

IN THE INCOME TAX APPELLATE TRIBUNAL “E” BENCH MUMBAI

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

**ITA No. 4074/MUM/2024
Assessment Year: 2017-18**

Trent Limited, Bombay House 24, Homi Mody Street, Fort, Mumbai – 400 001 (PAN : AAACL1838J) (Appellant)	Vs.	Deputy Commissioner of Income Tax, Circle 2(3)(1), Mumbai (Respondent)
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Present for:

Assessee : Shri Rajan Vora and Nikhil Tiwari, CA
Revenue : Shri Ganesh Rakh, Sr. DR

Date of Hearing : 01.10.2024

Date of Pronouncement : 31.12.2024

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of Ld. CIT(A), National Faceless Appeal Centre (NFAC), Delhi vide order no. ITBA/NFAC/S/250/2024-25/1066406191(1), dated 04.07.2024 passed against the assessment order by the Assistant Commissioner of Income Tax, Circle 2(3)(1), Mumbai, u/s. 143(3) of the Income-tax Act (hereinafter referred to as the “Act”), dated 25.12.2019 for Assessment Year 2017-18.

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

The Appellant objects to the order, dated 4 July 2024, passed by the Commissioner of Income-tax- (Appeals), National Faceless Appeal Centre [learned CIT(A)] under Section 250 of the Income-tax Act 1961 ('the Act') in relation to the appeal filed against the assessment order dated 25 December 2019 under section 143(3) of the Act on the following grounds of appeal, which are independent and without prejudice to one another

On the facts and in the circumstances of the case and in law, the Commissioner of Income-tax (Appeals)

Disallowance under section 14A of the Act in respect of expenditure incurred towards earning exempt income:

1. *erred in not accepting the disallowance amounting to Rs. 9,09,943/- made by the appellant on a reasonable basis in the return of income:*
2. *upholding the action of the Assessing Officer in computing disallowance under section 14A of the Act by applying the provisions of Rule SD of the Income-tax Rules, 1962 ('the Rules') only in respect of investments which has yielded exempt income.*
3. *erred in not adjudicating the contention of the appellant that provisions of Rule 8D of the Rules are not automatic and cannot be invoked by the Assessing Officer without recording dis- satisfaction regarding the suo- moto disallowance made under section 14A of the Act on a reasonable basis,*
4. *erred in not appreciating the fact that disallowance made on reasonable basis under section 14A of the Act has been upheld by the Income-tax Appellate Tribunal, Mumbai, in the appellant's own case, for earlier years.*

Addition in respect of expenditure attributable towards earning of exempt income computed as per Rule 8D of the Rules for the purpose of section 115JB of the Act:

5. *erred in not appreciating that no adjustment can be made to the book profit under section 115J8 of the Act by applying provisions of section 14A of the Act (read with Rule 8D of the Rules).*

Levy of Interest under section 234C of the Act: Rs. 67,15,395

6. *erred in not adjudicating ground of appeal raised before the appellate authority in respect of levy of interest under section 2340 of the Act*

3. Essentially, the issue involved in the present appeal is in respect of disallowance made u/s.14A by applying provisions of Rule 8D of the Income-tax Rules, 1962 (the Rules) by not accepting the suo moto disallowance made by the assessee as ld. Assessing Officer invoked Rule 8D without recording satisfaction. Assessee has also contested adjustments made to the book profit u/s.115JB towards disallowance resorted to by ld. Assessing Officer by applying provisions of section 14A r.w.r. 8D.

