

**IN THE INCOME TAX APPELLATE TRIBUNAL “F” BENCH, MUMBAI**

**BEFORE SHRI PRASHANT MAHARISHI, AM AND  
MS. KAVITHA RAJAGOPAL, JM**

ITA No. 1872/Mum/2020  
(Assessment Year: 2015-16)

Asst. CIT-3(2)(1) Room No. 674, 6 <sup>th</sup> Floor, Aayakar Bhavan, M. K. Road, Mumbai-400 020	Vs.	M/s. Jai Corporation Ltd. H-B, Mittal Tower, Free Press Journal Marg, Nariman Point, Mumbai-400 021
PAN/GIR No. AAACJ 2591 A		
<b>(Revenue)</b>	:	<b>(Assessee)</b>

&

ITA No. 1140/Mum/2021  
(Assessment Year: 2015-16)

M/s. Jai Corporation Ltd. H-B, Mittal Tower, Free Press Journal Marg, Nariman Point, Mumbai-400 021	Vs.	Asst. CIT-3(2)(1) Room No. 674, 6 <sup>th</sup> Floor, Aayakar Bhavan, M. K. Road, Mumbai-400 020
PAN/GIR No. AAACJ 2591 A		
<b>(Assessee)</b>	:	<b>(Revenue)</b>

<b>Assessee by</b>	:	Shri Rajesh P. Shah
<b>Revenue by</b>	:	Shri Vranda U. Matkarni

<b>Date of Hearing</b>	:	26.09.2022
<b>Date of Pronouncement</b>	:	21.12.2022

**ORDER**

**Per Kavitha Rajagopal, J. M.:**

These cross appeals by the Revenue and the assessee are being filed against the order passed by the learned Commissioner of Income Tax (Appeals)-54, Mumbai ('ld.CIT(A) for short), passed u/s.250 of the Income Tax Act, 1961 ('the Act') dated 25.01.2018, pertaining to the Assessment Year ('A.Y.' for short) 2015-16.

2. The assessee has challenged the disallowance made u/s. 14A read with Rule 8D on the investment which yielded exempt income, amounting to Rs.2,33,00,886/- without

considering the fact that the assessee has *suo moto* disallowed the amount of Rs.38,90,129/-. The assessee is a public limited company which is in the business of manufacture of ropes, bags and geotextile material distributors, real estate, manufacture of steel coil and sheets, development of urban infrastructure, which has units at Maharashtra, Gujarat, Silvasa, Patna.

3. Brief facts are that the assessee company filed its return of income dated 28.11.2015, declaring total income of Rs.85,80,57,420/-. The assessee then revised its return of income and declared total income at Rs.85,81,35,310/-. The assessee's case was for selected for scrutiny and assessment order dated 28.12.2017 was passed u/s. 143(3) of the Act, determining the total income at Rs.90,68,99,340/-, by making the disallowance of Rs.4,87,64,030/- u/s. 14A read with Rule 8D.

4. Aggrieved by this, the assessee was in appeal before the Id. CIT(A), who partly allowed the appeal filed by the assessee and restricted the disallowance only to the extent to the investment made by the assessee which yielded exempt income.

5. Further aggrieved, both the assessee as well as the Revenue are in appeal before the Tribunal.

6. The Id. AR for the assessee contended that the lower authorities have failed to consider the *suo moto* disallowance of Rs.38,90,129/- made by the assessee u/s. 14A of the Act. The Id. AR further stated that during the impugned year, the assessee has earned total income, amounting to Rs.7,99,94,288/- out of which the assessee has

claimed depreciation of Rs.4,69,26,591/- as exempt income u/s. 10(34) of the Act. The ld. AR further stated that the A.O. has not recorded his non satisfaction to reject the disallowance u/s. 14A and hence, would not be entitle to invoke Rule 8D to work out the disallowance. The ld. AR relied on the decision of *Bombay Stock Exchange Ltd.* [2020] 113 taxmann.com 303 (Bom).

