

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

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)
AND
SHRI SANDEEP SINGH KARHAIL (JUDICIAL MEMBER)**

**ITA No. 6083/MUM/2025
Assessment Year: 2020-21**

ACIT
Kautilya Bhavan, BKC
Mumbai-400051.

Appellant

Vs. K Raheja Corp Pvt. Ltd.,
Plot No. C-30, Block-G, Raheja
Tower, Bandra,
Mumbai-400051.
PAN NO. AAACP 0522 B
Respondent

Assessee by : Mr. Paresh Sondagar, CA
Revenue by : Mr. Hemanshu Joshi, Sr. DR

Date of Hearing : 25/11/2025
Date of pronouncement : 22/01/2026

ORDER

PER OM PRAKASH KANT, AM

This appeal by the Revenue is directed against order dated 25.07.2025 passed by the Ld. Commissioner of Income-tax (Appeals) – 52, Mumbai [in short 'the Ld. CIT(A)'] for assessment year 2020-21, raising following grounds:

- 1. Whether the Ld. CIT(A) right in law and facts of the case by deleting the disallowance us 14A of the IT Act, relying on the premises that there was no exempt income received by the assessee during the year under consideration, without*



appreciating the direction contains in the Circular No.5 of 2014 dated 11.02.2014 of CBDT?

2. *Whether the Ld. CIT(A) right in law and facts of the case by deleting the disallowance u/s 14A of the Income Tax Act, 1961 thereby overlooking the computational procedure laid down in Rule 8D of the 1 T Rulcs. 1962 which has to be necessarily followed whenever a disallowance u/s 14A was to be made*
3. *Whether the Ld. CIT(A) right in law and facts of the case by deleting the addition of disallowance u/s 14A of the IT Act to the book profit of the assessee without appreciating the clause (f) of explanation 1 to section 11SJB(2) of the IT Act*

2. Briefly stated, facts of the case are that the assessee is a domestic company engaged in the construction activity and is also running a hotel at Madh Marve Road, Malad in the name and style “The Resort”. The assessee is also engaged in various business activity i.e. Real Estate Development, leasing of properties etc. The assessee company owns a 5 star hotel at Mumbai and is also a partner at various partnership firms which are in the business of real estate development, hospitality etc.

2.1 The assessee filed its return of income declaring total income at Rs.1,94,15,430/- and book profit of Rs.56,91,386/-. While filing the said return, the assessee had *suo-motu* disallowed Rs.1,45,32,176/- and Rs.740/- u/s 14A of the Income-tax Act, 1961 (in short ‘the Act’) while computing the normal income. The return of income filed by the assessee was selected for scrutiny and statutory notices under the Act were issued and complied with. In the assessment completed u/s 143(3) of the Act on 25.03.2022, the Assessing Officer however computed disallowance u/s 14A r.w.r. 8D at Rs.4,17,30,725/- and made addition for balance amount other



than already offered by the assessee, amounting to Rs.2,71,98,549/- while computing income under the normal provisions of Act and also disallowance of Rs.2,71,98,549/- was made u/s 14A of the Act while computing book profit.

3. On further appeal, the Ld. CIT(A) deleted both the additions.
4. Aggrieved, the Revenue is in appeal before the Tribunal by way of raising grounds as reproduced above.
5. We have heard rival submissions of the parties and perused the relevant materials on record. In the case, the assessee earned dividend income of Rs.6,65,50,230/-. Against said exempted income, the assessee following the Rule 8D of Income-tax Rules, 1962(in short the Rules) made disallowance @ 1% of the assets which had yielded dividend income during the year under consideration. The assessee also made disallowance of Rs.740/- directly related to the earning of the dividend income.

