

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

BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER  
AND  
SHRI RAJ KUMAR CHAUHAN, JUDICIAL MEMBER

ITA No. 458/Mum/2024 : A.Y. : 2018-19  
C.O. No. 99/Mum/2024 : A.Y. : 2018-19  
(Arising out of ITA No. 458/M/24)

Asst. Commissioner of Income Tax,  
Circle-8(3)(1),  
Room No. 446, 4<sup>th</sup> Floor,  
Aayakar Bhavan, M.K.Road,  
Mumbai.

**(Appellant)**

Vs. Vyoman India Pvt. Ltd.,  
(Successor to Ganjam Trading Co.  
Pvt. Ltd.,)  
1, New Prakash Cinema,  
N.M. Joshi Marg,  
Lower Parel West,  
Mumbai.  
PAN : AAWCS1972Q

**(Respondent/Cross Objector)**

For Assessee : Shri Madhur Agrawal, Advocate &  
Shri Jay Bhansali, Advocate

For Revenue : Dr. Kishor Dhule, CIT-DR

Date of Hearing : 01-10-2024  
Date of Pronouncement : 17-12-2024

**ORDER**

**PER B.R. BASKARAN, A.M :**

The appeal of the Revenue and the Cross Objection filed by the assessee are directed against the order dated 08-12-2023 passed by the Ld.CIT(A)-NFAC, Delhi and they relate to the Assessment Year (AY.) 2018-19. The grounds urged by the Revenue relates to the following two issues:-

- (a) Disallowance of depreciation on goodwill;

- (b) Disallowance made u/s.14A of the Income Tax Act, 1961  
(‘the Act’)

In the Cross Objection, the assessee is contending that the disallowance worked out u/s.14A of the Act should not have been adopted for computing book profit u/s 115JB of the Act.

2. The facts relating to the case are stated in brief. The assessee is engaged in the business of trading in goods, shares & securities and also carrying on financing business. During the year under consideration, following four group companies were merged with the assessee company w.e.f the appointed date, i.e., from 01-04-2017:-

- (a) ITX Trading and Financial Services Pvt. Ltd.
- (b) Ganjam Trading Company Pvt. Ltd.
- (c) Rupee Finance and Management Pvt. Ltd.
- (d) Intrex India Pvt. Ltd

The consideration paid for acquiring the above said group companies was more than their Net Asset Value. Accordingly, the difference between the consideration paid for acquisition of above said four companies and their Net Asset Value was accounted as “Good Will” by the assessee in its books of accounts. The assessee claimed depreciation on the amount of goodwill, but the AO did not accept the said claim and accordingly disallowed the same. The assessee had also earned exempt income. The assessee made disallowance u/s.14A of the Act as per its own computation. The AO, however, increased the amount of disallowance u/s.14A of the Act. Both these additions were deleted by the Ld.CIT(A) and hence, the Revenue has filed this appeal. As noticed earlier, the assessee has filed Cross Objection with regard to the computation of book profit u/s.115JB of the Act.

3. We shall first take up the appeal filed by the Revenue. The first issue contested by the Revenue relates to the relief granted in respect of disallowance of depreciation claimed on Goodwill. The facts relating to thereto are set out in brief. As noticed earlier, four group companies were merged with the assessee w.e.f 01-04-2017, as per the scheme sanctioned by The National Company Law Tribunal ("NCLT"), vide its order dated 27<sup>th</sup> August, 2018. It was stated that the Income Tax Department has also given its approval to the scheme of amalgamation and has issued a letter dated 07-03-2018 stating that the Income Tax Department does not have any objection with the scheme of amalgamation. As per the Scheme of Merger, the assessee issued its shares to the shareholders of the above cited four companies, which were merged with the assessee. The details relating to allotment of shares are given in paragraph 3.5 of the order of the Ld.CIT(A). The value of shares so allotted was in excess of the Net Asset Value of the four companies and the said excess payment was accounted as 'Good will' by the assessee-company. The relevant details are given in paragraph 3.6 of the order of the Ld.CIT(A). The workings given in paragraph 3.5 and 3.6 of order of the Ld.CIT(A) are extracted below:-