4. Brief facts of the case are that assessee is a public limited company listed on recognised stock exchanges in India. Assessee is engaged in retailing of apparels, footwear, accessories, toys, games etc. It operates through 'Westside' and 'Landmark' retail formats. Westside - Trent's flagship format offers apparel, footwear and accessories for men, women and children, along with furnishings, decor and a range of home accessories. It filed its return of income on 29.11.2017, reporting total income at Rs. 93,33,18,662/- under the normal provision and Rs. 138,29,46,363/- under section 115JB of the Act. During the year under consideration, assessee had received exempt dividend income of Rs. 2,07,70,826/- u/s.10(34) of the Act, break-up of which is provided as under:

Name of the company	Amount of Dividend (Rs. crores) in
Tata Sons Limited	1.05
Fiora Services Limited	0.13
Tata Capital Limited	0.83
Birla Sun Life Cash Plus-Instt-Prm.DDR	0.03
HDFC cash management fund savings plan Daily divid, reinvst.	0.03
Total	2.08

4.1. In the return of income, assessee suo-moto made disallowance under section 14A of the Act amounting to Rs. 9,04,943/-. The said disallowance was computed as per working prepared on reasonable basis which is based on an analysis of each and every head of expenditure. Detailed working furnished by the assessee for suo-motto disallowance is extracted below for ease of reference.

Sl No.	Particulars	Amount (Rs.)	Amount (Rs.)	Amount Disallowed(Rs.)
1	Proportionate Salary of Investment accountant	585,640		
2	Proportionate Salary of Investment Manager	1,464,100		
3	Proportionate Salary of General Manager as estimated cost of accounts and other	732,050		
4	5% of MD remuneration(Refer note 1 below)	2,665,390		
5	5% of Remuneration to CFO	969,498		
6	5% of commission to non executive directors (Refer note 2 below)	443,100		
7	5% of Directors Fees	448,399		
8	Sitting Fees paid to Investment Committee	310,500		
9	Other Administrative expenses (as per working note below)	912,000		
10	Total Expenses Incurred for investment income			8,530,677
	Income from Investments			
11	Dividend, Interest etc Claimed Exempt	20,770,826		
12	Capital Gains Income Claimed Exempt u/s 10(38)	-		
13	Less: Negative capital gains	-		
14	Capital Gains Income Claimed Exempt	-	20,770,826	
15	Short Term Capital Gains on Sale of Investment	175,030,664		
16	Long Term Capital Gains on Sale of Investment	-	175,030,664	
17	Total (14) + (15) +(16) Income from Investment			195,801,489
18	Proportionate Amount Disallowed u/s 14A		904,943	
	Dividend, Interest etc Claimed Exempt (11/17*10)			
19	Proportionate Amount Disallowed u/s 14A Long Term Capital Gain Claimed Exempt (14/17*10)		-	
20	Total Amount Disallowed u/s 14A			904,943
Details of Interest incurred in relation to exempt income disallowed u/s 14A				
21	Direct Expenses (commission) disallowed u/s14A i.e. pertaining to exempt income being dividend on mutual funds (Inditex Dividend)			0
22	Total Expenses disallowed (20 +21)			904,943

4.2. From the above table, it is noted that assessee had apportioned salary of various resources including Managing Direction/CFO, commission to non-executive Directors, Director's fees, sitting fees paid to investment committee as well as other indirect administrative expenses for each of the line item in the table. Assessee had also furnished detailed and elaborated working along with the explanation for the assumptions made in the apportionment for computing the suo-motto disallowance. The detailed working is placed at page 10-12 of the paper book and is not extracted for the sake of brevity. However, from the said elaborate details, it is noted that apart from employment cost, total operation and other expenses excluding expenses not related to investment and income therefrom have been taken into account for the purpose of apportionment.

5. In the course of assessment proceedings, Id. Assessing Officer took note of certain presumptions to arrive at a satisfaction that disallowance u/s. 14A as per Rule 8D has to be made. His presumptions as noted in para 5.3 of the impugned order mentions that investments made by the assessee cannot be managed without inherent expenses since it requires market analysis and expertise. He noted that for the market expertise, necessary staff expenses had to be incurred. He also noted that other cost on account of conveyance, travelling, telephone/mobile, stationery, etc. are also required. Since it is difficult to ascertain such cost in quantitative terms, it has to be considered on an approximate basis for the purpose of disallowance. Id. Assessing Officer disregarded the elaborate submissions made by the assessee in explaining the suo-moto disallowance made by it of Rs.9,04,943/- and computed the disallowance by applying Rule 8D(2)(iii) to arrive at figure of Rs.10,56,03,663/-. For the purpose of making an addition to the total income, he reduced the disallowance

so computed by the amount of suo-moto disallowance made by the assessee to arrive at a sum of Rs.10,46,98,720/-.

