

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI B BENCH, MUMBAI**

**[Coram: Pramod Kumar (Vice President),  
and Aby T Varkey (Judicial Member)]**

ITA No. 528/Mum/2022  
Assessment year: 2016-17

**Assistant Commissioner of Income Tax,  
Circle 3(1)(1), Mumbai** ..... **Appellant**

**Vs.**

**Bajaj Capital Ventures P. Ltd.,** ..... **Respondent**  
*106-107, 10<sup>th</sup> Floor, Bajaj Bhawan, Jamnalal Bajaj Marg,  
Nariman Point, Mumbai 400 021 [PAN: AAACA3565F]*

CO No.: 76/Mum/ 2022  
Arising out of ITA No. 528/Mum/20122  
Assessment year 2017-18

**Bajaj Capital Ventures P. Ltd.,** ..... **Appellant**  
*106-107, 10<sup>th</sup> Floor, Bajaj Bhawan, Jamnalal Bajaj Marg,  
Nariman Point, Mumbai 400 021 [PAN: AAACA3565F]*

**Vs.**

**Assistant Commissioner of Income Tax,  
Circle 3(1)(1), Mumbai** ..... **Respondent**

**Appearances by:**

**Kirit Kamdar** *for the appellant*

**Dr. Mahesh Akhade** *for the respondent*

Date of concluding the hearing : 27/06/2022

Date of pronouncing the order : 29/06/2022

**O R D E R**

**Per Pramod Kumar VP**

1. These cross appeals are directed against the order dated 29<sup>th</sup> November 2021 passed by the learned CIT(A) in the matter of assessment under section 143(3) of the Income Tax Act, 1961, for the assessment year 2016-17.

2. Grievances raised by the parties are as follows:-

(A) *Grievances raised by the assessee*

1. *On the facts and in the circumstances of the case and in law, the respondent prays that no disallowance ought to be made in absence of earning of any exempt income.*

2. *Without prejudiced to ground 1 above, on the facts and in the circumstances of the case and in law, the respondent prays that in case the disallowance under section 14A is to be made in accordance with Rule 8D as prayed by the Department, then the disallowance under section Rule 8D(3) ought to be restricted to Rs. 9,87,978/- basis the working of disallowance accepted by the Department in the past assessment year.*

(B) *Grievance raised by the Assessing Officer.*

1 *“On the facts the circumstances of the case and in law, whether the Ld. CIT(A) was justified in deleting the disallowance made by the Assessing Officer on account of expenditure (incurred in relation to exempt income) u/s. 14 r.w.Rule 8D of the Income Tax Act, 1961, without considering the decision of the Hon’ble ITAT, Special Bench, Mumbai in the case of Daga Capital Management Pvt Ltd, decision of the Hon’ble Bombay High Court in Writ Petition No. 785 of 2010 in ITA 626/10 in the case of Maxopp Investment Ltd, 91 Taxmann.com 154 in the Civil Appeal no 1423 of 2015 filed by Avon Cycles Ltd, Ludhiana.”*

3. As both the sets of grievances are interconnected, we will take them up together.

4. To adjudicate on these grievances, only a few material facts need to be taken note of. During the course of scrutiny assessment proceedings, it was noticed that the assessee is holding investments in shares, which are for the purpose of earning dividend income, but no disallowance is made u/s. 14A for expenses incurred to earn this tax exempt income. The Assessing Officer, accordingly, proceeded to make the disallowance under rule 8D read with

Section 14A which worked out to Rs. 11,87,85,293. Aggrieved, assessee carried the matter in appeal before the CIT(A) who restricted the disallowance to Rs. 9,87,978 by observations, *inter alia*, as follows:-