Amalgamating company	Consideration	Amount (In Rs.)
Ganjam	Assessee was required to issue and allot 10,849 fully paid up <u>equity shares</u> of Rs. 10 each to shareholders of Ganjam for every 100 equity shares of Rs. 100 each held by them.  Therefore, for 8,876,385 equity shares of Ganjam, assessee issued and allotted 962,999,008 shares of Rs. 10 each.	962,99,90,080
	Assessee was required to issue and allot 10,849 fully paid up <u>preference shares</u> of Rs. 10 each to preference shareholders of Ganjam for every 100 preference shares of Rs. 100 each  Therefore, for 114,000 preferences shares of Ganjam, assessee issued and allotted 12,367,860 shares of Rs. 10 each.	12,36,78,600
Rupee	Assessee was required to issue and allot 10 fully paid up <u>equity shares</u> of Rs. 10 each to shareholders of Rupee for every 10,000 equity shares of Rs. 10 each  Therefore, for 10,300,000 equity of Rupee, assessee issued and allotted 10,300 shares of Rs. 10 each.	1,03,000
Intrex	No consideration was to be issued by assessee to shareholders of Intrex, being wholly owned subsidiary of Ganjam.	-
ITX	No consideration was to be issued by assessee to shareholders of ITX being wholly owned subsidiary of Ganjam.	-
<b>Total</b>		<b>975,37,71,680</b>

Particulars	Ganjam	Rupee	Intrex	ITX	Total
Total Asset	551,34,56,261	32,31,05,113	7,96,09,701	30,61,731	591,92,32,806
Less:					
Liabilities					
Long-term	166,31,47,379	93,23,00,000	-	-	259,54,47,379

Borrowings					
Other long term liabilities					
Short-term Borrowings	144,36,43,454	38,342	53,17,200	-	144,89,98,996
Other Current Liabilities	20,76,27,625	17,23,672	2,89,748	82,500	20,97,23,545
Short-term Provisions	38,26,15,742	-	-	-	38,26,15,742
Total Liabilities	369,70,34,200	93,40,62,014	56,06,948	82,500	463,67,85,662
<b>Net Assets</b>	<b>181,64,22,061</b>	<b>(61,09,56,901)</b>	<b>7,40,02,753</b>	<b>29,79,231</b>	<b>128,24,47,144</b>
Less: Investments cancelled	(8,70,31,548)	-	12,74,80,599	3,30,00,000	7,34,49,051
Less: Issue of equity shares and pref. shares	975,36,68,680	103,000	-	-	975,37,71,687
<b>Goodwill on amalgamation</b>	<b>785,02,15,071</b>	<b>61,10,59,901</b>	<b>5,34,77,846</b>	<b>3,00,20,769</b>	<b>854,47,73,594</b>

From the above, it can be seen that the excess of consideration over the Net Asset Value of the four companies worked out to Rs.854,47,73,594/- and it was accounted as Good will. The assessee claimed depreciation thereon @ 25%, which worked out to Rs 213,61,93,300/-.

4. The AO disallowed the above said claim of depreciation with the following observations:-

*“3.3. The reply filed by the assessee company has been duly considered. Goodwill of a business or profession has not been specifically provided as an asset either in the definition under clause 11 of section 2 of the Act or in section 32 of the Act. Probably, what is described as “goodwill” in the balance sheet of business need not always be an intangible asset entitled to depreciation. It should be capable of independent evaluation. Further, in order that an asset may be depreciable, it should lose its value by use. With due respect to the decision of the Hon’ble Supreme Court in the case of CIT v Smifs Securities Ltd [2012] 348 ITR 302 (SC) reliance is placed on the decision of Delhi High Court in the case of Sharp Business Systems in ITA No. 492/2012 wherein the Hon’ble High Court has held that “but for the ownership of intellectual property or knowhow or license or franchise, it would be unable to either access the advantage or asset the right and the nature of the right mentioned or spelt out in the*

