

IN THE INCOME TAX APPELLATE TRIBUNAL  
"A" BENCH, MUMBAI

SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER  
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER

ITA No. 7695/MUM/2019  
(ASSESSMENT YEAR: 2016-17)

The Deputy Commissioner  
of Income Tax – 9(1)(2), Mumbai,  
Room No. 210, 2<sup>nd</sup> Floor,  
Aayakar Bhavan, M.K. Road,  
Mumbai - 400020

..... Appellant

**Vs**

Atlanta Limited,  
101, Shree Amba Shanti Chamber,  
Opp Leela Hotel, Andheri Kurla Road,  
Andheri (East),  
Mumbai - 400059  
[PAN: AAACA8865E]

..... Respondent

ITA No. 7749MUM/2019  
(ASSESSMENT YEAR: 2016-17)

Atlanta Limited,  
101, Shree Amba Shanti Chamber,  
Opp Leela Hotel, Andheri Kurla Road,  
Andheri (East),  
Mumbai - 400059  
[PAN: AAACA8865E]

..... Appellant

**Vs**

The Deputy Commissioner  
of Income Tax – 9(1)(2), Mumbai,  
Room No. 210, 2<sup>nd</sup> Floor,  
Aayakar Bhavan, M.K. Road,  
Mumbai - 400020

..... Respondent

Appearances

For the Appellant Department : Shri Sunil Jha  
For the Respondent/Assessee : Shri Vijay Mehta

Date of conclusion of hearing : 05.04.2022  
Date of pronouncement of order : 04.07.2022

## ORDER

**Per Rahul Chaudhary, Judicial Member:**

1. These are cross-appeals directed against the order, dated 30.09.2019, passed by the Ld. Commissioner of Income Tax (Appeals)-16, Mumbai [hereinafter referred to as 'the CIT(A)'] under Section 250 of the Income Tax Act, 1961 [hereinafter referred to as 'the Act'] for the Assessment Year 2016-17, whereby the Ld. CIT(A) had partly allowed the appeals filed by the Assessee against the Assessment Order, dated 26.03.2018, passed under Section 143(3) of the Act.
2. The Grounds of Appeal raised by the Revenue in Appeal (ITA No. 7695/Mum/2019) are as under:
  1. *Whether in the facts and circumstances of the case and in law, the Ld. CIT(A) erred in restricting the addition at Rs.1,08,46,691/- which is @ 12.5% of disputed purchase of Rs.8,67,73,526/- and giving relief amounting to Rs.7,59,26,835/- to the assessee?*
  2. *Whether the Ld. CIT(A) has failed to appreciate the judgement of the Hon'ble Apex Court in the case of N.K. Proteins Vs. DCIT SLP Nos.769 of 2017 dated 16.01.2017 wherein the Supreme Court has dismissed the SLP filed by the assessee and confirmed the decision of High Court for addition of entire income on account of bogus purchases against the ITAT's decision restricting it to 25%?*
  3. *Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the disallowance u/s.14A of the Income Tax Act, 1961,*

*without appreciating the legislative intent behind the insertion of section 14A as clarified in the CBDT's Circular No.05/2014 and also when the review petition in the case of Ballarpur Industries Limited is still pending with the Hon'ble Apex Court?*

4. *Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in restricting the disallowance u/s. 14A of the Income Tax Act, 1961 to the extent of exempt income, without appreciating the facts that in the case of Maxopp Investment Limited the issue whether disallowance u/s.14A was to be restricted to the quantum of exempt income was not decided by Supreme Court, and in the case of Joint Investments (P) Limited, the SLP was not filed against HC decision due to low tax effect?*
  5. *Whether in the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the disallowance u/s. 14A to the Book Profit computed u/s.115JB of the Act without appreciating the fact that the same requires to be added to Book Profit as per clause (f) to Explanation 1 of section 115JB of the Act?*
3. Grounds of Appeal raised by the Assessee in appeal (ITA No. 7749/Mum/2019) are as under:
1. *Addition of Rs. 1,08,46,691/- (being 12.5% of Rs. 8,67,73,526/-) on account of bogus purchases*
    - a) *On the facts and circumstances of the case and in law, the learned CIT(A) erred in partly confirming the addition on account of bogus purchases at 12.5% of amount of purchases of Rs. 8,67,73,526/- by holding that the appellant has failed to discharge*