7. The ld. Departmental Representative (ld. DR for short), on the other hand, contended that the recording of non satisfaction by the A.O. is not a *sine qua non* for making disallowance under Rule 8D. The ld. DR relied on the decision of the Hon'ble Apex Court in the case of *Maxopp Investment Ltd. Vs. CIT* [2018] 91 taxmann.com 154 (SC).

8. Having heard the rival submissions and perused the material available on record. It is observed that the assessee has earned dividend income for the impugned year, amounting to Rs.7,99,94,288/- as per the P & L account and the same is tabulated as under:

Sr. No.	Name of the Company	Dividend Amount (in Rs.)	Investment Amount (in Rs.)	Remarks
<u>Dividend Claimed exempt</u>				
1	Reliance Industries Limited	3,34,59,000	4,77,47,74,889	Shares held since F.Y.
2	Urban Infrastructure Vnture Capital Limited	50,00,000	1,00,28,000	100% subsidiary company
3	Jai Corp Finance and Holdings Ltd.	84,67,591	-	100% subsidiary company
	<b>Total</b>	<b>4,69,26,591</b>	<b>4,78,48,02,889</b>	
<u>Taxable Dividend</u>				
4.	Sarbags PTY Ltd.	3,30,67,597	12,34,000	100% subsidiary company
	<b>Total</b>	<b>7,99,94,288</b>	<b>4,78,60,36,889</b>	

9. Out of the above said dividend income, the assessee has claimed Rs.4,69,26,591/- as exempt u/s. 10(34) of the Act and has made a disallowance u/s. 14A, amounting to Rs.38,90,129/-, pertaining to the expenses specified as under:

<i>Sr. No.</i>	<i>Particulars</i>	<i>Amount</i>
1	Salary/Staff Welfare Expense	Rs.38,67,264/-
2	Telephone Expenses	Rs.18,070/-
3	Other Expenses	Rs.4,795/-
<i>Total</i>		<i>Rs.38,90,129/-</i>

10. It is also observed that during the assessment proceeding, the A.O. has disallowed Rs.12,27,169/- out of the interest expenses of Rs.25.31 lacs under Rule 8D(2) and has also disallowed Rs.5,14,27,000/- being 0.5% of the average investment under Rule 8D(2)(iii) and made a total disallowance of Rs.5,26,54,159/-. The assessee submits that for A.Ys. 2011-12 to 2014-15, the Id. CIT(A) has decided this issue in favour of the assessee and has also directed the A.O. to exclude the interest expenses, pertaining to any other income, other than the exempt income for computing disallowance under Rule 8D(2)(ii) of the Act. The assessee further submits that the Id. CIT(A) in the earlier years has directed the A.O. to exclude the amount of head office/corporate expenses allocated to different units, claiming deduction and to accordingly calculate the difference amount for disallowance on the administrative expenses. The assessee has also submitted that the Tribunal in assessee's case for A.Ys. 2007-08 to 2013-14 has decided the issue in favour of the assessee, pertaining to Rule 8D(2)(ii) of the Income Tax Rules, wherein it held that by placing reliance on the decision of Hon'ble Bombay High Court in the case of *Godrej & Boyce Manufacturing Co. Ltd. vs. DCIT* [2010] 328 ITR 81 (Bom) which laid the proposition that Rule 8D of Income Tax Rules can be resorted to only when the A.O. is not satisfied with the correctness of the claim made by the assessee in respect to the expenses and that no disallowance under Rule 8D(2)(ii) can be made when own funds are more than the investments made.