5.1. It is important to note that despite making discussion in respect of expenses for interest as well as other expenses in para 5.1, ld. Assessing Officer did not make any computation towards interest expense and direct expenses while applying Rule 8D(2). Thus, no disallowance is computed u/r. 8D(2)(i) and (ii). Aggrieved, assessee went in appeal before the ld. CIT(A), who directed the ld. Assessing Officer to work out disallowance as per Rule 8D by considering only those investments which have yielded exempt income during the year and to restrict the disallowance to the extent of exempt income earned by the assessee. He thus, upheld the application of Rule 8D made by ld. Assessing Officer while making disallowance u/s.14A. Aggrieved, assessee is in appeal before the Tribunal.

6. Before us, ld. Counsel for the assessee strongly submitted that disallowance u/s. 14A cannot be made where no satisfaction has been recorded by the ld. Assessing Officer, "having regard to the accounts of the assessee", to arrive at conclusion about the incorrectness of the claim made by the assessee. According to him, recording of satisfactions is a pre-requisite for invoking the provisions of section 14A of the Act when assessee has made a suo-motto disallowance. In the present case, ld. Assessing Officer did not record any satisfaction regarding rejection of the suo-moto disallowance made by assessee having regard to the accounts of the assessee. Ld. Counsel pointed to the presumptions noted by ld. Assessing Officer while arriving at his satisfaction for applying Rule 8D to make disallowance u/s.14A as noted in para 5.3 of the impugned order. He submitted that, it is evident from records that nowhere in the impugned order, ld.

Assessing Officer recorded his satisfaction on the correctness of the claim of expenditure made by the assessee having regards to the accounts of the assessee. According to him, assessee has computed the disallowance suo-moto of Rs.9,04,943/- prepared on scientific basis, after analysing each and every head of expenditure.

6.1. Provisions of section 14A(2) requires the Assessing Officer to invoke Rule 8D only if he is not satisfied with the correctness of the claim of the assessee in respect of the expenditure, in relation to the exempt income having regard to the accounts of the assessee. Even Rule 8D postulates similar condition as mentioned in section 14A(2) wherein also the satisfaction to be arrived at by the Id. Assessing Officer on the correctness of the claim of expenditure made by the assessee is "having regard to the accounts of the assessee". There is no change in Rule 8D(1) even though method of computation of disallowance has been substituted with a different method.

6.2. Ld. Assessing Officer has simplicitor noted that assessee has made a disallowance of Rs.9,04,943/- without any scientific basis or application of any rules and contention of the assessee is not satisfactory. Ld. Assessing Officer has not provided any cogent reasons as to why the disallowance computed by the assessee is not sufficient to cover the expenses relating to earning of the exempt income. He has disregarded the elaborate detailed submissions made which demonstrates scientific basis of working the disallowance of Rs.9,04,943/-.

6.3. Ld. Counsel placed reliance on several judicial precedents including that of Hon'ble Supreme Court and Hon'ble Jurisdictional High Court of Bombay which are listed below:

1. Maxopp Investment Limited 402 ITR 640 (SC)
2. Godrej & Boyce Manufacturing Company Ltd. 394 ITR 449 (SC)
3. Reliance Capital Asset Management Ltd. 400 ITR 217 (Bom)
4. Reliance Capital Asset Management Ltd 98 taxmann.com 361 (SC), wherein the SLP filed by Department is dismissed
5. Bombay Stock Exchange Ltd 113 taxmann.com 303 (Bom)
6. Bajaj Finance Ltd 110 taxmann.com 303 (Bom)
7. JSW Energy Ltd 153 taxmann.com 208 (Bom)
8. Tata Capital Ltd 161 taxmann.com 557 (Bom)

7. Ld. Sr. DR placed reliance on the orders of the authorities below.

8. We have heard the rival contentions of both the parties and perused the material on record. We have also given thoughtful consideration to various judicial precedents listed above. Before proceeding, it is worth taking note of the relevant provisions contained in section 14A(2), which is reproduced as under:

“The Assessing Officer shall determine the amount of expenditure incurred in relation to such income which does not form part of the total income under this Act in accordance with such method as may be prescribed, if the Assessing Officer, having regard to the accounts of the assessee, is not satisfied with the correctness of the claim of the assessee in respect of such expenditure in relation to income which does not form part of the total income under this Act.”