*provision as against the word 'at large' or in legal parlance 'in rem'. The Hon'ble Delhi Court also distinguished the term goodwill considered as intangible asset by the Hon'ble Supreme Court in the case of Smifs Securities Pvt Ltd by stating that every species of right spelt out expressly by the statute- i.e. of the intellectual property right and other advantages such as knowhow, franchise, license etc can be said to be alienable (Transferable). Thus the court has emphasized that, the intangible asset should be the one which is alienable, failing which it cannot be termed as intangible.*

*3.4 The Bangalore Tribunal in the case of United Breweries while appreciating the findings of the Supreme Court in the case of Smifs Securities (supra) held that claim of depreciation on goodwill arising on amalgamation cannot be allowed. The Tribunal relied on 5th proviso to section 32(1) of the I.T. Act 1961 which provides that depreciation on the assets acquired on amalgamation cannot be more than the deprecation as was allowable to the amalgamated company had the amalgamation not taken place. The Tribunal held that since no depreciation was being claimed on goodwill by the amalgamated company prior to amalgamation, tax payers claim of depreciation on goodwill was required to be restricted to NIL.*

*3.5 Various case laws quoted by the assessee company were carefully perused and the facts of the present case of the assessee are different from the decisions relied by the assessee company.*

*3.6 In view of different judicial interpretations and to put the controversy to end the Finance Bill, 2021 has provided that goodwill in general is not a depreciable asset and its value may depend upon how a business runs; goodwill may see appreciation or in the alternative no depreciation in value. Therefore, there may not be a justification of depreciation on goodwill in the manner there is a need to provide for depreciation in case of other intangible assets or plant or machinery. It further clarified that while the Hon'ble Supreme Court in the case of Smifs Securities has held that goodwill of a business or profession is a depreciable asset, the actual calculation of depreciation on goodwill is dependent upon various provisions and on application of the provisions of the Act the depreciation in some situations would be nil*

*3.7 Goodwill of a business or profession has not been specifically provided as an asset either in the definition under clause 11 of section 2 of the Act or in section 32 of the Act and the Finance Bill '2021 bill has further clarified the allowability of claim of depreciation on goodwill. However, the claim of depreciation on goodwill is covered by proviso to section 32(1) of the I.T. Act, 1961 which is already provided in the Act and is also relevant to the assessment year under consideration 3.8 In view of the above, the depreciation on goodwill claimed by the assessee company at Rs213,61,93,399/- is disallowed*

*and added back to the income for the relevant year under consideration.”*

5. It can be noticed that the AO had placed reliance on the decision rendered by the Hon'ble Delhi High Court in the case of Sharp Business Systems (supra) and the Bangalore Bench of Tribunal in the case of United Breweries Vs. ACIT (76 taxmann.com103). Before the Ld.CIT(A), the assessee contended that both the above said decisions are not applicable to the facts of the present case. With regard to the decision rendered in the case of Sharp Business Systems (supra), the assessee contended as under:-

*“3.27. In the case of Sharp Business System Vs CIT (211 taxman 576) on which the Ld AO has placed reliance, the question arose whether the payment of non-compete fees paid amounts revenue expenditure or capital expenditure. The Hon'ble Delhi High Court held that the non-compete fees paid by the assessee as a consideration for not setting up or undertaking or assisting in the setting up or undertaking any business in India, of selling, marketing and trade of electronic office products for seven years amounted to capital expenditure. It held that such non-compete fees being a right in persona would not fall within the definition of "any other business or commercial right". The present case, relates to acquiring goodwill and distinguishable to the said case relating to payment of non-compete fees.....”*

With regard to the decision rendered by Bangalore bench of ITAT in the case of United Breweries (supra), the assessee contended as under:-

*“3.28. The AO has also relied on the decision of the Hon'ble Bangalore Tribunal in the case of United Breweries Vs ACIT (76 taxmann.com103) in the assessment order. The said case relates to goodwill generated on merger of wholly owned subsidiary with assessee. The Hon'ble Tribunal held that the claim of depreciation in the hands of the assessee is subjected to the 5 th proviso to section 32(1) and accordingly the claim of depreciation was not allowable. The facts of the present case are distinguishable, as they do not relate to merger of wholly owned subsidiary. Intact, the said decision was considered by the Hon'ble Hyderabad Tribunal in the case of Mylan Laboratories*