The Assessing Officer however is of the view that while computing the disallowance under Rule 8D(2)(ii) the assessee should take into consideration monthly average of all the investments and not only the investment which had yielded the exempted income, but the Ld. CIT(A), however following the decision of the Special Bench of the Tribunal in the case of ACIT vs. Vireet Investment Pvt. Ltd. (82 taxmann.com 415), deleted the disallowance made by the ld AO under normal provisions of the Act. The Ld. CIT(A) also disallowed



the addition/disallowance made while computing book profit. The relevant finding of the Ld. CIT(A) is reproduced as under:

7.2 The appellant has broadly raised the following contentions:

(i) The appellant had earned an exempt dividend income of Rs. 6,65,50,231 during the year under consideration and made a suo moto disallowance of Rs. 1,45,32,176 under Section 14A r.w. Rule 8D, considering only investments from which exempt income was actually earned. The details of exempt dividend income earned were submitted as under:

Particulars	Amount
JUHU BEACH RESORT LTD	5,82,70,710
K RAHEJA IT PARK (HYDERABAD) P	50,000
SUNDEW PROPERTIES LTD	10,000
INTIME PROPERTIES LTD	3,35,820
INFRASTRUCTURE DEVELOPMENT	45,833
Zodiac Clothing Company Ltd	33,151
Prism Cement Ltd	65,000
Kothari Products Ltd	4,62,717
SHOPPERS STOP LIMITED	25,36,653
DLF Limited	73,200
Balaji Telefilms Ltd	16,000
Ambuja Cements Ltd	7,500
JM Financial Limited	45,000
FAERING CAPITAL INDIA EVOLVING	43,95,827
INDIA VALUE FUND SCHEME 'B'	2,02,820
Total	6,65,50,231

(ii) A working for the same suo moto disallowance computed was submitted which is reproduced as under:

Particulars	Amount
JUHU BEACH RESORT LTD	96,12,85,508
K RAHEJA IT PARK (HYDERABAD) P	50,000
SUNDEW PROPERTIES LTD	0
INTIME PROPERTIES LTD	0
INFRASTRUCTURE DEVELOPMENT	13,56,910
Zodiac Clothing Company Ltd	83,33,296
Prism Cement Ltd	33,97,940
Kothari Products Ltd	3,87,86,642
SHOPPERS STOP LIMITED	32,58,86,651
DLF Limited	20,02,864
Balaji Telefilms Ltd	18,89,415
Ambuja Cements Ltd	12,26,649



<i>JM Financial Limited</i>	61,18,823
<i>FAERING CAPITAL INDIA EVOLVING</i>	4,86,83,106
<i>FAERING CAPITAL INDIA EVOLVING</i>	2,55,45,278
<i>INDIA VALUE FUND SCHEME 'B'</i>	2,80,67,857
<i>Total</i>	1,45,26,30,939

<i>Average Investment</i>	1,45,31,43,595
<i>Disallowance under section 14A @ 1% of investments</i>	1,45,31,436
<i>Add: Direct Expenditure</i>	740
Disallowance u/s. 14A	1,45,32,176
Less: Suo Moto Disallowance	(1,45,32,176)
Difference	-

iii) The appellant submitted that the AO did not record the mandatory satisfaction under Section 14A(2) of the Act.

(iv) Without prejudice to the above, the appellant contended that the amount of disallowance must be restricted upto the exempt income earned during the relevant year. For this proposition the appellant relied on the decision of Hon'ble Supreme Court in the case of Commissioner of Income Tax, (Central) v Chettinad Logistics (P.) Ltd. [2018](95 taxmann.com 250) wherein it was held that while computing expenditure allocable for earning exempt income as per the formulae prescribed in Rule 8D, investments which have not yielded exempt income must be excluded and that provisions of Rule 8D cannot override the provisions of section 14A of the Act and disallowance under section 14A of the Act is only warranted when there is actual receipt of exempt income.

