

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "D", MUMBAI

BEFORE SHRI ANIKESH BANERJEE, JUDICIAL MEMBER AND
SHRI PRABHASH SHANKAR, ACCOUNTANT MEMBER

I.T.A No.6123 /Mum/2025
(Assessment Year: 2018-19)

DCIT, Cent.Circle-1(1), Mumbai Pratishtha Bhavan, M.,K. Road, Mumbai-400 020	vs	Dentsu Aegis Network India Pvt Ltd, 6 th Floor, B Wing, Poonam Chambers, Dr Annie Besant Road, Worli, Mumbi-400 018 PAN : AAHCA3058N
APPELLANT		RESPONDENT

Assessee by : Shri A.K. Jawadwala
Respondent by : Shri Umashankar Prasad (CIT DR)

Date of hearing : 04/12/2025
Date of pronouncement : 05/12/2025

ORDER

Per: Anikesh Banerjee (JM):

The instant appeal of the revenue was filed against the order of the Learned Commissioner of Income-tax (Appeal)-47, Mumbai [hereinafter, 'Ld.CIT(A)] passed under section 250 of the Income-tax Act, 1961 (in short, 'the Act') for the Assessment Year 2018-19, date of order 08/07/2025. The impugned order was emanated from the order of the Learned Deputy Commissioner of

Income-tax, Central Circle-1(1) Mumbai (in short, 'Ld.AO') passed under section 143(3) of the Act, date of order 03/05/2021.

2. The revenue has raised the following grounds of appeal:-

"GROUNDS OF APPEAL

"1. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in restricting the disallowance under section 14A to only those investments which yielded exempt income during the year, ignoring the fact that Rule 8D does not prescribe such restriction and the Assessing Officer's computation was based on the entire investment portfolio as per law?

2. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) justified in deleting the disallowance of Rs 9,46,59,153/- made by the Assessing Officer under section 14A of the Income tax Act, 1961 read with Rule 8D of the income tax Rules, 1962, despite the assessee having made substantial investments capable of yielding exempt income?

"3. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in relying on judicial precedents which interpreted Rule 8D(2)(iii) restrictively, without appreciating that the Assessing Officer's approach was consistent with the statutory framework and CBDT Circular No. 5/2014, which clarifies that disallowance under section 14A is applicable in respect of investment which does not yield exempt income

4. Whether on the facts and in the circumstances of the case and in law the Ld. CIT(A) erred in not appreciating the legislative intent behind the Explanation, inserted by the Finance Act, 2022 to section 14A, which clarifies that disallowance is attracted even no exempt income is earned, and that the said amendment is declaratory and curative in nature.

5. "Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in relying on judicial precedents which held the amendment to section 14A as prospective, without appreciating that the consistent legal position supported by departmental circulars and legislative intent warranted the disallowance?

6. *Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition of Rs.9,46,59,153/- made while computing the book profit under section 115JB of the Act, by not appreciating that clause (f) of Explanation 1 to section 115JB mandates addition of expenditure relatable to exempt income, regardless of whether such income is actually earned during the year.*

7. *The appellant craves leave to add, alter, amend, delete and / or vary any of the above grounds of appeal / relief claimed at any time before the final adjudication of the appeal."*

3. Brief facts of the case are that the assessee's case was scrutinised under section 143(3) of the Act, wherein the Ld. AO made a disallowance under section 14A read with Rule 8D of the Income-tax Rules, 1962 (Rule). The Ld. AO noted that the assessee had applied section 14A only to those investments which actually yielded exempt income. A show-cause notice was issued, referring to CBDT Circulars No.14/2001 and No.8/2002, questioning why disallowance should not be computed on the entire investment portfolio.

In response, the assessee submitted that:

- (i) the investments were made in subsidiary companies out of own funds without any use of borrowed funds;
- (ii) dividend income of Rs.8.34 crore was earned during the year; and
- (iii) a suo motu disallowance of Rs.2.44 crore was already offered in accordance with Rule 8D.

The assessee relied on judicial precedents, including **Piramal Enterprises Ltd, 97 taxmann.com 352 (ITAT-Mumbai)**, and the **Special Bench** of ITAT Delhi in **ACIT vs. Vireet Investment (P.) Ltd. (2017) 165 ITD 27 (Delhi) (SB)**, to contend that only those investments which yielded exempt income should be considered for Rule

8D(2)(iii) computation. The Ld. AO rejected the explanation, observing that the assessee had “picked and chosen” only income-yielding investments, contrary to Rule 8D. Relying on CBDT Circular No.5/2014, he held that disallowance under section 14A applies even if no exempt income is earned from certain investments. Accordingly, he computed the annual average of total investments at Rs.11,90,23,94,852/- and determined disallowance at 1% thereof, i.e., Rs.11,90,23,949/-. After adjusting the assessee’s suo motu disallowance of Rs.2,43,64,796/-, a net addition of Rs.9,46,59,153/- under section 14A r.w. Rule 8D(2)(iii) was made. The assessee filed appeal before the Ld. CIT(A). The Ld. CIT(A), following several Tribunal decisions, held that only those investments which yielded exempt income should be considered for Rule 8D disallowance, and accordingly deleted the addition. Aggrieved, the revenue has preferred the present appeal before us.

4. The Ld. DR, in his argument stated that the assessee’s case is squarely covered by Finance Act, 2022 under Explanation inserted in section 14A of the Act, which clarifies that the section applies even in absence of exempt income and the addition can be made. The Ld. DR relied on the order of the Ld.AO.