6.2 I have considered the assessment order and the submission of the appealnt. The issue regarding applicability of section 14A read with rule 8D of the Income Tax Rules, 1962 has been the subject matter of incessant litigation on almost every issue, involved, i.e. whether a disallowance can be made when no exempt income has been earned during the year, whether the satisfaction has been correctly recorded by the AO regarding the correctness of the claim and in respect of such expenditure incurred in relation to exempt income, whether share application money is to be considered as investment, whether investment in subsidiary company or joint ventures can be said to be made with a view of earn exempt income etc. In the present case the admitted fact is that no dividend income or any other exempt income has been earned during the year under consideration. The present legal position established by the Delhi High Court in the case of *Cheminvest Ltd.* (61 taxmann.com 118), which has also been relied upon by the appellant, is that no disallowance can be made if no exempt income has been earned during the year. Recently, in the case of *Commissioner of Income Tax, (Central) 1 vs. Chettined Logistics (P) Ltd.* [(2018) 95 taxmann 250 (SC)1, the Hon'ble Supreme Court have dismissed the SLP against High Court ruling that section 14A cannot be invoked where no exempt income was earned by assessee in relevant assessment year. The ITAT Mumbai [jurisdictional ITAT] has recently in the case of *ACIT vs. Essel Utilities Distribution re* affirmed the same.

6.3 The assessee in his written submission has also stated that-

"Without prejudice, even if there is disallowance u/s 14A the maximum disallowance u/s 14A r. w. rule 8D(2) (iii) cannot exceed administrative expenses less audit fees, professional fees, stamp duty on issue of debentures thus aggregating to Rs 9,87,978/- comprising of under mentioned accounts:

Nature of Account	Rs	Rs.
Employee Benefit Expenses (A)		3,29,523
Total Administrative Expenses (B)	11,48,62,285	
Less:		
Loss on sale of Investment (c )	7,66,80,524	
Stamp duty on issue of debentures (D)	15,00,000	
Professional fees (E)	3,59,85,997	
Auditor's fees (F)	37,309	
Net Administrative Exps. (B-C-D-E-F)		6,58,445
Total		9,87,978

Further we would like to bring to your notice that the same issue was equally covered & decided by Honorable CIT(A), Mumbai in our case in AY 2008-09, 2009-10, 2010-11, 2011-12 & 2012-13 & Honorable ITAT in our case in AY 2008-09, 2009-10, 2010-11 & 2011-12 and the department has not contested the same before higher authorities.

*The Ld. Assessing Officer may, therefore, be directed to restrict the disallowance u/s. 14A of the Income Tax Act, 1961 to Rs. 9,87,978/- in normal computation, as well as under section 115JB of the Act.”*

5. None of the parties is satisfied. While assessee is aggrieved of the disallowance being confirmed to the extent Rs.9,87,978, the Assessing Officer is aggrieved of the relief so granted by the CIT(A). Both the parties are in appeal before us.

6. We have heard the rival contentions perused the material on record and duly considered facts of the case in the light of the applicable legal position.

7. We find that there is no dispute about the fact that the assessee did not have any tax exempt income during the relevant previous year and that the period before us pertains to the period prior to insertion of explanation to section 14A. In this view of the matter, and in the light of consistent stand by co-ordinate benches, following Hon’ble Delhi High Court’s judgment in the case of Cheminvest Ltd vs CIT [(2015) 61 taxmann.com 118 (Del)], we uphold the plea of the assessee that no disallowance under section 14A was and in the circumstances of the case. The plea of the Assessing Officer is thus rejected. As regards the disallowance of Rs. 9,87,978/- it is sustained on the basis of computation given in the alternative plea of the assessee, but given the fact that the basic plea of non-disallowance itself was to be upheld, there was no occasion to consider the computation given in the alternative plea. This disallowance of Rs. 9,87,978/- must also be deleted.

8. In view of the above discussions, we hold that no disallowance under section 14A was justified on the facts, and the remaining disallowance of Rs. 9,87,978/- must be deleted. Ordered, accordingly.

9. In the result, appeal of the Assessing Officer is dismissed and appeal of the assessee is allowed. Pronounced in the open court today on the 29<sup>th</sup> day of June, 2022.

Sd/-  
**Aby T Varkey**  
(Judicial Member)

Sd/-  
**Pramod Kumar**  
(Vice President)

**Mumbai, dated the 29<sup>th</sup> day of June, 2022**

*Copies to:*

<i>(1)</i>	<i>The appellant</i>	<i>(2)</i>	<i>The respondent</i>
<i>(3)</i>	<i>CIT</i>	<i>(4)</i>	<i>CIT(A)</i>
<i>(5)</i>	<i>DR</i>	<i>(6)</i>	<i>Guard File</i>

*By order etc*

*Assistant Registrar/ Sr PS  
Income Tax Appellate Tribunal  
Mumbai benches, Mumbai*