*Ltd. vs.DCIT (113 taxmann.com 6)wherein the Hon'ble Tribunal distinguished the judgment holding as under:*

*"the AO followed the decision of Bangalore bench of ITAT in the case of United Breweries (cited supra )to disallow the claim of depreciation on goodwill. The Tribunal had considered the judgment of the Hon'ble Supreme Court in the case of Smits Securities Ltd.and has held that the Hon'ble Supreme Court has only held that goodwill is an intangible asset and that depreciation is allowable thereon ,but, that it does override the provisions of 5<sup>th</sup> Proviso to section 32(1) of the Act. We find that the facts of United Breweries are distinguishable from the facts of the case before us, as in the Case of United Breweries, there was a merger with its Wholly owned Subsidiary, whereas in the case of the assessee, it is amalgamation by purchase. Therefore, the decision in the case of United Breweries is not applicable to the case before us."*

6. The AO has also taken support of the amendment brought in by Finance Act, 2021, denying the depreciation on Goodwill. The assessee contended that the said amendment is prospective in nature and hence the same should not be applied for the claim made in AY.2018-19. In support of this proposition, the assessee relied upon the memorandum issued with Finance Bill, 2021 and accordingly submitted as under before the Ld.CIT(A):-

*"3.31. With regard to recent amendment in various section brought by the Finance Act, 2021 in relation to goodwill, we draw to kind attention to the relevant para of the memorandum explaining the provisions in the Finance Bill, 2021 which is read as under:*

*"Thus, while Hon'ble Supreme Court has held that the Goodwill of a business or profession is a depreciable asset, the actual calculation of depreciation on goodwill is required to be carried out in accordance with various other provisions of the Act, including the ones listed above. Once we apply these provisions, in some situations (like that of business reorganization) there could be no depreciation on account of actual cost being zero and the written down value of that assets in the hand of predecessor/amalgamating company being zero.*

However, in some other cases (like that of acquisition of goodwill by purchase) there could be valid claim of depreciation on goodwill in accordance with the decision of Hon'ble Supreme Court holding goodwill of a business or profession as a depreciable asset. It is seen that Goodwill, in general, is not a depreciable asset and in fact depending upon how the business runs; goodwill may see appreciation or in the alternative no depreciation to its value. Therefore, there may not be a justification of depreciation on goodwill in the manner there is a need to provide for depreciation in case of other intangible assets or plant & machinery. Hence there appears to be little justification. In view of above discussion, it has been decided to propose that goodwill of a business or profession will not be considered as a depreciable asset and there would not be any depreciation on goodwill of a business or profession in any situation. **In a case where goodwill is purchased by an assessee, the purchase price of the goodwill will continue to be considered as cost of acquisition for the purpose of computation of capital gains under section 48 of the Act subject to the condition that in case depreciation was obtained by the assessee in relation to such goodwill prior to the assessment year 2021- 22, then the depreciation so obtained by the assessee shall be reduced from the amount of the purchase price of the goodwill.**

Therefore, to give effect to the above decision, it has been proposed to,

(a) amend clause (11) of Section 2 of the Act to provide that block of asset shall not include Goodwill of a business or profession;

(b) amend clause (ii) of sub-section(1) of section 32 of the Act to provide that goodwill of a business or profession shall not be considered as an asset for the purpose of the said clause and therefore not eligible for depreciation.

Further, it is also proposed to amend Explanation 3 to sub-section (1) of the said section to provide that goodwill of a business or profession shall not be considered as an asset for the said sub-section. (c) amend section 50 of the Act to provide that in a case where goodwill of a business or profession formed part of a block of asset for the assessment year beginning on the 1st April, 2020 and depreciation has been obtained by the assessee under the Act, the written down value of that block of asset and short term capital gain, if any, shall be determined in the manner as may be prescribed.

