

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

**BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER AND
SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER**

ITA NO.1419/MUM/2024
ASSESSMENT YEAR :2016-17

Vidarbha Industries Power Ltd.
Reliance Centre, Ground Floor,
19 Walchand Hirachand Marg,
Ballard Estate, Mumbai – 400 001
PAN:AADCR-1892-D

---- Appellant

Vs.

Deputy Commissioner of Income Tax,
Circle 14(1)(2) Mumbai.
[Erstwhile Dy. Commissioner of Income Tax
Cir.14(3)(1)] Room No.455, 4th Floor,
Aaykar Bhavan, M.K. Road,
Mumbai 400 020

--- Respondent

ITA NO.1491/MUM/2024
ASSESSMENT YEAR :2016-17

ACIT-14(1)(2), Mumbai.
Room NO.455, 4th Floor,
Aaykar Bhavan, M.K. Road,
Mumbai – 400 020

.... Appellant

Vs.

Vidarbha Industries Power Ltd.
H-Block, First Floor, Dhirubhai
Ambani Knowledge City,
Thane Belapur Road, Koperkhairane,
Navi Mumbai 400 710.

.... Respondent

Assessee by : Shri Amit Khatiwala
Revenue by : Shri Surendra Meena, Sr.DR

Date of Hearing : 10/06/2024

Date of Pronouncement : 10/06/2024

ORDER**PER B.R. BASKARAN, ACCOUNTANT MEMBER :**

These cross appeals are directed against the order dated 30/01/2024 passed by Ld Commissioner of Income Tax (Appeals) [in short the Id. CIT(A)], NFAC, Delhi and they relate to the Assessment Year 2016-17. The grounds urged by both parties relate to the disallowance made u/s. 14A of the Act.

2. The assessee company is engaged in the business of generation and sale of power/electricity. The Assessing Officer noticed that the assessee has earned exempt dividend income of Rs.1.09 crores, but did not make any disallowance u/s. 14A of the Act. Accordingly, the Assessing Officer computed the disallowance u/s. 14A of the Act as per Rule 8D consisting of interest disallowance u/r.8D(2)(ii) Rs.3.54 crores and expenses disallowance u/r. 8D(2)(iii) at Rs.0.27 crores. Though the aggregate amount of actual disallowance computed by the Assessing Officer worked to Rs.3.82 crores, yet the Assessing Officer disallowed a sum of Rs.3.56 crores only, apparently due to casting error. The same amount was also added by the Assessing Officer to the Net profit, while computing the book profit u/s. 115JB of the Act.

3. In the appellate proceedings, the Id.CIT(A)directed the Assessing Officer to restrict the disallowance u/s. 14A of the Act to the amount of exempt income earned by the assessee. Accordingly, the disallowance u/s. 14A of the Act was directed to be restricted to Rs.1.09 crores. With regard to the addition made by Assessing Officer while computing book profit u/s. 115JB of the Act, the Id.CIT(A) directed the Assessing Officer to compute book profit u/s. 115JB of

the Act without resorting to the disallowance computed u/s. 14A of the Act. Both the parties are aggrieved.

4. The contention of the assessee is that, while computing disallowance u/r 8D, the average value of investments should be computed by considering only those investments which have yielded exempt income. Further, it is contended that the no disallowance out of interest expenditure is called for since the own funds exceeds the value of investments.

5. The Contention of the revenue is that the disallowance should not have been restricted to exempt income and further, the amount of disallowance computed u/s 14A of the Act should have been allowed to be added to the net profit while computing book profit 115JB of the Act.

6. We heard the parties and perused the record. The first contention of the assessee is that the disallowance of interest expenses u/r 8D(2)(ii) is not called for, since the own funds exceeds the value of investments. In this regard, we notice the details of own funds and investments are given at page 26 of the order passed by Ld CIT(A). We notice that the own funds available with the assessee as at the beginning and end of the year is Rs.1736 crores and Rs.1981 crores respectively, while the value of investments stand at Rs.44.25 crores in the beginning and end of the year. Hence, no disallowance out of interest expenses is called for as per the decision rendered by Hon'ble Bombay High Court in the case of HDFC Bank Ltd ((366 ITR 505).

7. The next contention of the assessee is that the “average value of investments” for the purpose of Rule 8D should be computed by considering only those investments which have yielded exempt income. In this regard, the ld.A.R placed his reliance on the decision rendered by the Special bench of ITAT in the case of Vireet Investments P Ltd (2017)(82 taxmann.com 415). He further submitted that the Co-ordinate Bench has decided an identical issue in the case of DCIT vs. Reliance Power Limited (ITA No.1952/Mum/2023 dated 25/10/2023), wherein it was held as under:

“8. In the cross objection, it is the contention of the assessee that the “average value of investments” to be computed for the purpose of Rule 8D should be computed by considering only those investments, which have yielded dividend income. The above said contention finds support from the decision rendered by Delhi Special Bench in the case of Vireet Investments P Ltd (supra). Accordingly, we direct the AO to compute average value of investments by considering only those investments, which have yielded dividend income and then compute the disallowance under Rule 8D. One more principle to be followed is that, if the own funds available with the assessee exceeds the value of investments, then no disallowance of interest expenditure is called for u/r 8D(2)(ii) of I T Rules. If the disallowance so computed by applying above said principles works out to be lower than the value of exempt income, then the disallowance u/s 14A should be restricted to the lower amount so computed. We order accordingly.”

We notice that the above said contention of the assessee finds support from the decision rendered by the Special bench in the Vireet Investments P Ltd (supra), which has also been followed in the case of Reliance Power Ltd (supra). Accordingly, we modify the order passed by ld. CIT(A) and direct the Assessing Officer to compute the disallowance of average value of investment by considering only those investments which have yielded exempt income and accordingly compute the disallowance u/s. 14A of the Act.

8. In any case, the disallowance u/s 14A should not exceed the exempt income as held by Hon’ble Delhi High Court in the case of Caraf Builders & Constructions Private Limited, (2019) 112 taxmann.com 322.

9. The revenue's appeal is related to the addition made to the net profit while computing book profit u/s 115JB of the Act. With regard to this issue, we notice that the Special Bench of ITAT, Delhi has held in the case of Vireet Investment Private Ltd (supra) that the disallowance made u/s. 14A of the Act cannot be imported into section 115JB of the Act, i.e. addition to be made under clause (f) of Explanation-1 to section 115JB of the Act has to be computed independently with reference to the books of account. In view of the above, ld. CIT(A) was justified in holding that the amount disallowed u/s. 14A of the Act cannot be imported and added while computing book profit u/s. 115JB of the Act.

10. In the result, the appeal filed by the assessee is allowed and the appeal of the revenue is dismissed.

Order pronounced in the open court on 10th June, 2024.

Sd/-

(SANDEEP SINGH KARHAIL)
JUDICIAL MEMBER
Mumbai, Date : 10th June, 2024

Sd/-

(B.R. BASKARAN)
ACCOUNTANT MEMBER

Vm

Copy to :

- 1) The Applicant
- 2) The Respondent
- 3) The PCIT/CIT concerned
- 4) The D.R, " F" Bench, Mumbai
- 5) Guard file

By Order

Dy./Asstt. Registrar
I.T.A.T, Mumbai