(v) Without prejudice to the above, the appellant contended that for the purpose of disallowance u/s 14A of the Act, only those investments are to be considered from which exempt income has been received during the year under consideration. For this proposition the appellant relied on the decision of Hon'ble Delhi High Court in the case of Cargo Motors (P.) Ltd V. Deputy Commissioner of Income Tax ([2022] 145 taxmann.com 641) wherein it was held that while calculating disallowance made under Rule 8D @ 0.5% of the average investments, only those investments have to be considered which has yielded exempt income during the previous year.

(vi) Without prejudice to the above, the appellant contended that the suo moto disallowance made is correct as per law. For the proposition, the appellant relied on the decision of Hon'ble Supreme Court in the case of Godrej & Boyce Manufacturing Company Ltd. V. Deputy Commissioner of Income Tax ([2017] 81 taxmann.com 111) wherein it was held that Rule 8D cannot be applied mechanically and must be consistent with the facts of



each case. Since, a suo moto disallowance is made, it is possible that the additional disallowance under Rule 8D(2)(iii) might not be justified. The appellant relied on various other Tribunal order and High Court decisions.

(vii) In Ground No. 2, the appellant contended that the Ld. AO erred in disallowing Rs. 2,71,98,549/- u/s 14A of the Act while computing the book profits under section 115JB of the Act.

(viii) Further in relation to the explanation to section 14A inserted vide Finance Act 2022, the appellant contended that the said Explanation comes into force only with effect from AY 2022-23 i.e. effective prospectively and not retrospectively. In this regard the assessee has relied on the following decision of the Hon'ble Supreme Court:

a) MM Aqua Technologies Vs CIT (436 ITR 582)

b) Sedco Forex International Drilling Inc Vs CIT (279 ITR 310)

Also, appellant has relied on various other decisions of High court and tribunal.

7.3 I have considered the facts of the case, statement of facts, grounds of appeal and submissions made by the appellant. In the above background, the grounds of appeal are adjudicated as follows.

7.4. The submissions made by the appellant have been examined. It is noted that the appellant has categorically stated in its reply and the AO has also mentioned in the assessment order that the appellant has earned exempt income of Rs. 6,65,50,230/-. Whereas the appellant has suo-moto made disallowances of Rs. 1,45,32,176/- towards the expenses incurred in relation the earning such exempt income.

7.5. As regards the issue of disallowance made u/s 14A of the Act is concerned when there is no exempt income or the exempt income is less than the disallowance calculated as per Rule 8D, the various Judicial Authorities have held that disallowance u/s 14A cannot exceed the exempt income. However, in this case the disallowance is much less than the exempt income.

7.6. The appellant has also raised the issue that satisfaction was not recorded by the AO. I have gone through with the assessment order and examined that the AO has recorded satisfaction while making disallowances u/s 14A of the IT Act. The AO has not straight away resorted to Rule 8D. He has considered the books of accounts and arrived at an objective satisfaction that the appellant's claim is incorrect. Such satisfaction has been reached and recorded only after the claim of the appellant has been verified. This issue is, therefore, decided against the appellant as I find that the AO has recorded his satisfaction before rightly invoking the provisions of Rule 8D. However, as regards the quantum of disallowance, my observations are contained in the following portion of the order.



7.7. The explanation of sec. 14A inserted by the Finance Act, 2022 can be treated to be clarificatory in nature, the Hon'ble Delhi High Court in the case of *M/s. Era Infrastructure (India) Ltd.* in ITA No. 204/2022 & CM APPL. 31445/2022 dated 20.07.2022 has held that the provisions cannot be treated to be retrospective.

7.8. It is pertinent to point out that vide the Finance Act 2022 the following Explanation was inserted in section 14A w.e.f 01.04.2022:

Explanation. For the removal of doubts, it is hereby clarified that notwithstanding anything to the contrary contained in this Act, the provisions of this section shall apply and shall be deemed to have always applied in a case where exempt income has not accrued or arisen or has not been received during the previous year in relation to such income not forming part of the total income.