5. The Ld.AR in argument stated that the issue is squarely covered by the order of the Hon’ble Delhi High Court in the case of **Era Infrastructure India Ltd (2022) 448 ITR 674 (Del)**, where it is held that the disallowance u/s 14A of the Act is not required to be made when the assessee has not earned any exempt income. The Ld.CIT(A) concluded the issue by deleting the addition and the

relevant paragraphs 9.1.1 to 9.1.3 on pages-23 & 24 of the appeal order are extracted below:-

“9.1.1 In the course of appellate proceedings, the appellant has stated that the investments made in the subsidiary companies are out of its own funds and the assessee does not have any borrowed funds. The appellant has stated that it had correctly excluded those investments which do not yield exempt income and computed disallowance applying Rule 8D of the I.T.Rules. For this, the appellant has placed reliance on the decision of Piramal Enterprise Ltd. (2018) 97 Taxmann.com 352 (Mum. Tribunal), wherein it is held that only those investments which have yielded exempt income during the relevant previous year can be considered qua average value of investment for computing disallowance under Rule 8D(2)(ii) of the I.T. Rules. The relevant part of the judgement is quoted herebelow : “In our considered opinion, the Ld. CIT(A) has followed correct approach, both on law and facts. The disallowance has been sustained to the extent it pertains to investment in securities enjoying tax-free income and the disallowance has been deleted vis-à-vis investment in the securities enjoying taxable income. Nothing wrong could be pointed in the findings of the Ld. CIT(A), and therefore order of Ld. CIT(A) is upheld. Thus, ground raised by the Revenue is dismissed”

9.1.2 The Hon’ble Special Bench of Delhi Tribunal in the case of ACIT vs. Vireet Investments Pvt. Ltd. ITA No.502/Del/2012, have held that for the purposes of calculating disallowance as per Rule 8D(2)(iii), only those investments are to be considered for computing average value of investments which yield exempt income during the year. Further, the Spl Bench decision has been followed in a number of other judgements such as (i) Sajjan India Ltd. vs. Addl.CIT (2018) 89 Taxmann.com 21 (Mum Tribunal), (ii) DCIT vs. Bombay Oxygen Corporation Ltd. (2017) 86 Taxmann 88 (Mum Tribunal), (iii) Tata Power Co Ltd. vs PCIT, Mumbai (2020), 121 Taxmann.com 127 (Mum Tribunal).

9.1.2 The Hon’ble Special Bench of Delhi Tribunal in the case of ACIT vs. Vireet Investments Pvt. Ltd. ITA No.502/Del/2012, have held that for the purposes of calculating disallowance as per Rule 8D(2)(iii), only those investments are to be considered for computing average value of investments which yield exempt income during the year. Further, the Spl Bench decision has been followed in a number of other judgements such as (i) Sajjan India Ltd. vs. Addl.CIT (2018) 89 Taxmann.com 21 (Mum Tribunal), (ii) DCIT vs. Bombay Oxygen Corporation Ltd. (2017) 86

Taxman 88 (Mum Tribunal), (iii) Tata Power Co Ltd. vs PCIT, Mumbai (2020), 121 Taxmann.com 127 (Mum Tribunal).

9.1.3 In the facts of the present case, the appellant has considered only those investments yielding exempt income at Rs.243,64,79,591/- which is not disputed by the Assessing Officer. With the Spl. Bench decision in the case of Vireet Investment Ltd. (supra), law with respect to computation of disallowance under Rule 8D(2)(iii) of the Act is settled and the quantum of disallowance has to be limited to the extent of investments yielding exempt income. Further, the Spl Bench decision has been followed in several cases by the jurisdictional Mumbai Tribunal in several cases quoted in the previous paragraph. Hence, following the judgement of the Spl Bench Delhi Tribunal and jurisdictional Tribunal, it is held that disallowance u/s.14A of the Act has to be limited to the value of investments yielding exempt income. The appellant has also contested that the AO erred in making an addition of disallowance u/s.14A of the Act in computing book profits u/s.115JB of the Act. Since it is held that the quantum of disallowance should be limited to the extent of exempt investment, the appellant gets consequential relief. The ground of appeal is allowed.”

6. We heard the rival submissions and considered the documents available on the record. We find that the assessee the assessee has made disallowance u/s 14A read with rule 8D(2)(iii) on the exempt income yielding investments. As per the revenue, the assessee is liable to make disallowance on the annual average of the investments as per the amendment in the Finance Act, 2022, which is applicable in case of the assessee, which has a retrospective effect. Here we find that the **Special Bench** of the ITAT, Delhi in **Vireet Investment (P.) Ltd.** (supra), held that the law with respect to computation of disallowance under Rule 8D(2)(iii) of the Act is settled and the quantum of disallowance has to be limited to the extent of investments, yielding exempt income.

In our considered view, we respectfully follow the order of the Special ate bench in the case of **Vireet Investment Ltd.** (supra). Accordingly, we find no infirmity in the order of L.CIT(A). As a result, we uphold the order of the Ld.CIT(A). Accordingly, we direct the Ld. AO to compute any adjustment under clause (f) of Explanation 1 to section 115JB strictly on the basis of the book accounts, independently of the disallowance under section 14A of the Act.

7. In the result, the appeal of the revenue is dismissed.

Order pronounced in the open court on 05/12/ 2025.

Sd/-

(PRABHASH SHANKAR)
ACCOUNTANT MEMBER
Mumbai,दिनांक/Dated: 05/12/2025
Pavanan

sd/-

(ANIKESH BANERJEE)
JUDICIAL MEMBER

Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकरआयुक्त CIT
4. विभागीयप्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,
MUMBAI
5. गार्डफाइल/Guard file.

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BY ORDER,

(Asstt. Registrar), ITAT, MUMBAI