8.1. Condition mentioned in Rule 8D(1) is also reproduced which also contains the same condition of recording of satisfaction on the correctness of the claim of expenditure made by the assessee “having regards to the accounts of the assessee”.

“Where the Assessing Officer, having regard to the accounts of the assessee of a previous year, is not satisfied with-

(a) the correctness of the claim of expenditure made by the assessee; or

(b) the claim made by the assessee that no expenditure has been incurred in relation to income which does not form part of the total income under the Act for such previous year he shall determine the amount of expenditure in relation to such income in accordance with the provisions of sub-rule (2)

8.2. From the above, we note that if the ld. Assessing Officer is not satisfied with the correctness of the claim of the assessee in respect of expenditure incurred in relation to exempt income after having regard to the accounts of the assessee, he can determine the amount of such expenditure for making disallowance u/s.14A. The satisfaction arrived at by ld. Assessing Officer in terms of the above provisions is not just a mere disagreement with the submissions made by the assessee but has to be an objective satisfaction by taking into consideration the methodology adopted by the assessee for the claim made by it and then arriving at a satisfaction accepting or rejecting the same having regard to the accounts of the assessee. In the present case before us, ld. Assessing Officer has not taken into consideration the elaborate details and scientific basis adopted while arriving at the suo-moto disallowance but has proceeded merely on his own presumptions to invoke section 14A r.w.r. 8D.

8.3. It was pointed out before us by the ld. Counsel that similar issue has been dealt by the Coordinate Bench in assessee's own case for Assessment Year 2007-08 to 2013-14 in ITA No.5775/Mum/2024 and others, dated 15.07.2020 wherein under same computation mechanism, the Coordinate Bench accepted the computation mechanism adopted by the assessee as fair and reasonable and directed the ld. Assessing Officer to restrict the disallowance under section 14A of the Act to the amount which the assessee has suo-moto disallowed in its return of income and delete the disallowance worked out as per Rule 8D. Relevant extract of the said decision of the Coordinate Bench for AY 2008- 09 is reproduced as under:

"80. We have heard the rival submissions, perused the orders of the authorities below. The Ld.CIT(A) restricted the disallowance to the suomoto disallowance made by the assessee observing as under -

3.2. I have gone through the order of the AO which contains detailed submission of the appellant and also detailed submission from pages 3 to 14 of the written submission filed vide letter dated 30.12.2011.

3.2.1. The appellant has considered the entire salary of Investment Manager of 15.8 lacs, 10% of salary of General Manager at 3.89 lacs, entire sitting fee paid to Investment Committee at 55,000/-, 5% of MD Remuneration at ₹.7.68 lacs, 5% commission paid to none executive directors 1.53 Lacs, 5% of directors' fee at .28,900/-, other administrative expense at T 3.25 lacs and interest expense at 2. 3.73 Lacs totaling 35,90,326/- As may be seen from Para 3.2 of the assessment order quoted above, the AO has not given any cogent reason for not being satisfied with the claim of the appellant. The AO had further erred in disallowing employees' cost and miscellaneous expense at . 1.86 Crores over and above the disallowance computed as per Rule 8D, specially on account of the fact that Rule 8D (iii) itself provides for disallowance of administrative expense in form of 0.5% of the average value of investment. As the appellant's computation of disallowance u/s. 14A is satisfactory, the disallowance u/s, 14A is restricted to 35,90,326/- and the disallowance by the AO is deleted."