(d) amend section 55 of the Act by substituting clause (a) of subsection (2) to provide that in relation to a capital asset, being goodwill of a business or profession, or a trademark or brand

*name associated with a business or profession, or a right to manufacture, produce or process any article or thing, or right to carry on any business or profession, or tenancy rights, or stage carriage permits, or loom hours,-*

*(1) In the case of acquisition of such asset by the assessee by purchase from a Previous owner, means the amount of the purchase price; and*

*(2) in the case falling under sub-clause (i) to (iv) of sub-section (1) of section 49 and where such asset was acquired by the previous owner (as defined in that section) by purchase, means the amount of the purchase price for such previous owner; and*

*(3) in any other case, shall be taken to be nil (e) provide that in case of goodwill of business or profession acquired by the assessee by way of purchase from a previous owner (either directly or through modes specified under sub-clause (i) to (iv) of sub-section (1) of section 49) and any deduction on account of depreciation under section 32 of the Act has been obtained by the assessee in any previous year preceding the previous year relevant to the assessment year commencing on or after the 1st April, 2021, then the cost of acquisition will be the purchase price as reduced by the depreciation so obtained by the assessee before the previous year relevant to assessment year commencing on 1st April, 2021.*

***These amendments will take effect from 1st April, 2021 and will accordingly apply to the assessment year 2021-22 and subsequent assessment years. {Clauses 7.18 and 201}"***

The highlighted portion would show that the Parliament has visualized the assessee's claim of depreciation would have been allowed up to AY.2020-21. Accordingly, it has been prescribed that the depreciation allowed shall be deducted from the cost of goodwill for the purpose of computing capital gains. The eligibility to claim depreciation on goodwill was settled by the Hon'ble Supreme Court in the case of Smifs Securities Ltd. (348 ITR 302) (SC). Hence, in order to overcome the above said decision of the Hon'ble Supreme Court, the above amendments were brought by the Parliament w.e.f 01-04-2021 through Finance Act, 2021. Hence, it is clear that the

Government was aware that the depreciation will be allowed on goodwill. Further, the amendment made by Finance Act, 2021 has been made applicable from AY.2021-22 onwards. On legal front, the assessee submitted that the above said amendment, being substantive in nature denying the right of the assessee to claim depreciation shall have only prospective effect. In support of this proposition, the assessee placed reliance on the decision rendered by the Hon'ble Supreme Court in the case of CIT v. Vatika Township P.Ltd. (CivilAppeal No. 8750 of 2014).

7. As noticed earlier, the assessee placed its reliance on the decision rendered by Hon'ble Supreme Court in the case of CIT vs. Smifs Securities Ltd (348 ITR 302) (SC) and many other decisions rendered by the Hon'ble High Courts and Tribunal in support of its claim of depreciation on Goodwill amount.

8. Convinced with the contentions of the assessee, the Ld.CIT(A) allowed the depreciation claimed on the goodwill. The Revenue is aggrieved.

9. We heard the parties and perused the record. We notice that the two decisions relied upon by the AO, viz., Sharp Business Systems (supra) and United Breweries (supra) were found to be distinguishable on facts. The first decision was related to non-compete fee and the second decision was related to amalgamation of wholly owned subsidiary company. Hence, we are of the view that the AO was not right in placing reliance on the above said two case laws. The amendment brought in by Finance Act, 2021 denying depreciation on goodwill was rightly held by the Ld.CIT(A) to be prospective in nature. Hence, the AO could not take support of the said amendment.