*the onus cast upon it without appreciating the fact that all the documentary evidences in relation to said purchases were submitted by the appellant.*

*b) On the facts and circumstances of the case and in law, the learned CIT(A) erred in partly confirming the addition on account of bogus purchases at 12.5% of amount of purchases of Rs. 8,67,73,526/- only on the ground that the parties were bogus since they were non-existent. Thus, addition made is bad in law and needs to be deleted.*

*2. Disallowance u/s. 14A restricted to Rs. 65,44,468/- being amount of exempt income.*

*a) On the facts and circumstances of the case and in law, the learned CIT(A) erred in restricting the disallowance u/s. 14A to Rs. 65,44,468/- being the amount of exempt income without appreciating that no disallowance can be made on investments not fetching any exempt income.*

*b) Without prejudice to the above and without admitting, on the facts and circumstances of the case and in law, the learned CIT(A) erred in restricting the disallowance u/s. 14A to Rs. 65,44,468/- being the amount of exempt income without appreciating that disallowance of interest u/r. 8D(2)(ii) cannot be made when the appellant had sufficient own funds and no interest-bearing unsecured loans were utilized for making investments yielding exempt income.*

*c) Without prejudice to the above and without admitting, on the facts and circumstances of the case and in law, the learned CIT(A) erred in*

*restricting the disallowance u/s 14A to Rs. 65,44,468/- being the amount of exempt income instead of restricting the disallowance u/r. 8D(2)(iii) to Rs. 2,95,913/- being 0.5% of the average investment in partnership firm fetching exempt income."*

4. Brief facts of the case are that the Assessee filed return of income for the Assessment Year 2016-17 declaring income of INR 4,91,74,730/- under normal provisions of the Act and book profits of INR 2,68,66,344/- as per Section 115JB of the Act. The Assessing Officer framed assessment under Section 143(3) of the Act at income of INR 25,99,78,226/- under normal provisions of the Act and INR 15,08,96,314/- under section 115JB of the Act. For the purpose of computing income under normal provisions of the Act, the Assessing Officer made addition of INR 8,67,73,526/- on account of bogus purchases, and INR 12,40,29,970/- under Section 14A of the Act. Whereas, while computing Book Profits under Section 115JB of the Act the Assessing Officer increased Book Profits by the amount disallowed under section 14A of the Act.
5. Being aggrieved, the Assessee filed appeal before CIT(A). The CIT(A) partly allowed the appeal of the Assessee by restricting the disallowance (a) on account of bogus purchases to INR 1,08,46,691 being 12.5% of purchases, and (b) under Section 14A of the Act to INR 65,44,468/- being the amount of exempt income. The CIT(A) also deleted the addition to book profits on account of disallowance under Section 14A of the Act for the purpose of computation of Book Profits under Section 115JB of the Act.

6. While, the Assessee was not satisfied with the relief granted by CIT(A), the Revenue was aggrieved by the relief granted to the Assessee, and therefore, both, the Assessee and the Revenue are in appeal before us.

**Ground No. 1 & 2 of ITA No. 7695/Mum/2019 and Ground No. 1 to 1(c) of ITA No. 7749/Mum/2019**

7. We would first take up Ground No. 1 & 2 of Revenue's Appeal and Ground No. 1 to 1(c) of Assessee's Appeal relating disallowance on account of bogus purchase.