81. We also further noticed from the Assessment Order that, the assessee has made elaborate submissions and a detailed computation of the expenditure attributable for earning exempt income which is said to be consistent method of computation on a scientific basis made from the A.Y.2006-07 We further find that even though the Assessing Officer extracted the elaborate submissions and the computation of disallowance made by the assessee, there is no satisfaction recorded by the Assessing Officer as to why the suomoto computation of disallowance of expenses made by the assessee is not satisfactory having regard to the Books of Accounts of the assessee and the correctness of the claim of expenditure made by the assessee, The Ld. CIT(A) while disposing off the appeal for the A.Y. 2007- 08 has examined the issue elaborately and accepted that the computation of disallowance made by the assessee (suomoto disallowance) is on a scientific basis. While dealing with the appeal for the A.Y. 2007-08 we have accepted the computation of the assessee since it is more scientific than the adhoc disallowance made by the Assessing Officer. Even though the provisions of Rule SD are applicable for the year under consideration i.e. A.Y.2008-09 in the absence of any satisfaction recorded by the Assessing Officer as to why the suomoto disallowance made by the assessee is not acceptable having regard to the Books of Accounts of the assessee and the correctness of the claim of expenditure made by the assessee, we accept the suomoto disallowance made by the assessee as the computation of disallowance made by the assessee is on a scientific basis and is in consistent with the same method as adopted consistently from the A.Y. 2006-07 onwards, In the circumstances, we sustain the order of the Ld.CIT(A) and direct the Assessing Officer to adopt the suomoto disallowance made by the assessee for computing the disallowance u/s. 14A of the Act. Grounds raised by the revenue are dismissed."

8.4. Aforesaid view has been consistently followed by the Coordinate Bench in assessee's own case up to Assessment Year 2013-14. From the perusal of the findings arrived at by the Coordinate Bench, it is noted that the suo-moto disallowance computed by the assessee has been held on a scientific basis. Further, it has been held that there should be a consistent method of approach in making disallowance and thus followed the method for consistency. In all the years, ld. Assessing Officer had been directed to accept the computation of disallowance u/s14A as claimed by the assessee, while computing the income. The Coordinate Bench has consistently allowed the appeal of the assessee on the ground that the ld. Assessing Officer has not recorded any satisfaction for rejecting the working of the assessee. Since in the instant case, working remains similar and the ld. Assessing Officer has not recorded any satisfaction to this effect as in the case referred, the decision of Coordinate Bench is applied mutatis mutandis to maintain judicial consistency. It is noted that facts of the case remain identical to those considered previously and no amendments have been made to the relevant provisions of law.

8.5. The above finding arrived at by us is further fortified by the decision of Hon'ble Supreme Court in the case of *Maxopp Investment Ltd. vs. CIT(A) (2018) 402 ITR 640 (SC)* while emphasising on aspect of recording of satisfaction by the ld. Assessing Officer for which it observed as under:

"41. Having regard to the language of section 14A(2) of the Act, read with rule 8D of the Rules, we also make it clear that before applying the theory of apportionment, the Assessing Officer needs to record satisfaction that having regard to the kind of the assessee, suo moto disallowance under section 14A was not correct. It will be in those cases where the assessee in his return has himself apportioned but the Assessing Officer was not accepting the said apportionment. In that eventuality, it will have to record its satisfaction to this effect. Further, while recording such a satisfaction, the nature of the loan taken by the assessee for purchasing the shares/ making the investment in shares is to be examined by the Assessing Officer

8.6. Further, the Hon'ble Supreme Court in *Godrej & Boyce Manufacturing Company Ltd. v. DCIT*, (2017) 394 ITR 449, observed as under:

"37. We do not see how in the aforesaid fact situation a different view could have been taken for the Assessment Year 2002-2003. Sub-sections (2) and (3) of Section 14A of the Act read with Rule 8D of the Rules merely prescribe a formula for determination of expenditure incurred in relation to income which does not form part of the total income under the Act in a situation where the Assessing Officer is not satisfied with the claim of the assessee. Whether such determination is to be made on application of the formula prescribed under Rule 8D or in the best judgment of the Assessing Officer, what the law postulates is the requirement of a satisfaction in the Assessing Officer that having regard to the accounts of the assessee, as placed before him, it is not possible to generate the requisite satisfaction with regard to the correctness of the claim of the assessee. It is only thereafter that the provisions of Section 14A(2) and (3) read with Rule 8D of the Rules or a best judgment determination, as earlier prevailing, would become applicable." (emphasis supplied)

