

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "SMC": NEW DELHI****BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER****ITA No. 152/DEL/2021**  
**[Assessment Year: 2016-17]**

Vikas Multicorp Limited, G1, 34/1, East Punjabi Bagh, New Delhi0110026	<u>Vs</u>	Income-tax Officer, Ward-26(3), New Delhi.
PAN- AADCA5571A		
<b>APPELLANT</b>		<b>RESPONDENT</b>
<b>Appellant by</b>		<b>Shri Baldev Raj, CA</b>
<b>Respondent by</b>		<b>Sh. Sanjiv Mahajan, Sr. DR</b>
<b>Date of hearing</b>		<b>25.01.2022</b>
<b>Date of pronouncement</b>		<b>30.03.2022</b>

**ORDER****PER KUL BHARAT, JM:**

This appeal, by the assessee, is directed against the order of the learned Commissioner of Income-tax (Appeals)-36, New Delhi, dated 22.09.2020, pertaining to the assessment year 2016-17. The assessee has raised following grounds of appeal:

*"1. That on the facts and circumstances of the case, the order dated 29/12/2018 as passed by the Income-tax Officer, Ward26(3), New Delhi [hereinafter referred to as "the A.O."] under section 143(3) of the Income-tax Act [hereinafter referred to as "the Act"] and as upheld by the*

*Commissioner of Income-tax (Appeals)-36, New Delhi [hereinafter referred to as "the CIT(A)"] is bad at law and void ab initio.*

2. *That on the facts and circumstances of the case, the Ld. CIT(A) not disposed of the following additional grounds of appeal raised during the Appellate proceeding.*

*“That disallowance made of Rs. 22,89,790/- by invoking section 14A of the Act read with Rule 8D of the Income Tax Rules, 1962 both to the determination of total income under the normal provision of the Act and adjustment made to the book profit u/s 115J of the Act in excess of scope of assessment in respect of return selected for limited scrutiny under CASS and, therefore without jurisdiction.”*

3. *That on the facts and circumstances of the case, the Ld. CIT(A) erred in law and on facts in upholding the disallowance of Rs. 22,89,710 made by the Ld. AO u/s 14A of the Act read with rule 8D of the Act rules*

4. *That on the facts and circumstances of the case, the Ld. CIT(A) erred in law and on facts in uphold the addition of Rs 22,89,710 in Book profit made as per Clause (f) of explanation 1 to sec 115JB of the IT Act.*

5. *That on the facts and circumstances of the case, the Ld. CIT(A) erred in law and on facts in uphold the interest charged of u/s 234B and C of the Act.*

6.1 *All the above mentioned grounds are without prejudice and independent of each other; and*

6.2 *That the appellant prays for leave to add, alter, amend and / or vary the ground(s) of appeal at or before the time of hearing.”*

2. The facts giving rise to the present appeal are that in this case return of income was electronically filed on 7.10.2016, declaring income of Rs. 4,11,710/-. The case was subsequently selected for limited scrutiny to examine whether the receipt of foreign remittance had been correctly offered for tax; whether outward foreign remittance was from disclosed sources and appropriate with-holding and

reporting obligations had been complied with; and whether deduction claimed on account of interest expenses was admissible. The Assessing Officer, while framing the assessment u/s 143(3) of the Income-tax Act, 1961, hereinafter referred to as the "Act", noticed that the assessee was engaged in the business of trading of plastic raw materials in the primary form and during the year the assessee had shown investment of Rs. 45,11,31,297/- and earned dividend income of Rs. 1,05,86,551/-. The assessee did not make any disallowance regarding the expenditure for earning the income, which was not forming part of total income. Hence, the Assessing Officer invoked the provisions of Section 14A and by applying Rule 8D disallowed a sum of Rs. 22,89,790/-. Further, the Assessing Officer noticed that the interest paid for prior filled of BOE of Rs. 2,644/- and interest on service tax, sales tax of Rs. 20,993/- was not allowable expenditure. Therefore, he made addition of Rs. 23,637/- in this regard. The Assessing Officer, therefore, assessed the total income at Rs. 27,25,057/- and assessed book profit u/s 115JB of Rs. 85,50,886/-, after adding the disallowance made u/s 14A of the Act.

3. Aggrieved against this, the assessee preferred appeal before the learned CIT(Appeals). The learned CIT(Appeals), after perusing the facts on record and the submissions of the parties, dismissed the appeal and confirmed the action of the Assessing officer. Aggrieved, against this, the assessee is in appeal before the Tribunal.

4. Ground nos. 1 to 4 are against making the impugned addition by invoking provisions of Section 14A of the Act.

5. Learned counsel for the assessee submitted that the Assessing Officer exceeded his jurisdiction by invoking the provisions of Section 14A without having any authority of law. He submitted that the authorities below failed to appreciate the fact that the case was taken up for limited scrutiny and ex-facie issue of disallowance u/s 14A was not one of the items for which case was taken up for scrutiny. Learned counsel pointed out that qua the interest expenditure Assessing Officer did not make any disallowance. This fact itself demonstrates that no interest expenditure was disallowed u/s 14A of the Act. Learned counsel for the assessee further reiterated the submissions as made in the written synopsis.

6. On the contrary, learned DR opposed the submissions and supported the orders of the authorities below. He contended that the submission of the assessee that the Assessing Officer exceeded his jurisdiction by making disallowance u/s 14A is incorrect. He contended that one of the items was with regard to the disallowance of interest expenditure that falls within the scope of limited scrutiny. Hence, the Assessing Officer was justified in invoking the provisions of Section 14A for considering the disallowance relating to interest expenditure. He submitted that merely because that the Assessing Officer has not made any disallowance in

respect of the interest u/s 14A would not make the invocation of Section 14A illegal.