10. The Ld.DR relied upon by the Co-ordinate Benches in the case of Borkar Packaging P Ltd (2010)(131 TTJ 99)(Panaji), wherein the goodwill, being the difference between purchase consideration and NAV of assets was held to be not eligible for depreciation. However, the above said decision has been rendered prior to the decision of the Hon'ble Supreme Court rendered in the case of Smifs Securities Ltd (supra). Hence, the Revenue cannot take support of the above said decision rendered by the Panaji Bench of ITAT. The Ld,DR also relied upon the decision rendered by the Mumbai Bench of Tribunal in the case of ACIT vs. Dosti Realty Ltd (ITA No.2043/Mum/2022 dated 13-04-2023). In this case, we notice that the Tribunal has doubted the very availability of the Goodwill in the facts prevailing in that case. It was further held by the Tribunal that the decision rendered by the Hon'ble Supreme Court in the case of Smifs Securities Ltd (surpa) is only an authority only to the extent that goodwill is a depreciable asset. However, in the instant case, we notice that the AO has denied depreciation on Goodwill, but does not doubt the availability of goodwill. The Hon'ble Supreme Court has accepted in the case of Smifs securities Ltd (supra) that the excess consideration paid by the assessee over the value of net assets acquired should be considered as Goodwill arising on amalgamation and depreciation is allowable thereon.

11. Adverting to the facts of the present case, we noticed that the assessee has acquired group companies by issuing shares to the existing shareholders. The value of aggregate consideration paid for amalgamating all the four companies, as per the scheme approved by NCLT, was more than the Net Asset Value of all the four companies. Hence, as held by the Hon'ble Supreme Court in the case of Smifs Securities Ltd (supra), the excess consideration paid over and above the net asset value should be considered as Goodwill and depreciation should be allowed thereon. The jurisdictional Hon'ble Bombay High Court has also held so in the case of

CIT vs. Adiya Birla Nuvo Ltd (246 Taxman 202), following the decision of the Hon'ble Supreme court referred above. We also notice that the amendment brought by Finance Act, 2021, denying depreciation on goodwill, being substantive in nature, shall have prospective application only. We have noticed that various case laws relied on by the AO as well as the Ld.DR are not applicable to the facts of the present case. Under these set of facts, we are of the view that the Ld.CIT(A) was justified in granting depreciation on the amount of goodwill. Accordingly, we uphold the order passed by the Ld.CIT(A) on this issue.

12. The next issue contested by the Revenue relates to the addition made u/s 14A of the Act. The facts relating to this issue are that the assessee earned exempt dividend income of Rs.4,78,51,080/- during the year under consideration. The assessee computed disallowance @ 1% of average value of investments that yielded exempt income and the amount disallowable u/s 14A was computed at Rs.87,74,818/- by the assessee. The AO did not accept the computation made by the assessee. He took the view that the disallowance should be computed @ 1% by taking average value of all the investments and the same worked out to Rs.2,47,62,911/- under Rule 8D(2)(ii) of the Income Tax Rules, 1962 ('the Rules'). Besides the above, the AO also took the view that the entire interest expenditure of Rs.5,77,79,797/- incurred by the assessee are directly related to the investment activity of the assessee. Accordingly, he disallowed interest expenses also u/s Rule 8D(2)(i) of I.T. Rules. Thus, the aggregate disallowance worked out by the AO was Rs.8,25,42,708/- and after reducing the disallowance already made by the assessee, the AO enhanced the disallowance u/s 14A by Rs.7,37,67,890/-.

13. Before the Ld.CIT(A), the assessee advanced following arguments with regard to the interest disallowance made by the AO:-

- (a) The assessee is into investment and financing business. The total borrowings on which interest was paid stood at Rs.278.93 crores, while the total advances given or lent stood at Rs.256.78 crores. Hence, the major portion of loan funds has been used for financing activities.
- (b) The interest free funds available with the assessee as on 31-03-2018 was Rs.1031 crores, while the total amount of investments available as on that date was Rs.145.39 crores.

Accordingly, it was submitted that the loan funds were not actually diverted for making investments. Even otherwise, since the interest free funds available with the assessee is more than the value of investment, no disallowance of interest expenses is called for. In support of this proposition, the assessee placed reliance on the decision rendered by the Hon'ble Supreme Court in the case of CIT vs. Reliance Industries Ltd (Civil Appeal No.10 of 2019) and the decision rendered by the Hon'ble Bombay High Court in the case of HDFC Bank Ltd (366 ITR 505).