8.7. We also find that the Hon'ble jurisdictional High Court of Bombay in *CIT v. M/s Asian Paints Ltd.*, in ITA No. 1564 of 2016, vide order dated 06/04/2019, for the assessment year 2008-09, while dismissing the appeal filed by the Revenue on a similar issue held that in the absence of recording of satisfaction in terms of section 14A(2) of the Act, invocation of Rule BD is not permissible. Relevant findings of the Hon'ble Court, are reproduced as under:-

"4. Regarding question no.(c) :-

(a) In its return of income, the respondent made a suo-moto disallowance of Rs.15.21 lakhs being the expenditure incurred to earn exempt income under Section 14A of the Act. The Assessing Officer disregarded the same and proceeded to disallow an amount of Rs. 1.10 crores under Section 14A of the Act read with Rule 8D of the Rules as expenditure incurred to earn exempt income. Thus, adding Rs.1.10 crores to the income of the respondent.

(b) Being aggrieved, the respondent filed an appeal to the CIT(A) but without success.

(c) On further appeal, the impugned order of the Tribunal while allowing the appeal held that before invoking the provisions of Rule 8D of the Income Tax Rules, the Assessing Officer has to record his non satisfaction with the suo moto disallowance of expenditure made towards earning exempt income by the respondent. This exercise not having been carried out by the Assessing Officer

before applying Rule 8D of the Income Tax Rules, the disallowance of expenditure to earn exempt income cannot be sustained.

(d) This issue is no longer res integra as the Apex Court in Gorej & Boyce Mfg. Co. Ltd. v. Dy. CIT, 394 ITR 449 decided the issue in favour of the respondent. In the above case, the Supreme Court has while considering the issue of disallowing of expenditure incurred to earn exempt income observed as under

"Whether such determination is to be made on application of the formula prescribed under rule 8D or in best judgment of the Assessing Officer, what the law postulates is the requirement of a satisfaction in Assessing Officer that having regard to the accounts of the assessee, as placed before him, it is not possible to generate the requisite satisfaction with regard to the correctness of the claim of the assessee. It only thereafter that the provisions of section 14A (2) and (3) read with rule 8D of the Rules or a best judgment determination, as earlier prevailing, would become applicable."

Thus, Rule 8D of the Rules cannot be invoked where the suo moto disallowance made by the respondent assessee is not found to be satisfactory by the Assessing Officer having regard to the accounts of the assessee, In the absence of recording the aforesaid fact of non- satisfaction in terms of Section 14A(2) of The Act, invocation of Rule 8D is not permissible.

(e) Therefore, in view of the above decision of the Apex Court, this question also does not give rise to any substantial question of law. Thus, not entertained."

14. Since, in the present case, no proper satisfaction has been recorded by the ld. Assessing Officer in terms of the provisions of section 14A(2) of the Act, having regard to the accounts of the assessee, about the correctness of the claim of the assessee in respect of expenditure incurred in relation to exempt income, respectfully following the aforesaid decisions, we do not find any reason for upholding the disallowance made by the AO under section 14A read with Rule 8D of the Rules. Accordingly, the same is directed to be deleted. As a result, ground no. I raised in assessee's appeal is allowed."

8.8. Accordingly, grounds at Sr. No.1 to 4, taken by the assessee in this respect are allowed.

9. On the issue relating to adjustment made in computing the book profit for the purpose of Section 115JB, it is noted that ld. CIT(A) has not adjudicated on the issue raised before him. In this regard, we note that Section 115JB of the Act or MAT provisions levies an alternate tax on the 'book profit' as shown in the profit and loss statement as increased/decreased by the specified adjustments in the given section. Explanation 1 to section 115JB(2) of the Act provides that the