7. In rejoinder the learned counsel for the assessee submitted that even otherwise the case of the assessee is covered by the decision of the Special Bench in the case of ACIT Vs. Vireet Investment P. Ltd., in ITA no. 502/Del/2012.

8. I have heard rival submissions perused the material on record. I find that the learned CIT(Appeals) has decided the issue by observing as under:

*“I have considered the findings of the AO, written submission and oral arguments made by the appellant during course of appellate proceedings and material available on record. Section 14A(1) stipulates that for the purpose of computing the total income under Chapter IV, no deduction should be allowed in respect of the expenditure “incurred” by the assessee “in relation to” an income which does not form part of total income under the Income Tax Act.*

*6.1. It is pertinent to note that as per section 14A sub-clause (2) of the Act, if the AO is not satisfied with the correctness of claim of tax payer, of the expenditure related to exempt income, then the AO should calculate the expenditure by applying Rule 8D of the Income Tax Rules. It may be stated here that the issue arising of application of section 14A and Rule 8D now stand settled by Godrej and Boyce Mfg. Ltd vs. DCIT (2010) 43 DTR 177 (Bom) in which it was decided that the provisions of Rule 8D are not ultra vires the provisions of section 14A and do not offend Article 14 of the constitution. Further, in view of the clear enunciation in Memorandum explaining the provisions of the Finance Bill, 2006 and further clarification by CBDT vide Circular No. 14 of 2006, sub section(2) of section 14A is applicable from A.Y. 2007-08 onwards. The Hon. Bombay High Court in the case of Godrej and Boyce Mfg. Ltd, has held that the provisions of Rule 8D shall apply w.e.f. A.Y. 2008-09. Therefore, it is evident that all expenses connected with the exempt income have to be disallowed u/s. 14A regardless*

*of whether they are direct or indirect, fixed or variable and managerial or financial in accordance with law. It is further evident that deduction in respect of expenditure relating to exempted income has to be determined as per the mechanism laid down in sub-section (B) of section 14A and the method as prescribed under Rule 8D. Therefore, the Assessing Officer was justified in invoking the provisions of Rule 8D.*

6.2. *If one reads subsection (3) along with subsection (2), it simply means that in a case where the assessee claims that no expenditure has been incurred in respect of the exempt income, the AO shall determine the amount of expenditure incurred in relation to such income in accordance with the method as may be prescribed in view of the provisions of subsection (2). Therefore, since from A.Y. 2008-09, rule 8D is applicable, the AO shall be free to compute the disallowance of expenditure as per this rule in respect of the exempt income in all such cases where the assessee claims that no expenditure has been incurred in respect of the said income and no suo-moto disallowance of expenditure has been made by the assessee. This is quite logical as well, because it cannot be the case of any investor that he has not incurred even a single penny for making such investment and earning of exempt income there-from. This is exactly the case of the appellant, where accounts are kept on a mixed fund basis, and for the purpose of investment in shares, mutual funds etc, separate accounts have not been kept. Although the appellant has given a number of arguments based on the facts of its case, still, in spite of that, due to reasons cited above, it cannot be accepted that the appellant has not incurred even a single penny for making investment, maintaining the investment portfolio and thereby earning exempt income. Even if the requirement, of AO's satisfaction in this regard is considered necessary, the very knowledge of the fact on the part of the AO that the appellant has not disallowed any expenditure suo-moto was sufficient for her to compute the disallowance under rule 8D read with section 14a of the Act.*

6.3. *The Hon'ble Special Bench of ITAT Mumbai in Daga Capital Management (P) Ltd 26 SOT 603(Mum) has held as under:*

*Section 14A is wide enough to cover all types of expense direct as well as indirect*

*The word 'in relation to' used in Section 14A are very broad expression*

*Section 14A applies to even incidental exempt income*

*Section 14A would be applicable even if there is no direct and proximate connection between the exempt income and expenditure.*

*Taking into consideration the findings of the AO during the course of assessment proceedings and submissions of the appellant during the course of appellate proceedings, the disallowance made by the AO for an amount of Rs. 22,89,790/- in income and consequently under 115JB is hereby confirmed and appeal of the assessee on these grounds is dismissed.*

9. It is noteworthy that the objections of the assessee against the impugned assessment before the learned CIT(Appeals) was that Assessing officer exceeded his jurisdiction by entering into the issue of disallowance u/s 14A, which was beyond the scope of limited scrutiny; Assessing Officer did not record his satisfaction having regard to the accounts of the assessee as contemplated u/s 14A(2) of the Act; and the Assessing Officer ignored the provisions of Section 115JB of the Act by making addition into book profit.

10. It is evident from the order of the learned CIT(Appeals) that he has not adverted to the case laws as relied by the assessee while adjudicating the objections of the assessee. Looking to the facts of the present case I find merit into the contention of the assessee that the Assessing Officer ought to have recorded his satisfaction regarding interest expenditure relating to exempt income. If the assessee had not incurred any interest expenditure for earning of interest income in

that event no disallowance could be made and such action was beyond the scope of limited scrutiny, in the light of the decision of the co-ordinate Bench rendered in the case of Dev Milk Foods Pvt. Ltd. vs. Addl. CIT ITA no. 6767/Del/2019 dated 12.06.2020. Therefore, in my considered view the learned CIT(Appeals) was not justified in sustaining the addition under the facts and circumstances of the present case. The AO is hereby directed to delete the additions. The grounds raised in this appeal are allowed.

11. Appeal of the assessee is allowed.

**Sd/-**  
**(KUL BHARAT)**  
**JUDICIAL MEMBER**

**Dated: 30/03/2022.**

**\*MP\***

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT, NEW DELHI