14. The Ld.CIT(A) was convinced with the above said contentions of the assessee. He also took support of the decision rendered by the Hon'ble Supreme Court in the case of South Indian Bank Ltd. His observations in this regard are extracted below:-

*"5.2. In this regard, that the issue of allocation of interest cost to exempt income has been settled by the Honorable Supreme Court in the case of South Indian Bank Ltd – (438 ITR 1 – Sept 2021), in favour of the assessee wherein the Hon Supreme Court held that if investments in securities is made out of common funds and the assessee has available non-interest-bearing funds larger than the investments made in tax-free securities, then in such cases,*

*disallowance of interest under section 14A cannot be made (para 20 of the order.) No disallowance can be made u/s 14A if adequate interest free surplus is available with the assessee.”*

Accordingly, the Ld.CIT(A) deleted the disallowance made by the AO. The Revenue is aggrieved.

15. We heard the parties on this issue and perused the record. The above said discussions would show that the assessee has not diverted its loan funds for making investments. Even otherwise the interest free funds available with the assessee was more than the value of investments and hence the presumption is that the assessee has used its interest free funds for making investments, as per the decision rendered by the Hon'ble Supreme Court in the case of Reliance Industries Ltd (supra) and the decision rendered by the Hon'ble Bombay High Court in the case of HDFC Bank Ltd (supra). Accordingly, we are of the view that the Ld.CIT(A) was justified in deleting the disallowance made under Rule 8D(2)(i) of the I.T. Rules. We notice that the Ld.CIT(A) has deleted the enhancement made by the AO under Rule 8D(2)(ii) of I.T. Rules without discussion. We noticed earlier that the assessee had considered only those investments which have actually yielded exempt dividend income for computing average value of investments for the purpose of computing disallowance under Rule 8D(2)(ii) of I.T. Rules. However, the AO has considered all the investments for computing the average value of investments. We notice the stand of the assessee gets support from the decision rendered by Delhi Special Bench of ITAT in the case of ACIT vs. Vireet Investments Ltd (2017)(165 ITD 27)(Del)(SB). Accordingly, we uphold the order passed by the Ld.CIT(A) on this issue also.

16. We shall now take up the Cross objection filed by the assessee. It is delayed by 28 days. The assessee has filed an affidavit, explaining the delay that the delay has occurred in view of seeking legal advice on the issue of disallowance u/s.14A of the Act in view of various judicial pronouncements. We heard the parties on this issue. Having regard to the submissions made in the petition, we are of the view that there was reasonable cause for the assessee in filing this Cross Objection belatedly. Accordingly, we condone the delay and admit it for hearing.

17. The assessee has raised a ground relating to the addition to be made to the net profit under clause (f) of Explanation 1 to sec.115JB of the Act for the purpose of computing book profit. The Ld.AR submitted that, under clause (f) referred above, expenses relating to exempt income should be added to the net profit. The assessee had added the very same amount as computed by it u/s.14A of the Act for computing book profit u/s 115JB of the Act. He submitted that the law on this aspect has since been clarified by the Special Bench in the case of Vireet Investments Ltd (supra), wherein it has been held that the disallowance computed u/s.14A of the Act for the purpose of computing total income under normal provisions of the Act should not be adopted as it is for the purpose of sec.115JB of the Act, i.e., the addition that is required to be made under clause (f) to Explanation 1 to sec.115JB of the Act has to be computed as per the annual accounts. We notice that the assessee is raising this plea for the first time. Accordingly, we are of the view that the claim of the assessee requires examination at the end of the AO. Accordingly, we restore this issue to the file of the AO for examining it in accordance with law by duly taking into account the decision of the Special bench in the case of Vireet Investments Ltd (supra). After affording adequate

opportunity of being heard to the assessee, the AO may take appropriate decision in accordance with the law.

18. In the result, the appeal of the Revenue is dismissed and the Cross Objection of the assessee is treated as allowed for statistical purposes.

Order pronounced in the open court on 17-12-2024

Sd/-  
[RAJ KUMAR CHAUHAN]  
JUDICIAL MEMBER

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

Mumbai,  
Dated: 17-12-2024

*TNMM*

Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT concerned
- 4) The D.R, "G" Bench, Mumbai
- 5) Guard file

By Order

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