- 7.1. The relevant facts as emanating from material on record are that Information was received from the Investigation Wing that the Assessee had indulged in bogus transactions with Rameshwar Trading & Co. in relation to Nagpur Project and Ropar Project of the Assessee and on 21.03.2017 a survey was conducted on the Assessee under Section 133A of the Act. When the case of the Assessee was selected for scrutiny a letter, dated 24.11.2017, was sent to the Assessee which read as under:

*"The DDIT(Inv.) Unit-5(2), Mumbai vide his letter dated 16.11.2014 has informed that:*

*"A survey action was conducted in the case of M/s Atlanta Ltd. on 21.03.2017 from this charge. During the survey action, the books of accounts of the M/s Atlanta Group of companies were examined. On perusal of the details furnished in respect of purchases parties, it was observed that M/s Atlanta group of companies are making purchases from such parties whose name appears in the list of hawala dealers and sales/commercial tax department has cancelled/kept*

*pending the TIN of such parties and the same is also evident from the website of respective state's sales tax department. The details of aforesaid purchase parties are as under:-*

27930896929	Rameshwar Trading & Co.	M/s Atlanta (Nagpur Project)	3,28,82,850
		M/s Atlanta (ropar project)	5,38,90,676
			8,67,73,526

*Further, during the post survey enquiry by the Investigation Wing, summons u/s 131 of IT Act 1961 were issued to those to those parties on the addresses provided by the assessee and summons to Rameshwar Trading & Co. M/s Atlanta Ltd. (Nagpur Project) and M/s Atlanta Ltd. (ropar project) returned undelivered with postal remark 'not found'.*

*Hence, the total expenditure of Rs. 8,67,73,526/- represents bogus expenditure of Atlanta Ltd. in F.Y. 2015-16 relevant to A.Y. 2016-17 as detected during the course of survey proceedings u/s 133A of the I.T. Act, 1961."*

- 7.2. Thereafter, notices under Section 143(2) and 142(1) were issued to the Assessee on 03.07.2017, 12.10.2017, 24.11.2017 and 08.01.2018. In response to the same, the Assessee filed replies/submissions dated 06.10.2017 and 12.02.2018. Vide letter, dated 08.01.2018, the Assessee was directed to produce documentary evidence such as bills, invoices, octroi receipts, delivery challans, bank statement reflecting the payments, and ledger accounts to prove genuineness of the transaction. Further, the Assessee was also directed to produce the parties before the Assessing Officer as the notices sent to Rameshwar Trading & Co. under Section 133(6) of the Act on the addresses

appearing on the invoices furnished by the Assessee were received back with remark "left". According to the Assessing Officer, the Assessee failed to produce the parties and substantiate the claim of purchases of INR 8,67,73,526/- with the relevant documents. Therefore, the Assessing Officer made a disallowance of INR 8,67,73,526/-. In appeal, the CIT(A) restricted the disallowance to 12.5% of alleged bogus purchases since the Assessing Officer had not doubted the consumption/sales.

- 7.3. The Learned Authorised Representative for the Appellant appearing before us started submissions by challenging the validity of the Assessment Order on the ground of non-application of mind. Referring to Letter, dated 24.11.2017 sent by the Assessing Officer, he submitted that the Assessing Officer has failed to appreciate that the assessment proceedings were regular scrutiny proceedings and has proceeded as if the proceedings were re-assessment proceedings initiated under Section 148 of the Act which shows complete non-application of mind. Even the name of the parties is stated in the aforesaid letter as Atlanta Ltd. (Nagpur Project) and Atlanta Ltd. (Ropar Project) – without making any inquiry/verification. Further, the Appellant had submitted all the relevant documents related to the purchases aggregating to INR 8,67,73,528/- made from Rameshwar Trading & Co., however, without any application of mind, the Assessing Officer had made addition of 100% of alleged bogus purchases solely because the Assessee failed to produce the vendor during the assessment proceedings. Referring to the documents placed before us forming part of the paper- book (a) Invoice dated