11. The Id. CIT(A) after considering the assessee's submissions held that the assessee has earned dividend income, amounting to Rs.7.99 crores and the share capital was Rs.1855.46 lacs and reserve and surplus of Rs.2,00231.70 lacs which amounts to Rs.2,02,087.16 lacs and that the total investment was only Rs.1,01,031.50 lacs. The Id. CIT(A) observed that the assessee's own funds and reserve was very much in excess of its investment, which earned dividend income than the total investment which does not earn exempt income. The Id.CIT(A) placed its reliance in the case of Hon'ble Jurisdictional High Court decision in the case of *CIT vs. Reliance Utilities & Power Ltd.* [2009] 313 ITR 340 (Bom) which held that if the interest free fund of the assessee is sufficient to meet its investment and when the assessee has availed loan, it can be presumed that the investments were made from the interest free funds of the assessee. The Id. CIT(A) held that the assessee's own funds are in excess than the investments made by the assessee, thereby concluding no disallowance from interest expenses has to be made. The Id. CIT(A) relied on the decision of the Special Bench of ITAT, Delhi in the case of *Vireet Investments (P) Ltd.* (82 taxmann.com 415 (2017), which held that 'only those investments which yielded exempt income should be considered for computing the disallowance under Rule 8D' and for disallowance under Rule 8D(2)(iii) which is 0.5% of the average value of the investment, the Id. CIT(A) directed the A.O. to recompute the disallowance u/s. 14A after considering the investment which yielded exempt income. The relevant extract from the order of the Id. CIT(A) is reproduced hereunder for ease of reference:

5.3 I have carefully gone through the assessment order and written submissions of the appellant. The facts of the case are that the appellant has earned dividend income of Rs.7,99,94,288/-. The appellant had share capital of Rs. 1855.46 Lakhs and Reserves and

surplus of Rs.200231.70 Lakhs totaling to Rs.2,02,087.16 lakhs whereas the total investment was only Rs.1,01,031.50 lakhs Thus, it is seen that the appellant's own funds and reserves were not only far in excess of its investment in shares in RIL, UIVCL and Jai Corp Finance and Holding Ltd (companies from which exempt income of dividend is earned) but also far in excess of its total investment from which no exempt income is earned.

5.4 The Hon'ble High Court of Bombay in the case of *Reliance Utilities and Power Ltd. 1340 (Bom)* held that if there be interest free funds available to the assessee sufficient to meet its investments and at the same time the assessee had raised a loan which can be presumed that investments were from the interest free funds available

In the case of appellant also, own funds are much more than the investments, there is no need for disallowance from the interest expenses

5.5 With regard to disallowance under Rule 8D(2) (ii) which is 0.5% of the average value of the investment, reliance is placed on the decision of Special Bench of ITAT, Delhi, in the case of *Vireet Investments (P) Ltd. [82 Taxmann.com 415(2017)]* wherein it was held that only those investments which had yielded exempt income should be considered for computing the disallowance under Rule 8D. Therefore, the AO is directed to re-compute the disallowance u/s.14A by considering the investment, which yielded exempt income. After verification of working of disallowance submitted by the assessee. These grounds of appeal are Partly Allowed

12. From the above observation, it is evident that the assessee's case has been squarely covered by the earlier decision of the tribunal and also by placing reliance on the decision of the Hon'ble Bombay High Court in the case *HDFC Bank Ltd. vs. DCIT (2016) 67 taxmann.com 42 (Bom)*, we are inclined to respectfully follow the said decision in the earlier years on similar issue.

13. The assessee's contention that it has *suo moto* disallowed Rs.38,90,129/-, disentitles the A.O. from invoking the provision of Rule 8D, is not warranted as per the above observation. We are of the considered view that even if the assessee has disallowed the expenses, the A.O. has got the jurisdiction to invoke the provision under Rule 8D, if the assessee's calculation of expenses is not to the satisfaction of the A.O. In this context, we find no infirmity in the order of the Id. CIT(A).

14. In the result, both the appeals filed by the Revenue and assessee are dismissed.

*Order pronounced in the open court on 21.12.2022*

Sd/-

(Prashant Maharishi)  
Accountant Member

Mumbai; Dated : 21.12.2022

Roshani, Sr. PS

Sd/-

(Kavitha Rajagopal)  
Judicial Member

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT - concerned
5. DR, ITAT, Mumbai
6. Guard File

BY ORDER,

(Dy./Asstt. Registrar)  
ITAT, Mumbai