calculation of book profits shall begin with profit as per the profit and loss account which shall be in accordance with the provisions of Schedule III to the Companies Act. The provisions of section 115JB of the Act is a separate code and it does not refer to any disallowance made under section 14A of the Act r.w.r. 8D of the Rules while arriving at the book profits for the purpose of section 115JB(2) of the Act. Further, section 14A of the Act is a provision with fiction disallowing the deemed expenditure attributable to exempt income viz. incomes u/s. 10 of the Act. Section 115JB of the Act is also a provision with fiction payment of tax in respect of deemed income. Therefore, while computing the profit for the purpose of section 115JB of the Act, another provision with fiction cannot be superimposed Hence the question of increasing book profit on account of due to the disallowance under section 14A of the Act will not arise. Book profit has to be increased by expenses debited to Profit and Loss related to exempt income. In the present case, assessee had debited in profit and loss account, expenditure of Rs 9,04,453/- in relation to earning of exempt income and same may be added for working out book profit under section 115JB of the Act. In this regard, reliance is placed on the decision of the Hon'ble Special Bench of ITAT in the case of *Vireet Investment (P.) Ltd. (82 taxmann.com 415)*, wherein it is held that computation under clause (f) of Explanation 1 to section 115JB(2), is to be made without resorting to computation as contemplated under section 14A read with rule 8D. The relevant extract of the said decision is reproduced hereunder:

"the computation under clause (f) of Explanation 1 to section 115JB(2), is to be made without resorting to the computation as contemplated under section 14A, read with rule 8D of the Income-tax Rules, 1962"

9.1. The Coordinate Bench of ITAT Mumbai vide its combined order in the assessee's case for AY 2007- 08 to AY 2013-14, relied on the

decision of the special bench in the case of Vireet Investment (P) Ltd. (supra) and held that disallowance under section 14A of the Act as computed in accordance with rule 8D of the Rules cannot be made while computing book profits under section 115JB of the Act, and the same should be restricted to actual expenditure incurred. In view of the above, assessee submitted that the addition made by the ld. Assessing Officer on the basis of disallowance computed u/s.14A of the Act r.w.r. 8D should be deleted and the addition to book profits u/s. 115JB of the Act should be restricted to Rs 904,943/-, being the amount suo motto disallowed which was based on scientific method, consistent with previous years. Accordingly, the ground taken by the assessee in this respect is allowed.

10. On the issue relating to levy of interest u/s. 234C, ld. CIT(A) has not adjudicated on the same. It is submitted before us that provisions of Section 234C requires that interest is to be calculated only on returned income and not on the assessed income. However, ld. Assessing Officer had levied interest u/s. 234C, which according to assessee was not leviable at the time of filing of return. The relevant provisions of Section 234C is reproduced as under:

"(1) Where in any financial year,-

((a) an assessee, other than (the assessee referred to in clause (b)), who is liable to pay advance tax under section 208 has failed to pay such tax or-

*(i) the advance tax paid by such assessee on its current income on or before the 15th day of June is less than fifteen per cent of the tax due on the **returned income** or the amount of such advance tax paid on or before the 15th day of September is less than forty-five per cent of the tax due on the **returned income** or the amount of such advance tax paid on or before the 15th day of December is less than seventy-five per cent of the tax due on the **returned income**, then, the assessee shall be liable to pay simple interest at the rate of one per cent per month for a period of three months on the amount of the shortfall from fifteen per cent or forty-five per cent or seventy-five per cent, as the case may be, of the tax due on the **returned income**,*

*(i) the advance tax paid by the assessee on the current income on or before the 15th day of March is less than the tax due on the **returned income**, then, the assessee shall be liable to pay simple interest at the rate of one per cent on the amount of the shortfall from the tax due on the **returned income**..."*

Emphasis supplied

10.1. We note that the provisions contained in section 234C requires the returned income to be taken into account for the levy of interest. Accordingly, we direct the ld. Assessing Officer to delete the interest so levied computed on assessed income. Accordingly, ground taken by the assessee, in this respect is allowed.

11. In the result, appeal of the assessee is allowed.

Order is pronounced in the open court on 31 December, 2024

Sd/-
(Pavan Kumar Gadale)
Judicial Member

Sd/-
(Girish Agrawal)
Accountant Member

Dated: 31 December, 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