10.03.2016 raised by Rameshwar Trading Co along with delivery challan and transport challan (page 6-8), material receipt note (page 9), Bill Certification Form with invoice details (Page 10-11), Purchase Order dated 18.03.2016 (Page 12-18), Invoice dated 21.12.2015 raised by Rameshwar Trading Co. along with delivery challan and transport challan (19-21), material receipt note (Page 22), relevant extract of stock audit report (Page 23-48), and Credit Rating Report of Rameshwar Trading Co. (Page 49-58), the Ld. Authorised Representative for the Appellant submitted that these documents were filed before the Assessing Officer, however, the Assessing Officer neither challenged the veracity of the documents nor made any enquiries from third parties like the transporter. The Learned Authorised Representative submitted that finding returned by the Assessing Officer in paragraph 5.6(e) of the Act are factually incorrect. All payments were made by the Assessee through the banks and there is no statement substantiating the allegation that the Assessee has received back any cash against payments made for purchases through banks. He submitted that the Assessing Officer and CIT(A) have erred in holding that Rameshwar Trading & Co. was not existing as the notices issues under Section 133(6) of the Act were returned back with remarks 'left' which shows that the vendor was existed and had office at some point in time but had 'left'. To support this contention, he relied upon the Bills of Exchange and Letter of Credit issued by Bank in favour of the Rameshwar Trading & Co. as well as report of credit rating agency. He submitted that additions cannot be made merely on the basis of information received from the Sales Tax Department without conducting further inquiry or bring on record some material to

prove that the purchases were bogus. In this regard, he relied upon the judgment of the Hon'ble Bombay High Court in the case of ITO Vs Vaman International Pvt. Ltd. (Income Tax Appeal No. 1940 of 2017), and decisions of Mumbai Bench of the Tribunal in the case of ACIT Vs Mahesh K Shah (ITA No. 5194/Mum/2014). On the basis of the aforesaid the Ld. Authorised Representative for the Appellant submitted that the CIT(A) should have deleted the disallowance instead of restricting it to 12.5% of the alleged bogus purchase.

- 7.4. Per contra, the Learned Departmental Representative vehemently argued that the Assessing Officer was justified on making addition of INR 8,67,73,528/- and that the CIT(A) had erred in restricting the addition to 12.5%. He submitted that the purchases were bogus, clear information was received from the investigation wing that the Assessee was involved in bogus purchase transactions with Reameshwar Trading & Co. in respect of purchases made for Nagpur and Ropar projects leading to further inquiry and survey. The Assessee had failed to produce relevant documents to substantiate the purchases during the assessment proceedings. Even the paper-book filed before the Tribunal contains only some invoices/transport documents and on the basis of the same it cannot be concluded that the purchases were genuine. The Assessee was granted opportunity during the assessment and appellate proceedings before CIT(A) to produce the vendor/party, however, the Assessee failed to produce the vendor/party. The Credit Rating Report of Rameshwar Trading & Co. supports the claim of Revenue as it records that relevant information was not shared by the proprietor with the credit rating agency. Even the basic

information such as permanent account number, and details of suppliers, customers, bankers and auditors were not shared. Rameshwar Trading & Co. only had 2 employees and had experience of only 3 years. The fact that payment is made through banking channels is also not sufficient to conclude that purchases were genuine in view of the specific information received from the investigation wing that the Assessee had indulged in bogus transactions. Relying upon the judgment of the Hon'ble Apex Court in the case of N.K. Proteins Vs. DCIT (SLP Nos. 769 of 2017, dated 16.01.2017), wherein addition of entire amount of bogus purchase was confirmed, the Ld. Departmental Representative submitted that addition on INR 8,67,73,526/- made by the Assessing Officer be restored.

- 7.5. We have given thoughtful consideration to the rival submissions, perused the material on record and examine the legal position. The submissions made by the learned authorised representative for the Appellant, though convincing at the first blush, did not hold good scrutiny of the documents placed on record to show genuineness of the purchases. Through the communication, dated 24.11.2017, the Assessing office has shared the information regarding bogus purchases and the fact that the summons issued under Section 131 of the Act were returned back with remarks 'not found'. The Assessment has been framed under Section 143(3) of the Act. We note that the Assessing Officer had made the disallowance as according to the assessing officer the Assessee had failed to substantiate the claim of purchases with the relevant documentary evidence and had failed to produce the concerned party which was not traceable at the address provided. While restricting the

disallowance on account of bogus purchases to 12.5% of such purchases, the CIT(A) had returned a finding that no vehicle numbers were given insofar as delivery of purchases were concerned and therefore, it was clear that no purchases were actually made from the parties from bills were procured. This was disputed by Learned Authorised Representative for the Appellant during the course of hearing by placing reliance on delivery challan and transport challan placed at page 8 and 21 of the paper book.

