

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

**BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER  
AND  
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No. 1463/MUM/2024  
Assessment Year: 2017-18**

Amrit Diamond Trade Centre Pvt. Ltd., Cooper Building, Swadeshi Mill Compound, Tata Road No.1, Girgaon, Mumbai – 400 004  (PAN : AAECA8104E)	Vs.	Assistant Commissioner of Income Tax, Circle – 5(1)(1), Mumbai
<b>(Appellant)</b>		<b>(Respondent)</b>

**Present for:**

Assessee : Ms. Rutuja Pawar, Advocate and  
Ms. Sneha More, Advocate

Revenue : Shri Manoj Kumar Sinha, Sr. DR

Date of Hearing : 31.07.2024

Date of Pronouncement : 16.10.2024

**ORDER**

**PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:**

This appeal filed by the assessee is against the order of Ld. CIT(A)-2, Kolkata, vide order no. ITBA/APL/S/250/2023-24/1061688917(1), dated 28.02.2024 passed against the assessment order by Assessing Officer, Assessment Unit, u/s. 143(3) of the Income-tax Act (hereinafter referred to as the "Act"), dated 03.12.2019 for Assessment Year 2017-18.

2. Grounds taken by the assessee are reproduced as under:

*“1) That on the facts and in the circumstances of the case of the appellant and in law Ld. CIT(A) has erred in disallowing the sum of Rs.7,77,662/-u/s. 14A read with Rule 8D of the Act without assigning any cogent reason and explanation.*

*2) That on the facts and in the circumstances of the case of the appellant and in law Ld. CIT(A) has erred in relying upon the judgment in the case of M/s. Vireet Investment, Special Bench ITAT which has been now decided by Hon'ble Supreme Court in the case of M/s. Maxopp Investment Ltd.*

*3) That on the facts and in the circumstances of the case of the appellant and in law Ld. CIT(A) has erred in ignoring the fact that the appellant has already disallowed the sum of Rs.62,984/-being Demat charges u/s 14A as per past accepted practice.*

*4) That the impugned order being contrary to law, evidence and facts of the case may kindly be set aside, amended and modified in the light of the grounds of appeal enumerated above and the appellant be granted such relief as is called for on the facts and in the circumstances of the case of the appellant and in law.*

*5) That each of the grounds of appeal enumerated above is without prejudice to and independent of one another.”*

3. The only issue raised by the assessee is in respect of disallowance made u/s. 14A r.w.r. 8D of the Act.

4. Brief facts of the case are that assessee is engaged in the business of trading in diamonds. Assessee filed its original return of income on 05.10.2017 reporting total income at Rs. 93,96,410/- which was revised on 26.07.2018 reporting same total income under the normal provisions of the Act and of Rs.1,80,78,231/- u/s. 115JB. One of the issue for which the case of the assessee was selected for scrutiny through CASS was “expenses debited to Profit and Loss Account for earning exempt income as per Schedule BP of ITR is significantly lower as compared to investments made to earn exempt income”.

4.1. Ld. Assessing Officer noted in para 4.1 while dealing with the issue relating to disallowance u/s. 14A r.w.r. 8D that assessee has shown exempt dividend income of Rs. 11,64,853/- against which a suo motto disallowance has been made by the assessee of Rs.62,984/- being a DEMAT charges. On this observation, ld. Assessing Officer noted that Rule 8D is applicable for the purpose of computing the disallowance u/s. 14A. Assessee made its submissions and asserted that it has already disallowed the expenses incurred for earning the dividend income which are in respect of DEMAT charges. Further, it was submitted that investments made by it in shares and mutual funds is out of own capital and reserves and that no loan had been taken by the assessee to make investments for which interest expense was incurred. On the submissions made by the assessee, ld. Assessing Officer observed that for making investment decisions, assessee must have used its manpower and infrastructure of the company. According to him, it is difficult to accept that one could earn exempt income without incurring expense what so ever including management or administrative expenses since investment decisions are taken which requires use of infrastructure. He thus, recorded his satisfaction for making the disallowance u/s. 14A of the Act, by applying Rule 8D. He thus arrived at an amount of Rs.7,76,662/- u/r. 8D(2)(iii) to make disallowance u/s.14A which is towards administrative expenses, by taking 1% of the annual average of the monthly averages of the opening and closing balances of the value of investment, income from which does not or shall not form part of the total income. Thus, the assessment was completed by making a disallowance of Rs.7,77,662/- u/s.14A r.w.r. 8D(2)(iii). Aggrieved, assessee went in appeal before the ld. CIT(A) who confirmed the disallowance so made and dismissed the appeal. Aggrieved, assessee is in appeal before the Tribunal.

5. We have heard both the parties and perused the material on record. The facts discussed above are not in dispute. We find that the issue involved in the present appeal before us has been dealt with by the Hon'ble Special Bench in the case of ACIT vs. Vireet Investment Pvt. Ltd. [2017] 82 taxmann.com 415 (Del-Trib) (SB) wherein it was held that while computing the disallowance u/s. 14A by applying Rule 8D, only those investments are to be considered for computing average value of investments which yielded exempt income during the year. In the same decision, it was held that computation under clause (f) of Explanation 1 to the Section 115JB(ii) is to be made without resorting to computation as contemplated u/s. 14A r.w.r. 8D.

5.1. In the case before us, assessee has placed on record details of non current investments held by it, placed at page 10 and 11 of the paper book, which includes investment in shares and mutual funds. From these investments, it is only those investments have to be considered for computing the average value of investments which yielded the exempt income to the assessee during the year. Since the said details are not readily discernible from the material placed on record, we find it appropriate to remit the matter for limited purposes of verification and ascertainment of this fact by the ld. Assessing Officer and accordingly re-compute the disallowance made u/s. 14A r.w.r. 8D(2)(iii). Further, respectfully following the findings of the Hon'ble Special Bench (supra), in respect of computation of book profit u/s. 115JB of the Act, no adjustment is permissible on account of disallowance u/s. 14A r.w.r.8D. Ld. Assessing Officer is thus directed

accordingly. Accordingly, grounds taken by the assessee are allowed for statistical purposes.

6. In the result, appeal of the assessee is allowed for statistical purposes.

Order is pronounced in the open court on 16 October, 2024

Sd/-  
(Pavan Kumar Gadale)  
Judicial Member

Sd/-  
(Girish Agrawal)  
Accountant Member

***Dated: 16 October, 2024***

*MP, Sr.P.S.*

**Copy to :**

1. The Appellant
2. The Respondent
3. DR, ITAT, Mumbai
4. Guard File
5. CIT

BY ORDER,

(Dy./Asstt.Registrar)  
ITAT, Mumbai