7.9. The legislative intent behind insertion of the aforesaid Explanation to section 14A of the Act was to clarify that notwithstanding anything to the contrary contained in this Act, the provisions of this section shall apply and shall be deemed to have always applied in a case where exempt income has not accrued or arisen or has not been received during the previous year relevant to an assessment year and the expenditure has been incurred during the said previous year in relation to such exempt income.

7.10. However, the Hon'ble ITAT Mumbai vide its order dated 29.06.2022 in the case of *Bajaj Capital Ventures (P) Ltd.* (2022) 141 taxmann.com 1 (Mumbai-Trib) has held that the amendment by way of insertion of the aforesaid explanation was prospective in nature and that prior to 1.4.2022, no disallowance could be made under section 14A with respect to expenditure incurred by assessee to earn exempt income, when no exempt income was earned during relevant assessment year. The relevant extract of the said decision is reproduced as under:

*"7. We find that there is no dispute about the fact that the assessee did not have any tax exempt income during the relevant previous year and that the period before us pertains to the period prior to insertion of explanation to section 14A. In this view of the matter, and in the light of consistent stand by co-ordinate benches, following Hon'ble Delhi High Court's judgment in the case of *Cheminvest Ltd v. CIT* [2015] 61 taxmann.com 118/234 Taxman 761/378 ITR 33, we uphold the plea of the assessee that no disallowance under section 14A was and in the circumstances of the case. The plea of the Assessing Officer is thus rejected".*

7.11. The same view that the insertion of the explanation in section 14A is prospective in nature has also been held by the Hon'ble Delhi High Court in the case of *Era Infrastructure (India) Ltd* (2022) 141 taxmann.com 289 (Delhi). The relevant extract is reproduced as under:

"8. Consequently, this Court is of the view that the amendment of section



14A, which is "for removal of doubts" cannot be presumed to be retrospective even where such language is used, if it alters or changes the law as it earlier stood.

9. Though the judgment of this Court has been challenged and is pending adjudication before the Supreme Court, yet there is no stay of the said judgment till date. Consequently, in view of the judgments passed by the Supreme Court in *Kunhayammed v. State of Kerala* [2000] 113 Taxman 470/245 ITR 360 and *Shree Chamundi Mopeds Ltd. v. Church of South India Trust Association* [1992] 3 SCC 1, the present appeal is dismissed being covered by the judgment passed by the learned predecessor Division Bench in *IL & FS Energy Development Co. Ltd. (supra)* and *Cheminvest Ltd. v. CIT* [2015] 61 taxmann.com 118/234 Taxman 761/378 ITR 33 (Delhi).

10. Accordingly, the appeal and application are dismissed. However, it is clarified that the order passed in the present appeal shall abide by the final decision of the Supreme Court in the SLP filed in the case of *IL & FS Energy Development Co. Ltd. (supra)*."

7.12. The appellant has contended that for the purpose of disallowance u/s 14A of the Act, only those investments are to be considered from which exempt income has been received during the year under consideration. The appellant relied on the decision of Hon'ble Delhi High Court in the case of *Cargo Motors (P.) Ltd V. Deputy Commissioner of Income Tax* ([2022] 145 taxmann.com 641) wherein it was held that while calculating disallowance made under Rule 8D @ 0.5% of the average investments, only those investments have to be considered which has yielded exempt income during the previous year.

7.13. The issue raised by the appellant and interpretation that evolved is that the investments which do not give rise to exempt income are to be excluded from working of disallowance under rule 8D. Rule 8D is to be applied only in respect of investment yielding exempted income. During the period under consideration in the present case of the appellant, Rule 8D(2)(ii) postulated that in the calculation of the disallowance amount "1% of the annual average of the monthly averages of the opening and closing balances of the value of investment which does not or shall not form part of the total income" should be taken into consideration. The appellant has relied on a slew of judgments on this issue.