- 7.6. We note that the Assessee has placed at 9 of the Paper-book the Material Receipt Note (MRN 5070), dated 12.03.2016, issued by the Assessee showing receipt of material against Challan No. 800 (39 Metric Tons), 802 (38 Metric Tons), 805 (39 Metric Tons), 807 (38 Metric Tons) and 810 (39 Metric Tons) pertaining to receipt of TMT Steel of 36 to 39 metric tons against each challan. At page 10 and 11 of the Paper-book the Assessee has filed Bills Certification Form issued by the Assessee along with details of invoices for supply of steel to Nagpur Project which correspond to the aforesaid challans wherein Invoices numbers have been mentioned as 800, 802, 805, 807 and 810 with 10.03.2016 as date of issue of each of the aforesaid invoice. In relation to this the Assessee has placed on record only Invoice No. 800 dated 10.03.2016 along with corresponding delivery Challan No. 800, dated 10.03.2016 for supply of 39 Metric Tonns of TMT Bars and Goods Consignment Note issued by Suraj Roadways Logistics, dated 10.03.2016, a third party transporter. Similarly, in respect of Goods Receipt Note, dated 23.12.2015 (at Page 22 of the Paper-Book), wherein six challan numbers have been

mentioned, only one Invoice for INR (Invoice No. 623, dated 21.12.2-15) corresponding to Challan No. 623 for supply of 18 Metric Tons of TMT Bars along with Goods Consignment Note issued by Bhartiya Carriers Corporation, dated 21.03.2015, a third party transporter, has been filed. The Purchase Order is placed at Page 12 of Paper-Book is dated 18.03.2016 whereas the invoices mentioned hereinabove were issued prior to this date. Though the said Purchase Order refers to purchase order dated 17.02.2016, as pointed out by the Learned Authorised Representative for the Appellant, the same has not been placed on record. Page 18 of the Paper-Book provides details of other set of invoices issued on 11.03.2016 and 12.03.2016. However, no documents pertaining to the same are placed on record. There are no more details of other Invoices, or Delivery Challans or Goods Consignment Note on record to support the contention of the Appellant that the goods were delivered. Despite the Assessing Officer returning a finding that the purchases were bogus, the aforesaid documentary evidence were not placed on record. It is the contention of the Appellant that the veracity of the documents filed by the Assessee was not challenged by the Assessing Officer. However, since the same documents are placed before us to return a finding after examining the facts that the purchases were indeed genuine, we are duty bound to examine the same. This takes us to the Stock Audit Report addressed to State Bank of India issued by independent Chartered Accountant. We note that the report has been issued on 06.02.2016 and covers period from 1.04.2015 to 30.09.2015. As per the observations of the auditor, the auditor was not given access for physical identification and the documentary evidence regarding stock at

Nagpur was week. Even the report issued on 07.03.2016 by Mira Inform Private Limited states that the Rameshwar Trading & Co was established as a proprietorship firm by one Mr. Pappuram Ugarg aged about 30 years in the year 2013 and had turnover of INR 1,00,00,000/- and INR 1,50,00,000/- during financial year 2013-14 and 2014-15, respectively, which could not be verified. We note that during the financial year 2015-16 sales made to the Assessee are more than 5 times of total turnover of immediately preceding financial year. As rightly pointed out by the Ld. Departmental Representative, Rameshwar Trading & Co had only 2 employees and basic information such as capital invested, details of PAN, TAN, auditor & bankers were stated to have not been divulged. In view of the aforesaid, the documents placed on record during the assessment and appellate proceedings do not inspire confidence to arrive at a conclusion that the entire purchases of INR 8,67,73,526/- were genuine. Further, the decisions of the Tribunal relied upon by the Ld. Authorised Representative would not apply to the facts of the present case. In the case of Vama International Pvt. Ltd (Income Tax Appeal No. 1940 of 2017), the appeal of the Revenue was rejected as there were concurrent findings of CIT(A) and the Tribunal supporting the case of the Assessee. However, in the present case we concur with the CIT(A) that the Assessee has failed to provide necessary documents/details to substantiate that the purchases reflected in books of accounts as having been made from Rameshwar Trading & Co. were actually made from the said party and goods were delivered to the Assessee. However, since the Assessing Officer had not disputed consumption/sales, the CIT(A) was justified in reducing the

disallowance to INR 1,08,46,691/- being 12.5% of such purchases. We note that in identical facts and circumstances, the a co-ordinate bench of the Tribunal has, in the case of the Assessee, for the immediately preceding Assessment Year 2015-16 (ITA No. 3233/Mum/2019), dismissed the appeal of the Revenue challenging restricting disallowance in respect of bogus purchases to 12.5% of such purchases since the Assessing Officer had no disputed the consumption/sales and therefore, the doubt was only with regard to the source of the purchases as is the case in the appeal before us. We are in agreement with the aforesaid decision of the Tribunal and accordingly, we confirm the order of CIT(A) of restricting the disallowance on account of alleged bogus purchases to INR 1,08,46,691/ - being 12.5% of bogus purchases.

- 7.7. Accordingly, Ground No. 1 & 2 of Revenue's Appeal (ITA No. 7695/Mum/2019) and Ground No. 1 to 1(c) of Assessee's Appeal (ITA No.7749/Mum/2019) are dismissed.

**Ground No. 3 & 4 of ITA No. 7695/Mum/2019 and Ground No. 2 to 2(c) of ITA No. 7749/Mum/2019**

8. Next we would take up Ground No. 3 & 4 of Revenue's Appeal and Ground No. 2 to 2(c) of Assessee's Appeal relating disallowance under Section 14A of the Act while computing income under normal provisions of the Act.
- 8.1. The Assessing Officer also noted that the Assessee had earned exempt dividend income of INR 7,139/- on investment in shares of Dombivali Sahakari Bank Ltd. and profit of INR 65,44,468/- from partnership firms and joint ventures (forming part of

current investment as reflected the balance sheet of the Assessee as on 31.03.2016). However, the Assessee has not made any disallowance under Section 14A of the Act in the return of income. Accordingly, a notice dated 05.03.2018 was issued to the Assessee asking the Assessee to show cause as to why disallowance of INR 12,40,29,970/- should not be made under Section 14A of the Act read with Rule 8D of the Income Tax Rules, 1962 ('the Rules'). Noting that no response was received from the Assessee, the Assessing Officer went on to make a disallowance of INR 12,40,29,970/- under Section 14A of the Act.

- 8.2. Being aggrieved, the Assessee carried the issue before CIT(A). Vide order, dated 30.09.2019, the CIT(A) granted relief to the Assessee by restricting the amount of disallowance made by the Assessing Officer under Section 14A of the Act to the amount of INR 65,44,468/- being profits from partnership firm and joint ventures of the Assessee.
- 8.3. Both, the Assessee and the Revenue, are in appeal before us against the abovesaid order of the CIT(A) on this issue. The contention of the Assessee is that the entire addition made under Section 14A of the Act should have been deleted by the CIT(A) whereas the Revenue is aggrieved by the relief granted by the CIT(A) to the Assessee by restricting the disallowance under Section 14A to the amount of exempt income, i.e. INR 65,44,468/-.
- 8.4. The Learned Authorised Representative for the Appellant appearing before us raised multiple contentions to support

grounds directed against disallowance made under Section 14A of the Act to the extent of INR 65,44,468/- as confirmed by the CIT(A). He submitted that all the expenses debited to the Profit & Loss Account were incurred by the Assessee for the purpose of the business. The Assessing Officer erred in making disallowance under Section 14A of the Act without giving proper reasoning and satisfaction for rejecting the submissions made by the Assessee that no expenses have been incurred for earning exempt income during the relevant previous year 'having regards to the accounts of the Assessee'. The Assessing Officer failed to specify the expenses specifically incurred by the Assessee to earn share of profits from partnership and joint ventures. Thus, the disallowance made under Section 14A of the Act is bad in law. Without prejudice to the aforesaid, the Ld. Authorised Representative for the Appellant submitted that the Assessing Officer has erred in computing disallowance under Section 14A read with Rule 8D(2) by not excluding investments which did not fetch any exempt income during the relevant previous year. Exempt income of INR 66,21,556/- Further, majority of the investments were made for the purpose of acquiring controlling stake in equity shares of wholly owned subsidiary companies/joint ventures created as Special Purpose Vehicles (SPV) on account of business necessity. Without prejudice to the aforesaid, the Assessee had sufficient own funds to cover the investments and for this reason alone, disallowance under Section 14A of the Act read with Rule 8D of the Rules by the Assessing Officer, to the extent confirmed by CIT(A), must be deleted. Majority of investments were made in the earlier years from own funds and no borrowed funds were utilized for making such

investments except for capital contribution of INR 45,66,603/- in Shreenath Builder made out of own funds during the relevant previous year no fresh investment have been made by the Assessee. The Assessee has share capital and reserves aggregating to INR 373.08 Crores and INR 379.26 Crores as on 31.03.2015 and 31.03.2016, respectively as against Investment of INR 330.07 Crores and INR 330.31 Crores as on 31.03.2015 and 2016, respectively. Without appreciating the aforesaid contention, the CIT(A) has, relying upon without prejudice contention raised by the Assessee before CIT(A) that the amount of disallowance under Section 14A read with Rule 8D cannot exceed the exempt income, granted relief to the Assessee and limited the disallowance to INR 65,44,468/-.

- 8.5. Per contra, the Ld. Departmental Representative submitted that addition/disallowance of INR 12,40,29,970/- made by the Assessing Officer should have been sustained by the CIT(A). He submitted that appropriate satisfaction was recorded by the Assessing Officer before invoking provision of Rule 8D of the Rules. The Assessee had not made any suo-moto disallowance or filed any computation. The Assessee had not maintained separate accounts for investment activities and investments were made from common pool of funds. The fact that there has been no change in the amount of investment made during the relevant previous year is of no relevance. He further submitted that the disallowance under Section 14A of the Act was correctly computed by the Assessing Officer as per Rule 8D of the Rules and that the CIT(A) erred in restricting the disallowance to INR 65,44,468/-. He relied upon paragraph 7.1

to 7.4 of the assessment order to support his aforesaid contention.

- 8.6. Having considered the rival submissions and on perusal of records. We are of the view that the appropriate satisfaction was recorded by the Assessing Officer before invoking the provision of Section 14A of the Act. The Assessee had submitted that no expenses have been incurred for earning the exempt income and therefore, no disallowance was warranted. The Assessing Officer after taking note of the fact that separate accounts were not maintained by the Assessee in respect of investment activity and business activity (in paragraph 7.2 of the assessment order) concluded that the provisions of Section 14A of the Act would be attracted in the case of the Assessee in paragraph 7.3 of the Assessment Order the relevant extract of which read as under:

*“In view of the above discussion, and having regard to the accounts of the assessee company of the previous year relevant to A.Y. 2016-17, the undersigned is not satisfied with the correctness of the assessee’s claim that no expenses have been incurred for earning exempt income and no disallowance u/s 14A is warranted. ....”*

- 8.7. In the facts and circumstances of the case, we are of the view that it cannot be said that the Assessing Officer has failed to record his dissatisfaction having regard to the accounts of the Assessee. We note that the Assessing Officer has made disallowance of INR 10,75,20,365/- under Section 14A read with Rule 8D(ii) and INR 1,65,09,605/- under Section 14A read with Rule 8D(iii).

- 8.8. While the Ld. Authorised Representative for the Appellant has raised the multiple contentions, as regards disallowance on INR 10,75,20,365/- made by the Assessing Officer in terms of Section 14A read with Rule 8D(ii) of the Act is concerned we note that the issue stands decided in favour of the Assessee by the judgment of the Hon'ble Bombay High Court relied upon by the Learned Authorised Representative of the Appellant in view of the fact that the own funds of the Assessee are more than the investments. A perusal of the Balance Sheet of the Assessee placed on record shows that the aggregate of Non-Current Investments and Current Investment is less than Share Capital and Reserves of the Assessee-Company as on 31.03.2015 and 31.03.2016. As per the Assessing Officer the Investment as on 31.03.2015 and 31.03.2016 were 330.07 Crores and 330.31 Crores, respectively. As per the Balance Sheet, the Share Capital and Reserves of the Assessee stood at INR 373.02 Crores and INR 379.26 Crores as on 31.03.2015 and 31.03.2016, respectively. The jurisdictional High Court has in the case of **HDFC Bank Ltd. Vs. DCIT-2(3), Mumbai : 366 ITR 505 (Bombay)** held that where interest free funds and interest-bearing funds are available, and the interest free funds are more than the investments, the presumption is that such investments would be made from the interest free funds. The aforesaid view stands approved by the Hon'ble Supreme Court in the case of **South Indian Bank Ltd. Vs. Commissioner of Income-tax : 438 ITR 1 (SC)**. In view of the aforesaid, no disallowance is warranted in terms of Section 14A of the Act read with Rule 8D(2)(ii) of the Act.

- 8.9. as regards disallowance on INR 1,65,09,605/- made by the Assessing Officer in terms of Section 14A read with Rule 8D(ii) of the Act, It has been contended by the Assessee that only investment which has yielded exempt income are to be included for the purpose of computing average value of investment for arriving at the quantum of disallowance in terms of Rule 8D(2)(iii) of the Rules. We note that the Special Bench of the Tribunal in the case of **Assistant Commissioner of Income Tax, Circle 17(1), Delhi vs. Vireet Investment (P.) Ltd : 58 ITR(T) 313 (Delhi - Trib.) (SB)** has held only those investments are to be considered for computing average value of investment which yielded exempt income during the year. As per paragraph 4.22 of the submissions filed by the Assessee before the CIT(A) reproduced on page no. 18 of 59 of the order passed by the CIT(A), the investment of in ARSS-Atlanta Joint Venture and Atlanta-ARSS Joint Venture yielded exempt income during the relevant previous year. Accordingly, we direct the Assessing Officer to verify the investments which have yielded the exempt income and re-compute the amount of disallowance as per Section 14A read with Rule 8D(2)(iii) of the Rules by taking into account the same as per the decision of the Special Bench of the Tribunal in the case of Vireet Investments (P) Ltd. (supra).
- 8.10. In view of the above, Ground No. 3 & 4 of Revenue's appeal (ITA No. 7695/Mum/2019) are dismissed whereas Ground No. 2 to 2(c) of the Assessee's appeal (ITA No.7749/Mum/2019) are partly allowed.

**Ground No. 5 (ITA No. 7695/Mum/2019)**

9. We would now take up Ground No. 5 of Revenue's Appeal relating to including/excluding amount of disallowance computed under Section 14A of the Act Read with Rule 8D of the Income Tax Rules, 1962 while computation of book profits under Section 115JB of the Act. We note that CIT(A) had decided this issue in favour of the Assessee by relying upon the decision of Special Bench of the Tribunal in the case of **Vireet Investment (P.) Ltd** (supra) and the judgment of jurisdictional High Court in the case of **CIT Vs JSW Energy Ltd.:** **379 ITR 36 (Bombay)** and holding that disallowance under Section 14A of the Act read with Rule 8D of the Rules cannot be added while computing book profits in terms of Section 115JB of the Act. In view of the aforesaid, we do not find any infirmity in the order passed by the CIT(A) and are not inclined to interfere with the same on this issue. Accordingly, Ground No. 5 of Revenue's appeal (ITA No. 7695/Mum/2019) is dismissed.
10. In the result, Revenue's appeal (ITA No. 7695/Mum/2019) is dismissed and Assessee's appeal (ITA No.7749/Mum/2019) is partly allowed.

Order pronounced on 04.07.2022.

*Sd/-*

(Prashant Maharishi)  
Accountant Member

*Sd/-*

(Rahul Chaudhary)  
Judicial Member

मुंबई Mumbai; दिनांक Dated : 04.07.2022  
*Alindra, PS*

**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