order that, the assessee has made elaborate submissions and a detailed computation of the expenditure attributable for earning exempt income which is said to be consistent method of computation on a scientific basis made from the A.Y.2006-07. We further find that even though the Assessing Officer extracted the elaborate submissions and the computation of disallowance made by the assessee, there is no satisfaction recorded by the Assessing Officer as to why the suomoto computation of disallowance of expenses made by the assessee is not satisfactory having regard to the Books of Accounts of the assessee and the correctness of the claim of expenditure made by the assessee. The Ld.CIT(A) while disposing off the appeal for the A.Y. 2007-08 has examined the issue elaborately and accepted that the computation of disallowance made by the assessee (suomoto disallowance) is on a scientific basis. While dealing with the appeal for the A.Y. 2007-08 we have accepted the computation of the assessee since it is more scientific than the adhoc disallowance made by the Assessing Officer. Even though the provisions of Rule 8D are applicable for the year under consideration i.e. A.Y.2008-09 in the absence of any satisfaction recorded by the Assessing Officer as to why the suomoto disallowance made by the assessee is not acceptable having regard to the Books of Accounts of the assessee and the correctness of the claim of expenditure made by the assessee, we accept the suomoto disallowance made by the assessee as the computation of disallowance made by the assessee is on a scientific basis and is in consistent with the same method as adopted consistently from the A.Y. 2006-07 onwards. In the circumstances, we sustain the order of the Ld.CIT(A) and direct the Assessing Officer to adopt the suomoto disallowance made by the assessee for computing the disallowance u/s. 14A of the Act. Grounds raised by the revenue are dismissed.”***

15. Now the Ld. A.R. for the assessee contended that the issue as to restricting the disallowance under section 14A while computing

the assessment is also applicable while computing the book profit under section 115JB of the Act as this has already been decided in favour of the assessee by the Tribunal in assessee's own case for A.Y. 2007-08.

16. We have perused the relevant paras from 57 to 59 of the order (supra) passed by the co-ordinate Bench of the Tribunal in assessee's own case for A.Y. 2007-08 which is on identical issue having been decided in favour of the assessee, which fact has not been controverted by the Ld. D.R. for the Revenue. Operative part of the findings returned by the Tribunal is as under:

*“58. Ld. Counsel for the assessee submits that the assessee has disallowed an amount of ₹.35,07,020/- as expenditure incurred towards earning exempt income while computing its book profit taxable under section 115JB of the Act. The expenses disallowed pertain to those incomes which are exempted/ excluded while computing book profit under section 115JB of the Act. The Assessing Officer has applied Rule 8D of I.T. Rules to compute the disallowance u/s. 14A of the Act at ₹.3,71,34,919/- and added back the same to the assessee's income taxable under normal provisions of the Act, as well as to the book profit under section 115JB of the Act. Ld. Counsel for the assessee further submits that disallowance computed u/s. 14A of the Act r.w. Rule 8D of I.T. Rules is not the actual expenditure incurred by the assessee for earning exempt income, but is a notional amount, which has not actually been debited to the assessee's profit and loss account. Hence, the same cannot be added back while computing book profit under section 115JB of the Act. Ld. Counsel for the assessee submits that the amount to be added back to book profits should be restricted to actual expenditure incurred to earn the exempt dividend income. In support of the above contentions Ld. Counsel for the assessee relied on following decisions: -*

- i) *Vireet Investment (P.) Ltd [2017] 82 taxmann.com 415 (Delhi - Trib.) (Special Bench)*

- ii) *Bombay Dyeing & Mfg. Co. Ltd. [2017] 87 taxmann.com 213 (Mumbai Tribunal)*
- iii) *Piramal Enterprises Ltd. [2018] 97 taxmann.com 352 (Mumbai Tribunal)*
- iv) *Reliance Natural Resources Ltd. [2017] 85 taxmann.com 128 (Mumbai Tribunal)*

***59. Heard rival submissions. As the additional ground being purely a legal ground the same is admitted. We further observe that this issue has been decided by the Hon'ble Special Bench of Delhi in the case of Vireet Investment Pvt. Ltd., (supra) wherein it has been held that computation under clause (f) of explanation 1 to section 115JB(2) is to be made without resorting to computation as contemplated u/s. 14A r.w. Rule 8D of the Act. Thus, in view of the decision of the Hon'ble Special Bench the claim of disallowance as computed under Rule 8D cannot be made while computing the book profits. We further find that the assessee himself disallowed an amount of ₹.37,07,020/- as expenditure incurred towards earning exempt income while computing its book profits u/s. 115JB(2) of the Act. Further, we observed that the assessee while computing the income under normal provisions of the Act had made suomoto disallowance u/s. 14A at ₹.37,66,085/-, as this computation of suomoto disallowance was made on a scientific basis we feel it appropriated to adopt the same even while computing the book profits u/s. 115JB of the Act. Thus, we direct the Assessing Officer to restrict the disallowance u/s.14A to ₹.37,66,085/- while computing the book profits u/s. 115JB of the Act. This ground is partly allowed.”***

17. So in view of what has been discussed above and by following the order passed by the Tribunal in assessee's own case for A.Y. 2007-08, we are of the considered view that when the assessee while computing the income under normal provisions of the Act had made suo moto disallowance of Rs.26,65,237/- which has been upheld by the Tribunal vide order dated 15.07.2020 (supra) for A.Y. 2009-10 the same has to be adopted even while computing the book profit under section 115JB of the Act. So we

direct the AO to restrict the disallowance under section 14A to Rs.26,65,237/- while computing the book profit under section 115JB of the Act. Consequently, additional grounds No.1 & 2 raised by the assessee are decided in favour of the assessee.

**ITA No.1500/M/2018 A.Y. 2013-14**

18. Tribunal has passed the order dated 05.01.2022 in MA No.22/M/2021 (supra) and recalled the appeal for limited purpose to dispose of additional ground No.5 raised by the Revenue, which is as under:

***“The CIT(A) erred in confirming the interest income of Rs.23,17,37,000/- being taxed under the head ‘Income from other sources’ and not as ‘business income’ as offered by the Appellant.”***

19. The AO during the scrutiny proceedings noticed from the notes forming part of the profit & loss account (note 2.2) that the assessee has credited the same under the head “other income” as under:

Sr. No.	Sub-head	Amount (Rs. in Crores)
1.	Interest on loans & advances	23.72
2	Interest/discount on bank deposits with Banks	5.08

20. The assessee was called upon to explain as to why the interest income of Rs.28.80 crore included by the assessee under the head “income from business” be treated as “income from other sources”. Declining the contentions raised by the assessee the AO proceeded to treat the income of Rs.23,17,37,000/- under the head “income from other sources” and not as “Business income” as offered by the assessee for the purpose of taxation. The Ld. CIT(A) upheld the addition made by the AO.

21. At the very outset the Ld. A.R. for the assessee contended that this issue being academic in nature is not pressed as the same is tax neutral and further contended that this issue has already been decided in favour of the assessee in its own case for A.Y. 2007-08 (supra).

22. We have perused the order passed by the co-ordinate Bench of the Tribunal in ITA No.5775/M/2011 A.Y. 2007-08 vide order dated 15.07.2020 wherein the Tribunal dismissed the ground raised by the Revenue by returning the following findings:

***“73. Coming to Ground No. 11 of grounds of appeal relating to confirming the interest disallowance on the loans given to subsidiaries, interest on Income-tax refund and interest on warrants conversion, application money, taxed under the income from other sources instead of business income. Ld. Counsel for the assessee submitted***

*that this ground is not pressed as there is no impact on the assessed income and hence academic. In view of the submissions of the Ld. Counsel for the assessee this ground is treated as not pressed. Further, we keep the issue open and the decision taken for this assessment year shall not be treated as precedent for later years. This ground is dismissed as indicated above.”*

23. So in view of the matter, we are of the considered view that since the income under consideration is tax neutral and assessee has not pressed this ground being academic in nature, the same is dismissed. However, this issue is kept open and the decision taken for the year under consideration shall not be treated as precedent for the later years.

24. In view of what has been discussed above the aforesaid cross appeals filed by the Revenue in ITA No.2509/M/2012 A.Y. 2008-09 is hereby allowed, appeal filed by the assessee in ITA No.1500/M/2018 for A.Y. 2013-14 is dismissed and appeal filed by the assessee in ITA No.3423/M/2012 for A.Y. 2009-10 is partly allowed.

**Order pronounced in the open court on 22<sup>nd</sup> March 2022.**

**Sd/-**  
**(GAGAN GOYAL)**  
**ACCOUNTANT MEMBER**  
Mumbai, Dated: 22/03/2022.

**Sd/-**  
**(KULDIP SINGH)**  
**JUDICIAL MEMBER**

Copy to: The Appellant  
The Respondent  
The CIT, Concerned, Mumbai  
The CIT (A) Concerned, Mumbai  
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.