7.14. A similar view has been taken into the recent decision of Special Bench of Delhi ITAT in the case of *ACIT Vs Vireet Investment (P.) Ltd*(82 taxmann.com 415) where in it has been categorically being held that for the purpose of computing disallowance under section 14A, only those investments are to be considered for computing average value of investments which yielded exempt income during the year. It shall be pertinent to note that though the judgment has been rendered from the perspective of Rule 8D(2)(iii) but the rationale of the same can even be extending to the provisions of Rule 8D(2)(ii) since both the provisions use the same terminology.



7.15. Further, reliance can be placed on the decision of the Hon'ble Mumbai ITAT in the case DCIT Vs Anand Rathi Capital Advisors P. Ltd.(7472/Mum/2016), where in it has been specifically held that for the purpose of Rule 8D(ii) & Rule 8D(iii) only those investments will be considered from which exempt income is being earned during the year under consideration.

7.16. Next, in the decision of Hon'ble Mumbai Tribunal in case of Sajjan India Ltd. v. ACIT (89 taxmann.com 21), the Hon'ble Tribunal reliance placing on the decision of the Hon'ble Special Bench in the case of Vireet Investments (supra) has categorically held that only those instruments/securities which yielded exempt income during previous year relevant to assessment year shall be considered for computing disallowance under section 14A of the Act read with Rule 8D of the rules.

7.17. Further, reliance is placed on the decision of the Hon'ble Delhi High Court in case of ACB India Ltd. v. ACIT [2015] 62 taxmann.com 71 (Delhi) wherein the facts of the case are similar to that of the appellant, wherein the assessee had substantial investments out of which only few investments generated exempt income during the year. Though the AO had considered all the investments while computing disallowance under Rule 8D, the Hon'ble High Court directed to factor out those investments which did not yield exempt income and consider only those investments from which exempt income is received during the year.

7.18. Thus, out of the entire investment made by the assessee, the investment which yielded exempt income has to be identified and monthly average of opening and closing stock of such investment alone has to be considered for working out 1% for disallowance. In other words, the investments which do not give rise to exempt income are to be excluded from working of disallowance under rule 8D.

7.19. The appellant further contended that, in their own case, the Hon'ble Mumbai ITAT, through orders for AY 2010-11 and AY 2012-13, directed the learned AO to restrict the disallowance solely to those investments that had generated exempt income for the assessee. This direction was issued in light of the Special Bench decision in Vireet Investment (P) Ltd. - 165 ITR 27.

7.20. The appellant further submitted that, in their own case, the Hon'ble Mumbai ITAT in its orders for AY 2013-14 and AY 2015-16 ruled that the book profit" under Section 115JB is not to be increased by the disallowance made by the A.O. under Section 14A of the Act.

7.21. Accordingly, in light of the above discussions and relevant legal precedents, it is concluded that the appellant's contention that while calculating the disallowance under Section 14A read with Rule 8D, only those investments that have generated actual exempt income should be considered is correct in law. Consequently, the AO is directed to consider only such investments for disallowance purposes. In the present case, the appellant has appropriately made a suo moto disallowance under Section 14A of the Act. Accordingly, the AO is directed to delete the disallowance



made amounting to Rs. 2,71,98,549/- u/s 14A of the Act while calculating income under normal provision as well as calculating income u/s 115JB of the Act appellant during the year. Accordingly, the disallowance made by the AO amounting Rs. 2,71,98,549/- is hereby deleted. In view of the above, this ground of appeal of the appellant is allowed.”

5.1 We find that the Ld. CIT(A) has followed the binding precedent of the Co-ordinate Bench of the Tribunal in the case of Vireet Investment Pvt. Ltd. (supra). Accordingly, we do not find any infirmity in the order of the Ld. CIT(A) on the issue in dispute and same is upheld. The grounds raised by the Revenue are accordingly dismissed.

6. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open Court on 22/01/2026.

**Sd/-
(SANDEEP SINGH KARHAIL)
JUDICIAL MEMBER**

**Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER**

Mumbai;
Dated: 22/01/2026
Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai