

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI "C" BENCH : MUMBAI

BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER
AND
SHRI ANIKESH BANERJEE, JUDICIAL MEMBER

ITA No.	A.Y.	Appellant	Respondent
574/Mum/2024	2014-15	360 One WAM Limited, IIFL Centre,	ACIT, Circle-12(2)(2),/
576/Mum/2024	2016-17	Kamala City, Senapati Bapat Marg,	ACIT, Circle-4(2)(1),
577/Mum/2024	2017-18	Lower Parel West, Mumbai	Mumbai
578/Mum/2024	2018-19	PAN: AABC18294C	

For Assessee :	Shri Siddhesh Chaugule & Shri Himesh Jain
For Revenue :	Ms. Madhu Malati Ghosh, CIT-DR & Shri Yogendra T. Wakare, Sr.DR

Date of Hearing :	08-08-2024
Date of Pronouncement :	09-08-2024

ORDER

PER B.R. BASKARAN, A.M :

All these appeals filed by the assessee are directed against the order(s) passed by the Ld. Commissioner of Income Tax (Appeals)-NFAC, Delhi (in short 'Ld.CIT(A)') and relate to AYs. 2014-15, 2016-17, 2017-18 & 2018-19. In all these appeals, the assessee is challenging the addition made by the AOu/s. 14A of the Income Tax Act, 1961 ('the Act') and also addition made u/s. 115JB of the Act. Accordingly, these appeals were heard together and are being disposed of by this common order, for the sake of convenience.

2. The facts relating to the case are stated in brief. The assessee is a financial service provider and also renders investment banking services.

The AO noticed that the assessee has earned exempt income as detailed below, in these years:-

A.Y.	Exempt Income	Disallowance by assessee
2014-15	38,58,048	NIL
2016-17	11,60,60,372	NIL
2017-18	1,16,837	10,00,000
2018-19	66,03,82,995	25,00,000

2.1. As noticed in the above table, the assessee did not make any disallowance for the AYs. 2014-15 and 2016-17 u/s. 14A of the Act. In other two assessment years, the disallowance made by the assessee was Rs. 10 lakhs and Rs. 25 lakhs respectively. The AO noticed that the assessee has held huge non-current investments and also claimed interest expenses. Accordingly, the AO took the view that the disallowance made by the assessee is not in accordance with section 14A r.w. Rule 8D of the Income Tax Rules, 1962 ('the Rules'). Accordingly, he rejected the claim of the assessee and proceeded to compute the disallowance u/s. 14A r.w. Rule 8D of the Rules. The same was confirmed by the Ld.CIT(A) in all the assessment years and hence, the assessee has filed these appeals.

3. In all the four assessment years, the assessee has taken a legal ground contending that the AO has not recorded his dissatisfaction over the workings made by the assessee, having regard to the accounts of the assessee. Accordingly, it was contended that the entire disallowance made by him u/s 14A should be deleted. However, on a perusal of the assessment orders, we noticed that the AO has referred to the quantum of investments made by the assessee, interest expenses incurred by the assessee and also made observations about the claim of the assessee. Further, the AO has specifically recorded that he is not satisfied with the claim of the assessee. There should not be any dispute that the Statute did not provide for any specific method of recording dissatisfaction. In that case, the fact as to whether the AO has recorded dissatisfaction or not has to be deduced for the discussions made by

him in the assessment order. In the instant cases, in our view, it cannot be said that the AO has not recorded dissatisfaction over the claim of the assessee. Accordingly, we reject the above said legal contention of the assessee in all the four assessment years.

4. We shall first take up the appeal filed for the AY.2014-15. In this assessment year, the AO has computed disallowance of Rs.1,51,53,295/- u/s 14A read with Rule 8D, which consisted of interest disallowance of Rs.1,34,88,396/- u/r 8D(2)(ii) and expenditure disallowance of Rs. 16,64,899/- u/s 8D(2)(iii). In so far as the disallowance made out of interest expenses, it is the submission of the assessee that the own funds available with it far exceeds the value of investments. Referring to the Balance Sheet, the Ld.AR submitted that own funds available with the assessee was Rs. 100.82 crores while the investments made by the assessee was Rs. 46.56 crores. Accordingly, by placing reliance on the decision rendered by the Hon'ble Bombay High Court in the case of HDFC Bank Ltd., [2014] 366 ITR 505 (Bombay), the Ld.AR contended that the disallowance of interest expenditure is not called for.

4.1. With regard to the expenditure disallowance made under Rule 8D(2)(iii), the Ld.AR submitted that the AO should have considered only those investments which have yielded exempt income for the purpose of computing average value of the investments and should have computed the disallowance u/r 8D(2)(iii) accordingly. In support of this proposition, the Ld.AR placed reliance on the decision rendered by the Hon'ble Delhi High Court in the case of Cargo Motors Pvt. Ltd., (ITA No. 7/2020; dt. 07-10-2022) and also the decision rendered by the Special Bench of the Delhi Tribunal in the case of ACIT vs. Vireet Investment (P.) Ltd., [2017] 82 taxmann.com 415 (Delhi, ITAT) / 165 ITD 27.

4.2. We find merit in the above said submissions of the assessee. Since the own funds available with the assessee exceeds the value of investments, no disallowance out of interest expenses u/r 8D(2)(ii) is

called for. In respect of expenditure disallowance to be made u/r 8D(2)(iii) of I T Rules, we direct the AO to consider only those investments, which have yielded exempt income for the purpose of computing average value of investments and accordingly recompute the disallowance under Rule 8D(2)(iii).

4.3. The Ld.AR submitted that the AO has added the disallowance computed by him u/s. 14A of the Act for computing book profits u/s. 115JB of the Act. He submitted that the Special Bench of the Delhi Tribunal has held in the case of ACIT vs. Vireet Investment (P.) Ltd., (supra) that the addition to be made under clause (f) of explanation (1) to section 115JB(2) of the Act is required to be made without resorting to computation contemplated u/s. 14A r.w. Rule 8D of the Rules. Accordingly, we set aside the order passed by the tax authorities on this issue and restore the same to the file of the AO with a direction to compute the addition to be made under clause (f) of explanation (1) to section 115JB(2) of the Act on the basis of annual accounts of the assessee without having regard to the disallowance made u/s 14A of the Act.

5. We shall now take up the appeal filed for the AY. 2016-17. In this assessment year, the assessee did not make any disallowance u/s. 14A of the Act. On the contrary, the AO disallowed a sum of Rs. 5,62,26,605/- under Rule 8D(2)(iii) of the I T Rules.

5.1. In this year, the AO has made disallowance of expenditure only under Rule 8D(2)(iii).The Ld.AR submitted that the AO should have considered only those investments which have yielded exempt income for the purpose of computing average value of the investments and should have computed the disallowance u/r 8D(2)(iii) accordingly. In support of this proposition, the Ld.AR placed reliance on the decision rendered by the Hon'ble Delhi High Court in the case of Cargo Motors Pvt. Ltd., (ITA No. 7/2020; dt. 07-10-2022) and also the decision rendered by the Special Bench of the Delhi Tribunal in the case of ACIT

vs. Vireet Investment (P.) Ltd., [2017] 82 taxmann.com 415 (Delhi, ITAT) / 165 ITD 27.

5.2. We find merit in the above said submissions of the assessee. In respect of expenditure disallowance to be made u/r 8D(2)(iii) of I T Rules, we direct the AO to consider only those investments, which have yielded exempt income for the purpose of computing average value of investments and accordingly recompute the disallowance under Rule 8D(2)(iii).

5.3. The Ld.AR submitted that the AO has added the disallowance computed by him u/s. 14A of the Act for computing book profits u/s. 115JB of the Act. He submitted that the Special Bench of the Delhi Tribunal has held in the case of ACIT vs. Vireet Investment (P.) Ltd., (supra) that the addition to be made under clause (f) of explanation (1) to section 115JB(2) of the Act is required to be made without resorting to computation contemplated u/s. 14A r.w. Rule 8D of the Rules. Accordingly, we set aside the order passed by the tax authorities on this issue and restore the same to the file of the AO with a direction to compute the addition to be made under clause (f) of explanation (1) to section 115JB(2) of the Act on the basis of annual accounts of the assessee without having regard to the disallowance made u/s 14A of the Act.

6. We shall now take up the appeal filed for the AY. 2017-18. In this assessment year, the assessee earned exempt income of Rs.1,16,837/-. The assessee computed disallowance u/s. 14A of the Act at Rs. 10 lakhs. However, the AO computed disallowance under Rule 8D and accordingly added a sum of Rs.10,40,43,577/-.

6.1. The Ld A.R submitted that the disallowance u/s 14A should not exceed the amount of exempt income. In support of his arguments, the Ld.AR placed reliance on the decision rendered by the Hon'ble Delhi High Court in the case of Joint Investments Ltd (ITA No.117/2015 dt. 25-02-2015). In this year, the assessee has voluntarily disallowed

Rs.10.00 lakhs u/s 14A of the Act. Further, the above said submission of the assessee is in accordance with the decision rendered by Hon'ble Delhi High Court referred above. Accordingly, in our view, no further disallowance over and above that disallowed by the assessee in this year is called for. Accordingly, we set aside the order passed by Ld CIT(A) on this issue and direct the AO to delete the addition made by the AO in this year.

6.2. The Ld.AR submitted that the AO has added the disallowance computed by him u/s. 14A of the Act for computing book profits u/s. 115JB of the Act. He submitted that the Special Bench of the Delhi Tribunal has held in the case of ACIT vs. Vireet Investment (P.) Ltd., (supra) that the addition to be made under clause (f) of explanation (1) to section 115JB(2) of the Act is required to be made without resorting to computation of contemplated u/s. 14A r.w. Rule 8D of the IT Rules. Accordingly, we set aside the order passed by the tax authorities on this issue and restore the same to the file of the AO with a direction to compute the addition to be made under clause (f) of explanation (1) to section 115JB(2) of the Act on the basis of annual accounts of the assessee.

7. We shall now take up the appeal filed for the AY. 2018-19. In this assessment year, the assessee earned exempt income of Rs. 66,03,82,995/-. The assessee computed disallowance u/s. 14A of the Act at Rs. 25.00 lakhs. However, the AO computed disallowance under Rule 8D(2)(iii) and accordingly added a sum of Rs. 11,29,44,293/-.

7.1. The Ld.AR submitted that the AO should have considered only those investments which have yielded exempt income for the purpose of computing average value of the investments and should have computed the disallowance u/r 8D(2)(iii) accordingly. In support of this proposition, the Ld.AR placed reliance on the decision rendered by the Hon'ble Delhi High Court in the case of Cargo Motors Pvt. Ltd., (ITA No.7/2020; dt. 07-10-2022) and also the decision rendered by the

Special Bench of the Delhi Tribunal in the case of ACIT vs. Vireet Investment (P.) Ltd., [2017] 82 taxmann.com 415 (Delhi, ITAT) / 165 ITD 27.

7.2. We find merit in the above said submissions of the assessee. In respect of expenditure disallowance to be made u/r 8D of I T Rules, we direct the AO to consider only those investments, which have yielded exempt income for the purpose of computing average value of investments and accordingly recompute the disallowance u/s. 14A r.w. Rule 8D of IT Rules.

7.3. The Ld.AR submitted that the AO has added the disallowance computed by him u/s. 14A of the Act for computing book profits u/s. 115JB of the Act. He submitted that the Special Bench of the Delhi Tribunal has held in the case of ACIT vs. Vireet Investment (P.) Ltd., (supra) that the addition to be made under clause (f) of explanation (1) to section 115JB(2) of the Act is required to be made without resorting to computation of contemplated u/s. 14A r.w. Rule 8D of the IT Rules. Accordingly, we set aside the order passed by the tax authorities on this issue and restore the same to the file of the AO with a direction to compute the addition to be made under clause (f) of explanation (1) to section 115JB(2) of the Act on the basis of annual accounts of the assessee.

8. In the result, the appeal of the assessee filed for AY. 2017-18 is allowed. Other appeals are partly allowed.

Order pronounced in the open court on 9th August, 2024.

Sd/-
[ANIKESH BANERJEE]
JUDICIAL MEMBER

Sd/-
[B.R. BASKARAN]
ACCOUNTANT MEMBER

Mumbai, Dated: 09-08-2024

TNMM

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3.	The Pr. CIT, Mumbai concerned
4.	D.R. ITAT, "C" Bench, Mumbai.
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//By Order//

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