IN THE INCOME TAX APPELLATE TRIBUNAL "D" BENCH MUMBAI

BEFORE MS. KAVITHA RAJAGOPAL, JUDICIAL MEMBER
AND
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER

ITA No. 3925/MUM/2023
Assessment Year: 2021-22

DSP Finance Pvt. Ltd., (Formerly known as DSP Investment Managers Pvt Ltd.), 10th Floor, Mafatlal Centre, Nariman Point, Mumbai – 400 021 (PAN : AAACD3069K)	Vs.	Deputy Commissioner of Income Tax – 3(1)(1),Mumbai
(Appellant)		**(Respondent)**

Present for:
Assessee : None
Revenue : Shri Annavaram Kosuri, Sr. DR

Date of Hearing : 23.01.2026
Date of Pronouncement : 13.02.2026

O R D E R

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER

The present proceedings arise for passing a confirmatory order in accordance with Office Manual Chapter XIII at para 78(d) under the head 'Dissenting cases – how to be dealt with', pursuant to order dated 13.11.2025 passed by the Hon'ble Third Member in ITA No. 3925/Mum/2023.

2. Briefly recapitulating the facts, assessee is a resident company which acts as an investment manager to various schemes under the DSP Black Rock Mutual Fund. Activities of the assessee are regulated under the guidelines of Securities and Exchange Board of India (SEBI). Assessee had made investments in various funds in the course of its

business activities and had received exempt income of Rs. 5,09,75,022/- during the year under consideration from one of its investments being DSP Emerging Stars Funds.

2.1. In the course of assessment proceedings, assessee was called upon to explain why disallowance should not been made u/s.14A r.w. rule 8D(2)(ii) of the Income Tax Rules, 1962 (the Rules) as ld. AO noticed that assessee though having earned exempt income has not made any *suo moto* disallowance under the said provisions.

2.2. In response, assessee categorically denied its liability u/s. 14A r.w. rule 8D(2)(ii) by stating that it has not earned any income which can be categorized as exempt income so as to attract the said provisions. In the alternative, assessee submitted that if at all any disallowance has to be made, it has to be made under rule 8D(2)(ii) i.e. on the average value of the investment giving rise to such exempt income during the year and not on all the investments held by the assessee. For this purpose, assessee furnished a computation for the disallowance under rule 8D(2)(ii) which was for an amount of Rs. 7,91,667/- by taking into account average value of investment giving rise to exempt income earned during the year. Not accepting this alternative of the assessee, ld. AO was of the view that disallowance u/s 14A r.w. rule 8D(2)(ii) has to be made based on entire investments held by the assessee whether they yielded any exempt income or not during the year under consideration. He thus, worked out the disallowance at Rs. 60,80,245/- on the average value of entire investments held by the assessee at Rs. 60,80,24,500/.

3. Ld. CIT(A) in the first appellate proceedings, rejected the contentions of the assessee that disallowance under rule 8D(2)(ii) has to be computed based on average value of investments giving rise to

exempt income only earned in the year under consideration. He placed reliance on the decision of Co-ordinate Bench of ITAT, Guwahati in the case of ACIT vs. Williamson Financial Services Limited [2022] 140 taxmann.com 164 (GUW) to hold that disallowance u/s. 14A r.w. rule 8D(2)(ii) has to be computed on all the investments capable of giving rise to exempt income, irrespective of the fact whether exempt income has yielded to the assessee in the given assessment year.

3.1. He directed the ld. AO to calculate monthly average first and, thereafter, calculate annual average to ascertain correct amount of disallowance as according to him, ld. AO had not properly computed the average value of investment. He further directed the ld. AO to ascertain correct opening balance of DSP Emerging Stars Fund which had yielded exempt income to the assessee during the year. Assessee took the matter before the Tribunal. Before the Tribunal, assessee pressed upon its alternative claim by submitting before the bench to proceed as if sum received by it is an exempt income which would be subject to section 14A r.w. rule 8D(2)(ii). Assessee thus, gave up various contentions made by it before the authorities below, against the applicability of section 14A r.w. rule 8D(2)(ii).

3.2. While pressing upon its alternative claim, it was asserted by the assessee that disallowance under rule 8D(2)(ii) has to be computed only on the average value of investment giving rise to exempt income during the year. For this, reference was made to the working furnished in the course of assessment proceedings (reproduced in the impugned assessment order) by computing the disallowance at Rs. 7,91,667/- on the average value of investment of DSP Emerging Stars Fund which yielded the said exempt income in the year under consideration.

3.3. For this working, reliance was placed on the decision of Hon'ble Special Bench of ITAT in the case of ACIT vs Vireet Investments Private Limited [2017] 82 taxmann.com 415 (Del)(SB). After the conclusion of hearing before the Tribunal, ld. Accountant Member (AM) proposed a draft order expressing his view that disallowance u/s. 14A r.w. rule 8D(2)(ii) should be restricted to the amount computed by the assessee on the basis of average value of investment which yielded exempt income during the year under consideration, by applying the ratio laid down by the Hon'ble Special Bench in the case of Vireet Investments Private Limited (Supra). However, ld. Judicial Member (JM) did not agree with the view expressed by the ld. AM.

3.4. According to the ld. JM, assessee failed to furnish any supportive evidence before the ld. AO to demonstrate composition of exempt income of Rs. 5,09,75,022/- as to capital gain, dividend or interest. The computation of disallowance furnished by the assessee according to the ld. JM is merely an estimate without following any systematic or scientific method prescribed under rule 8D(2)(ii). It was also observed that ld. CIT(A) found mismatch between the opening balance of investment of DSP Emerging Stars Fund. In conclusion, ld. JM held to restore the issue back to the file of the ld. AO by agreeing to the view taken by the ld. CIT(A).

4. In view of this cleavage of opinions, ld. Members framed questions u/s. 255(4) of the Act for reference to Hon'ble Third Member. Upon such a reference, Hon'ble Third Member after carefully going through the separate sets of questions proposed by the ld. Members as well as taking into consideration, orders of the authorities below and the proposed orders by the ld. Members, he observed that the core issue which arose for his consideration is *"Whether disallowance under rule 8D(2)(ii) r.w.*

Section 14A of the Income Tax Act, 1961 (the Act) has to be made based only on the average value of investments giving rise to exempt income in the assessment year under dispute or it has to be based on the average value of the total investments, both exempt income yielding and non-yielding investments?". According to him, once this co-issue is decided one way or the other, most of the other questions referred by the ld. Members would become either academic or redundant.

4.1. While answering the aforesaid core issue, Hon'ble Third Member gave his observations in paragraph 12 and 13 of his order which are extracted below:

> *"12. Thus, as could be seen from the aforesaid observations of ld. Special Bench in case Vireet Investments Pvt. Ltd. (supra), the disallowance under Rule 8D so far as administrative indirect expenses are concerned, can only be made with reference to investment has not given rise to exempt income during the year be considered for the purpose of computing disallowance under Rule 8D. Needless to mention, as per rules of stare decisis, a decision of the Special Bench of ITAT would be binding on all Division and Single benches of ITAT. It is interesting to note, though, the decision of Id. Special Bench in case of Vireet Investments Pvt. Ltd. (supra) was specifically brought to the notice of ld. first appellate authority by the assessee, however, he has conveniently overlooked it. Suffice to say, the Division Bench decision of ITAT in case of Williamson Financial Services Ltd. (supra) forcefully relied upon by ld. first appellate authority, in the meanwhile, has been reversed by the Hon'ble High Court of Guwahati in case of Williamson Financial Services Ltd. vs. CIT [2024] 166 taxmann.com 607 (Guwahati). While reversing the decision of the Tribunal, the Hon'ble High Court applied the well settled principle of law that in absence of any exempt income in a particular assessment year, no disallowance u/s. 14A read with Rule 8D can be made. The principle laid down by Id. Special Bench in case of Vireet Investments Pvt. Ltd. (supra) is founded on these very legal principles.*
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> *13. Once we apply the aforesaid legal principles to the facts at hand, only issue which remains to be addressed is the quantification of disallowance under rule 8D(2)(ii) read with section 14A of the Act. From the observations of Id. first appellate authority at para 6.1 of the order, inasmuch as, the other facts and materials on record clearly reveal that the exempt income of Rs.5,09,75,022/- received during the year was from a single investment of Rs. 10 crores in DSP Emerging Stars Fund Category III AIFs. Except the aforesaid investment, no other investments*

held by the assessee have given rise to exempt Income during the year. In fact, before the A.O., the assessee has furnished all the details of investments held during the year, based on which the A.O. has computed the average value of investment. Therefore, there cannot be any dispute regarding the fact that the only investment giving rise to exempt income during the year is DSP Emerging Stars Fund Category III AIFs. From the computation of suo moto disallowance furnished before the A.O., it emerges that the opening balance of the investment is Rs.10 crores and in January, 2021, the fund has matured. Therefore, the value has been shown as zero. The so called mismatch between the opening value of investment shown at Rs.10 crores for computing disallowance and value shown in the account of Rs.7,28,29,699/- has been explained before me by ld. Counsel for the assessee by stating that applying Indian Accounting Standard 109 issued by ICAI dealing with the financial instruments, the assessee has recorded the fair market value of the investment on marked to market basis (MTM) of the said fund at Rs.7,28,29,699/- in the annual accounts. Whereas, for the purpose of computing disallowance under Rule 8D(2)(ii), the assessee has adopted the actual higher figure of investment made of Rs. 10 crores. Thus, in my view, the mismatch pointed out by the Id. first appellate authority is irrelevant and inconsequential so far as the issue at hand is concerned. In any case of the matter, the assessee has computed the disallowance under Rule 8D(2)(ii) by considering the higher figure of Rs.10 crores, instead of Rs.7,28,29,699/-. Hence, no prejudice has been caused to the department. Therefore, the disallowance under Rule 8D(2)(ii) has to be quantified by working out the average value of the investment of DSP Emerging Stars Fund Category III AIFs."

4.2. Hon'ble Third Member with the aforesaid observations thus, concluded in paragraph 14 that the *suo moto* disallowance computed by the assessee at Rs. 7,91,667/- is correct. Hence, the disallowance u/s. 14A r.w. rule 8D(2)(ii) has to be restricted to this amount. Thus, upon due consideration of facts and material on record, Hon'ble Third Member concurred with the view expressed by the ld. AM. Contents of paragraph 14 from the order of Hon'ble Third Member is extracted below:

"14. Upon examination of working furnished before the A.O., which is incorporated at pg. nos 6 & 7 of the assessment order. It is evident that the assessee has worked out monthly average value of investment and, thereafter, computed the disallowance on the annual average value of investment. Therefore, the suo motu disallowance computed by the assessee at Rs.7,91,667/-, is correct. Hence, the disallowance u/s. 14A read with Rule 8D has to be restricted to that amount. Accordingly, upon

due consideration of facts and materials on record, I agree with the view expressed by Id. AM. In view of my decision on the core issue, the various other questions proposed by ld. Members, being academic and inconsequential for the purpose of determining the limited dispute arising in the present appeal, need not be gone into. Appeal records be returned back to the Registry and the Registry is directed to place the matter before the ld. Division Bench for passing the confirmatory order, as per majority view."

4.3. In view of the above and consonance with the findings of ld. AM as affirmed by the Hon'ble Third Member, as per the majority, disallowance u/s. 14A r.w. rule 8D(2)(ii) is restricted to Rs. 7,91,667/- as against the disallowance of Rs. 60,80,245/- computed by the ld. AO.

5. In the result, appeal of the assessee is partly allowed as per the majority view.

Order is pronounced in the open court on 13.02.2026

Sd/-	Sd/-
(Kavitha Rajagopal)	(Girish Agrawal)
Judicial Member	Accountant Member

Dated: 13.02.2026

Divya Ramesh Nandgaonkar
Stenographer

Copy to :

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2. The Respondent
3. DR, ITAT, Mumbai
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BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai

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

BEFORE SHRI SAKTIJIT DEY, VICE PRESIDENT – AS THIRD MEMBER

ITA No. 3925/Mum/2023
(Assessment Year: 2021-22)

DSP Finance Pvt. Ltd. (Formerly known as DSP Investment Managers Pvt. Ltd.) 10th Floor, Mafatlal Centre, Nariman Point, Mumbai-400 021	Vs.	Dy. CIT 3(1)(1) Aayakar Bhavan, Mumbai-400 001
PAN/GIR No. AAACD 3069 K		
(**Appellant**)	:	(**Respondent**)

Appellant by	:	Shri Nitesh Joshi, Shri Harsh Shah & Ms. Prerana Shet
Respondent by	:	Shri Annavaram Kosuri, Sr. AR

Date of Hearing	:	07.10.2025
Date of Pronouncement	:	13.11.2025

O R D E R

Per Saktijit Dey, Vice President:

The captioned appeal came up for hearing before the Division Bench of Income Tax Appellate Tribunal (ITAT) on 13.12.2024. After conclusion of hearing, the appeal was allotted to learned Accountant Member ('ld. AM') for drafting the order. The ld. AM proposed a draft order, expressing a particular view. However, learned Judicial Member ('ld. JM') was not in agreement with the view expressed by ld. AM, hence, proposed a dissenting order. Due to difference in opinion between the Members constituting the Division Bench, Hon'ble President, ITAT has nominated the undersigned as the Third Member to examine the point of difference between the Members and resolve the issue.

2. Even, there was no consensus between the ld. Members of the Division Bench on the point of difference to be formulated for reference to the Third Member. Both ld. Members have proposed separate set of questions to be placed before the Third Member. The questions proposed by ld. JM are as under:

> *1. Whether in the absence of bifurcation of expenditure incurred for earning taxable income and exempt income can it be held that the disallowance should be restricted to the assessee's suo moto disallowance of Rs.7,91.667/- as per the theory of apportionment of expenditure?*
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> *2. Whether on the facts that there are discrepancies with regard to the details of the investments made by the assessee which has earned exempt income, the ld. CIT(A) was right in directing the Id. AO to re-compute the disallowance in accordance with only those investments which have yielded exempt income during the year under consideration?*
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> *3. In case where the assessee has claimed that no expenditure has been incurred for earning exempt income, whether the lower authorities have rightly invoked Section 14A r.w.r. 8D as per the provisions of Section 14A(3) of the Act?*
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> *4. Whether in a case where the learned Assessing Officer (ld. A.O. for short) has recorded his dissatisfaction with regard to the correctness of claim of the assessee, which is not disputed, the lower authorities have rightly invoked Section 14A r.w.r. 8D and have rejected the assessee's suo moto disallowance?*
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> *5. Where on the facts that the assessee has not made any disallowance in the ITR for expenses related to earning of exempt income stating that the assessee has not incurred any expenditure, whether the Id. CIT(A) had rightly held that the same was an afterthought claiming the same to be a capital receipt where the assessee has approbated and reprobated the income to be an exempt income and in such circumstances can it be held that the assessee's suo moto disallowance was not in accordance with the provisions of the Act?*
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> *6. In a case where the assessee has failed to furnish the correct details of the opening balance of DSP Emerging Star Funds with supporting documentary evidences for calculating the monthly average and thereafter to calculate the annual average of the total investment neither before the lower authorities nor before us by way of additional evidence, can the suo moto disallowance be held to be based on scientific method as per the provisions of the Act?*
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> *7. Whether in the facts and circumstances of the case, this issue has to be remanded back to the Id. AO for computation of disallowance in accordance with Rule 8D of the I.T. Rules, 1962 by holding that the assessee's suo moto disallowance is against the settled principles of law?*

3. Whereas, ld. AM has formulated the following questions:

> *1. Whether in the facts of the case when application of rule 8D is not in dispute by both, the Id. Assessing Officer and the assessee for computing disallowance under section 14A and working by the assessee as reproduced in the impugned assessment order by the ld. Assessing Officer is in conformity with rule 8D(2)(ii), can such working of disallowance by the assessee be tinkered with?*

2. Whether in the facts of the case when Id. CITIA) found and held tha working by the Id. Assessing Officer is not strictly as per rule BD and at the same time has described the working made by the assessee for computing the disallowance as per rule 8D(20) which is in line with the principle laid down in the decision of Hon'ble Special Bench in the case of ACIT us. Vireet Pusestments (P) Ltd (2017) 82 taxmann.com 415 (Del) (SB), can the disallowance made by the assessee be held to be not in accordance with the provisions of the Act and settled position of law?

3. Whether in the facts of the case when the working for disallowance under rule 8D(2)(ii) given by the assessee is reproduced by the Id. Assessing Officer in para 5.2 which is self-explanatory and when Id. CIT(A) in para 6.5.1 took note of the working given by the assessee for opening balance, closing balance with monthly and annual average of the investment in DSP Emerging Stars Fund, can the same be doubted for remanding the issue back to the Id. Assessing Officer by holding that working by the assessee is against the settled principles of law?

4. Whether in the facts of the case when Id. CIT(A) had inadvertently mentioned the figure of 7,28,29,699/-instead of 7,91,66,667/- for calculation of disallowance amount at Rs. 7,91,667/- being 1% of annual average which formed the basis for giving direction to the Id. Assessing Officer and when the figure of 7,91,66,667/ is an arithmetic number arrived at by applying mathematical formula prescribed in rule 8D(2)(ii) and in no way can represent opening or closing value of investment accounted in the books of account, it being an annual average of the monthly averages, should the issue be remanded back to ld. Assessing Officer for computation of disallowance?

4. After carefully going through the separate sets of questions proposed by ld. Members and going through the orders of the Departmental Authorities as well as ld. Members, constituting the Division Bench, in my considered opinion, the core issue which arises for consideration is "Whether disallowance under Rule 8D(2) r.w.s. 14A of the Income Tax Act, 1961 ('the Act') has to be made based only on the average value of investments giving rise to exempt income in the assessment year under dispute or it has to be based on the average value of the total investments, both exempt income yielding and non-yielding investments?". Once this core issue is decided one way or the other, most of the other questions referred by ld. Members would become either academic or redundant.

5. Be that as it may, before delving into the core issue, as noted above, I must observe that the mandate given to the undersigned as 'Third Member' is not to find fault or criticize one or the other view expressed by the ld. Members. In my view, the issue has

to be examined on first principle and applying that principle, it needs to be determined which view is more appropriate, hence, acceptable. Before, I proceed to deal with the issue, for the sake of completeness, I intend to briefly recapitulate the facts, though, they have been exhaustively dealt in the orders proposed by ld. Members, constituting the Division Bench.

6. The assessee is a resident corporate entity and stated to be engaged in the activity of Investment Manager to various mutual fund schemes under the DSP Black Rock mutual fund. The assessee's activities are regulated in terms with the guidelines of Securities and Exchange Board of India (SEBI). In course of its activities, the assessee has invested in various funds and in the financial year relevant to the assessment year under dispute, the assessee had received exempt income to the tune of Rs.5,09,75,022/- from one of its investments, being DSP Emerging Stars Fund. In course of assessment proceedings, when the A.O. noticed that the assessee, though, had earned exempt income, but has not made any *suo motu* disallowance u/s. 14A read with Rule 8D, called upon the assessee to explain why disallowance should not be made under the aforesaid provisions. In response to the show cause notice, the assessee categorically denied its liability u/s. 14A read with Rule 8D by stating that it has not earned any income, which can be categorized in the nature of exempt income to attract the provisions of section 14A read with Rule 8D. Alternatively, the assessee submitted that if at all any disallowance under Rule 8D(2)(ii), has to be made, it has to be made on the average value of investment giving rise to exempt income during the year and not on all the investments held by the assessee. In support of such claim, the assessee also furnished a computation, computing disallowance under Rule 8D(2)(ii) of an amount of Rs.7,91,667/- on the average value of

investment giving rise to exempt income during the year. The A.O., however, did not accept the claim of the assessee. He was of the view that disallowance u/s. 14A read with Rule 8D(2)(ii) has to be made based on the entire of investments held by the assessee, irrespective of the fact whether they have given rise to exempt income or not during the year. Accordingly, on the average value of entire investment held by the assessee, worked out at Rs.60,80,24,500/-, the A.O. computed disallowance under Rule 8D(2)(ii) at Rs.60,80,245/-.

7. The assessee contested the aforesaid disallowance before ld. first appellate authority.

8. After considering the submissions of the assessee, in the context of the facts and materials on record, ld. first appellate authority, firstly, rejected assessee's contention that disallowance under Rule 8D(2)(ii) has to be computed based on average value of investment giving rise to exempt income during the year. Relying upon the decision of Division Bench of ITAT in case of *ACIT v. Williamson Financial Services Ltd* [2022] 140 taxmann.com 164 (Guwahati – Trib.), he held that irrespective of the fact whether exempt income has been earned by the assessee or not in a particular assessment year, disallowance u/s. 14A of the Act read with Rule 8D has to be computed, if the assessee has investments capable of giving rise to exempt income. Applying this principle, ld. first appellate authority held that disallowance under Rule 8D(2)(ii) has to be computed on average value of entire investment, irrespective of the fact whether it has given rise to exempt income or not in the relevant assessment year. However, being of the view that the A.O. has not properly computed the average value of investment, he directed the A.O. to calculate monthly average first and, thereafter, calculate annual average and ascertain

correct amount of disallowance. He further directed him to ascertain correct opening balance of DSP Emerging Stars Fund, which has given rise to exempt income during the year.

9. Being aggrieved with the aforesaid decision of ld. first appellate authority, the assessee escalated the issue before the Tribunal.

10. In course of hearing before the Tribunal, the assessee gave up various contentions made before the Departmental Authorities against applicability of section 14A read with Rule 8D. The assessee conceded that the income of Rs.5,09,75,022/- is indeed in the nature of exempt income, hence, would be subject to section 14A read with Rule 8D. However, pressing upon its alternative claim, the assessee strenuously contended that disallowance under Rule 8D(2)(ii) has to be computed only on the average value of investment giving rise to exempt income during the year. In this context, the assessee referred to the working furnished before A.O., computing disallowance under Rule 8D(2)(ii) on the average value of investment of DSP Emerging Stars Fund, which yielded exempt income of Rs.5,09,75,022/- in the year under consideration. In support of such claim, the assessee relied upon the ITAT Special Bench decision in case of *ACIT vs. Vireet Investments Pvt. Ltd.* [2017] 82 taxmann.com 415 (Delhi)(SB). Keeping in view the limited submission made by the assessee to apply the ratio laid down by ITAT SB in case of *Vireet Investments Pvt. Ltd.* (supra), ld. AM expressed the view that since the assessee has computed the disallowance under Rule 8D(2)(ii), on the average value of investment giving rise to exempt income during the year under consideration, disallowance u/s. 14A read with Rule 8D should be restricted to that amount. However, ld. JM did not agree with the view expressed by ld. AM. She observed that the *suo motu*

disallowance computed by the assessee is merely on estimate without following any systematic or scientific method prescribed as per Rule 8D. She observed that the assessee failed to furnish any supporting evidence before the A.O. to demonstrate composition of exempt income of Rs.5,09,75,022/-, whether capital gain, dividend or interest. She further observed that ld. first appellate authority has further found mismatch between the opening balance of investment in DSP Emerging Stars Fund. Thus, based on the aforesaid reasoning, ld. JM agreed with the view expressed by ld. first appellate authority and held that restoration of the issue to the A.O. is justified.

11. I have considered the submissions of Shri Nitesh Joshi, ld. Counsel appearing for the assessee and Shri Annavaram Kosuri, Sr. Departmental Representative. As could be seen from the facts discussed above, though before the Departmental Authorities, the assessee had raised various contentions challenging the applicability of section 14A read with Rule 8D, however, before the Tribunal, the assessee gave up all its contentions and limited its argument only to the alternative claim that disallowance u/s. 14A read with Rule 8D(2)(ii) has to be made only on the average value of investment giving rise to exempt income during the year. In support of such contention, the assessee furnished a working before the A.O. stating that the exempt income earned during the year, amounting to Rs.5,09,75,022/- arose from the investments made in the DSP Emerging Stars Fund Category III AIFs. The computation furnished by the assessee making the *suo motu* disallowance of Rs.7,91,667/- is incorporated at pg. nos. 6 & 7 of the assessment order. As per the said computation, the opening value of the investment was Rs.10 crores and in January, 2021, the fund matured. The assessee has computed the annual average at Rs.7,91,66,667/- based on monthly average and 1% disallowance thereon in terms with

Rule 8D(2)(ii) was made at Rs.7,91,667/-. Apparently, the A.O. has rejected the aforesaid claim of the assessee and has computed disallowance under Rule 8D(2)(ii) by taking the entire investment made by the assessee, irrespective of the fact whether such investments have given rise to any exempt income during the year or not. Ld. first appellate authority, more or less, has agreed in principle with the decision of the A.O. that disallowance under Rule 8D(2)(ii) has to be made on the entire value of investment, irrespective of the fact whether such investment have given rise to exempt income or not during the year. In this context, the legal position governing the issue needs to be looked into. In case of *Vireet Investments Pvt. Ltd.* (supra), ld. Special Bench of ITAT, while seized with the identical issue, has held as under:

> *11. We have considered the submissions of both the parties and have perused the record of the case. The basic issue for consideration is that the investment, which did not yield any exempt income, should enter or not enter into the computation under Rule 8D, while arriving at the average value of investment, income from which does not or shall not form part of the total income.*
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> *11.1 In the present case, our decision is restricted only to the extent of interpretation of language employed in Rule 8(2)(iii). The submission of ld. counsel for the assessee is that this issue is now covered by the decision of the Hon'ble Delhi High Court in the case of CIT v. Hofcin India (P.) Ltd. (supra), wherein it has been held that if no dividend income was earned, section 14A could not be invoked.*
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> *The Hon'ble Delhi High Court has referred to the decisions, which we have noted earlier i.e.:*
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> - *Shivam Motors (P) Ltd's. case (supra)*
> - *Winsome Textile Industries Ltd's. case (supra)*
> - *Lakhani Marketing Inc. case (supra)*
> - *Corrtech Energy (P.) Ltd's. case (supra).*
> - *CIT v. Hero Cycles Ltd. [2010] 323 ITR 518/189 Taxman 50 (Punj. & Har.).*
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> *11.2 The submission of ld. Principal CIT(DR) is that ITAT in the case of Delhi Special Bench in the case of Cheminvest Ltd. (supra) has specifically held that even if there is no exempt income, the provisions of section 14A are applicable in view of the decision of Hon'ble Supreme Court in the case of Rajednra Prasad Moody (supra). His submission is that the decision of Hon'ble Delhi Court reversing the decision of Special Bench in Cheminvest should not be followed because that is contrary to the principles laid down in Rajendra Prasad Moody's case (supra).*
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> *11.3 It is against these submissions, we first refer to the facts as were obtaining in these two decisions.*

11.4 In the case of Cheminvest Ltd. (supra), the assessee had borrowed funds of Rs. 8,51,65,000/- and during the previous year relevant to assessment year 2004-05 paid interest of Rs. 1,21,02,367/-thereon. Out of this unsecured loan, the assessee invested a sum in purchase of shares, which was shown as investment for the purpose of long term capital gains. The AO disallowed interest proportionate to the investment in shares, though no exempt income was earned during the year. The CIT(A) affirmed this but held that the net interest debited to the P&L A/c was required to be apportioned and not the interest expenditure. The Tribunal held that interest expenditure incurred by the assessee was for borrowing used for the purposes of investment in shares, both held for trading as well as investment purposes. Irrespective of whether or not there was any yield of dividend on the shares purchased, the interest incurred was relatable to earning of dividend on the shares purchased. The dividend income being exempted from tax by virtue of section 10(34) of the Act, the interest paid on borrowed capital utilized in purchase of shares, being the expenditure incurred in relation to dividend income not forming part of the assessee's total income, was held to be not an allowable deduction. In coming to the conclusion, the Special Bench primarily relied on the ratio laid down by the Hon'ble Supreme Court in the case of Rajendra Prasad Moody (supra).

11.5 In the case of Rajendra Prasad Moody (supra), the facts were that the assessees were brothers and each of them had borrowed. moneys for the purposes of making investment in shares of certain companies. During the relevant assessment year they paid interest on the moneys borrowed but did not receive any dividend on the shares purchased with these moneys. Both of them made a claim for deduction of the amount of interest paid on borrowed moneys but this claim was negated by the ITO and on appeal by the AAC on the ground that during the relevant assessment year the shares did not yield any dividend and, therefore, interest paid on the borrowed moneys could not be regarded as expenditure laid out or expended wholly and exclusively for the purposes of making or earning income chargeable under the head 'income from other sources', so as to be allowable as a permissible deduction u/s 57(iii). The Tribunal. however, on further appeal, disagreed with the view taken by the taxing authorities and upheld the claim of each of the two assessees for deduction u/s 57(iii).

11.6 In the backdrop of these facts the Tribunal's order was upheld by the Hon'ble High Court and Hon'ble Supreme Court. The Hon'ble Supreme Court, inter alia, held that it is the purpose of the expenditure that is relevant in determining the applicability of section 57(iii) and that purpose must be making or earning of income. It was further held that section 57(iii) does not require that this purpose must be fulfilled in order to qualify the expenditure for deduction. It does not say that the expenditure shall be deductible only if any income is made or earned. There is in fact nothing in the language of section 57(iii) to suggest that the purpose, for which the expenditure is made, should fructify into any benefit by way of return in the shape of income.

11.7 Thus, in both the decisions viz. in the case of Cheminvest Ltd. (supra), and in the case of Rajendra Prasad Moody (supra), the issue related to allowability of expenditure which had direct nexus with the earning of income. The borrowing in both the cases has not been disputed being for acquiring shares. Hon'ble Delhi High Court has specifically held in para 21 as under:— "21. There is merit in the contention of Mr. Vohra that the decision of the Supreme Court in Rajendra Prasad Moddy (supra) was rendered in the context of allowability of deduction under Section 57(iii) of the Act, where the expression used is for the purpose of making or earning such income'. Section 14A of the Act on the other hand contains the expression 'in relation to income which does not form part of the total income.' The decision in Rajendra Prasad Moody (supra) cannot be used in the reverse to contend that even if no income has been received, the expenditure incurred can be disallowed under Section 14A of the Act. "

11.8 In the case of Holcin India (P) Ltd. (supra) the facts were that the respondent- assessee was a subsidiary of Holderind Investments Ltd., Mauritius, which was formed as a holding company for 'making downstream investments in cement manufacturing ventures in India. In the return of income filed for the Assessment Year 2007-08, the respondent-assessee declared loss of

Rs. 8.56 Crores approximately. The respondent-assessee had declared revenue receipts of Rs. 18,02,274/- which included interest of Rs. 726/- from Fixed Deposit Receipts and profit on sale of fixed assets of Rs. 16,52,225/-. As against this, the respondent assessee had claimed administrative and miscellaneous expenditure written off amounting to Rs. 8.75 Crores. For the Assessment Year 2008-09, the assessee had filed return declaring loss of Rs. 6.60 Crores approximately. The assessee had declared revenue receipts in the form of foreign currency fluctuation difference gain of Rs. 12,46,595/-. It had claimed expenses amounting to Rs. 7.02 Crores as personal expenses, operating and other expenses, depreciation and financial expenses.

11.9 In both the assessment orders, the Assessing Officer held that the respondent-assessee had not commenced business activities as they had not undertaken any manufacturing activity or made downstream investments. It was observed that the respondent- assessee, after receiving approval of Foreign Investment Promotion Soard (FIPS) dated 20.12.2000 acquired shares capital of Ambuja Cement India Ltd. This, the Assessing Officer felt, was not sufficient to indicate or hold that the respondent-assessee had started their business. He, accordingly, disallowed the entire expenditure of Rs. 8.75 Crores for the Assessment Year 2007-08 and Rs. 7.02 Crores for the Assessment Year 2008-09.

11.10 Ld. CIT(A) did not agree with the findings of Assessing Officer that the business of the respondent- assessee had not been set up or commenced. The CIT(A) observed that the respondent-assessee had been set up with the business objective of making investment in cement industry after due approval given by the Government of India, Ministry of Commerce and Industry vide letter dated 18.12.2002 and 20.12.2012. It was observed that in fact, the respondent-assessee was not to undertake any manufacturing activity themselves. After considering the FIPS approval and the purchase of shares in the said company of Rs. 1850.91 crores, ld. CIT(A), inter alia, observed that the assessee was engaged in the business of holding of investment and was entitled to claim expenditure provided. There was a direct connection between expenditure incurred and business of the assessee company. However, he pointed out that since the business of the respondent-assessee was to act as a holding company for downstream investment and as it was an accepted fact that they had incurred expenses to protect their business and explore new avenues of investment, the provisions of section 14A were applicable.

11.11 The Hon'ble High Court observed that the reasoning given by the CIT(A) was ambiguous and unclear and on clarity being sought from the Revenue it was pointed out that "the stand of the assessee contained a contradiction to the extent that on the issue of setting up of business, it was stated that the assessee had incurred expenditure on acquiring the shares, therefore, the assessee could not now take different stand than the one taken in the first issue".
11.12 The Hon'ble High Court, after considering in detail the decision of ld. CIT(A) finally observed in para 13 as under:

> *"13. We. are confused about the stand taken by the appellant-Revenue. Thus, we had asked Sr. Standing Counsel for the-Revenue, to state in his own words, their stand before us. During the course of hearing, the submission raised was that the shares would have yielded dividend, which would be exempt income and therefore, the CIT(A) had invoked Section 14A to disallow the entire expenditure. The aforesaid submission does not find any specific and clear narration in the reasons or the grounds given by the CIT(A) to make the said addition. Possibly, the CIT(A), though it is not argued before us, had taken the stand that the respondent-assessee had made investment and expenditure was incurred to protect those investments and this expenditure cannot be allowed under Section 14A."*

11.13 Thus, Hon'ble Delhi High Court primarily decided the issue regarding applicability of section 14A even if no dividend income was earned. The Hon'ble High court in paras 14 to 16 of its decision observed as under:

'14. On the issue whether the respondent-assessee could have earned dividend income and even if no dividend income was earned, yet Section 14A can be invoked and disallowance of expenditure can be made, there are three decisions of the different High Courts directly on the issue and against the appellant-Revenue. No contrary decision of a High Court has been shown to us. The Punjab and Haryana High Court in Commissioner of Income Tax, Faridabad v. M/s. Lakhani Marketing Incl, ITA No. 970/2008, decided on 02.04.2014, made reference to two ' earlier decisions of the same Court in CIT v. Hero Cycles Limited, [2010] 323 ITR 518 and CIT vs. Winsome Textile Industries Limited, [2009] 319 ITR 204 to hold that Section 14A cannot be invoked when no exempt income was earned. The second decision is of the Gujarat High Court in Commissioner of Income Tax-I v. Corrtech Energy (P.) Ltd. [2014] 223 Taxmann 130 (Guj.). The third decision is Of the Allahabad High Court in Income Tax Appeal No. 88 of 2014, Commissioner of Income Tax II Kanpur, v. M/s. Shivam Motors (P) Ltd. decided on 05.05.2014. In the said decision it has been held:-

"As regards the second question, Section 14A of the Act provides that for the purposes of computing the total income under the Chapter, no deduction shall be allowed in respect of expenditure incurred by the assessee in relation to income which does not form part of the total income under the Act. Hence, what Section 14A provides is that if there is any income which does not form part of the income under the Act, the expenditure which is incurred for earning the income is not an allowable deduction. For the year in question, the finding of fact is that the assessee had not earned any tax free income. Hence, in the absence of any tax free income, the corresponding expenditure could not be worked out for disallowance. The view of the C1T(A), which has been affirmed by the Tribunal, hence does not give rise to any substantial question of law. Hence, the deletion of the disallowance of Rs. 2,03,752/- made by the Assessing Officer was in order"

15. Income exempt under Section 10 in a particular assessment year, may not have been exempt earlier and can become taxable in future years. Further, whether Income earned in a subsequent year would or would not be taxable, may depend upon the nature of transaction entered into in the subsequent assessment year. For example, long term, capital gain on sale of shares is presently not taxable where security transaction tax has been paid, but a private sale of shares in an off market transaction attracts capital gains tax: It is an undisputed position that respondent assessee is an investment company and had invested by purchasing a substantial number of shares and thereby securing right to management. Possibility of sale of shares by private placement etc. cannot be ruled out and is not all improbability. Dividend may or may not be declared. Dividend is declared by the company and strictly in legal sense, a shareholder has no control and cannot insist on payment of dividend. When declared, it is subjected to dividend distribution tax.

16. what is also noticeable is that the entire or whole expenditure has been disallowed as if there was no expenditure incurred by the respondent-assessee for conducting business. The CIT(A) has positively held that the business was set up and had commenced. The said finding is accepted. The respondent-assessee, therefore, had to incur expenditure for the business in the form of investment in shares of cement companies and to further expand and consolidate their business. Expenditure had to be also incurred to protect the investment made. The genuineness of the said expenditure and the fact that it was incurred for business activities was not doubted by the Assessing Officer and has also not been doubted by the CIT(A).'

11.14 Now the position of law as stands is that the decision of Hon'ble Jurisdiction High Court is directly on the point in dispute whereas the decision of Hon'ble Supreme court in the case of Rajendra Prasad Moody (supra) has been rendered in the context of section 57(iii), the applicability of which has been ruled out by Hon'ble Delhi High Court in the case of Cheminvest (supra).

11.15 Under Article 227 of the Constitution of India, the courts function under the supervisory jurisdiction of Hon'ble High Court. The decisions rendered by Hon'ble High Court are binding

on all subordinate courts working within its jurisdiction. In this regard we may refer to the following decisions:—

'(i)	*CIT v. Thana Electricity Supply Ltd. (1994) 206 ITR 727 (Bom.), wherein on the issue of "whose decision is binding on whom", the. Hon'ble Bombay Court considered in detail the hierarchy of the courts and has observed as under:*
	"It is also well-settled that though there is no specific provision making the law declared by the High Court binding on subordinate courts, it is implicit in the power of supervision conferred on a superior Tribunal that the Tribunals subject to its supervision would conform to the law laid down by it. It is in that view of the matter that the Supreme Court in East India Commercial Co. Ltd. v. Collector of Customs AIR 1962 SC 1893 (at page1905) declared:
	"We, therefore', hold that the law declared by the highest court in the State is binding on authorities or Tribunals under its superintendence, and they cannot ignore it. ...."
	This position has been summed up by the Supreme Court in Mahadeolal Kanodia v. Administrator General of West Bengal AIR 1960 SC 936 (at page 941) as follows:
	"Judicial decorum no less than legal propriety forms the basis of judicial procedure. If one thing is more necessary in law than any other thing, it is the quality of certainty. That quality would totally disappear if judges of co-ordinate jurisdiction in a High Court start overruling one another's decisions. If one Division Bench of a High Court is unable to distinguish a previous decision of another Division Bench, and holding the view that the earlier decision is wrong, itself gives effect to that view, the result would be utter confusion. The position would be equally bad where a judge sitting singly in the High Court is of opinion that the previous decision of another single judge on a question of law is wrong and gives effect to that view instead of referring the matter to a larger Bench."
	The above decision was followed by the Supreme Court in Baradakanta Mishra v. Bhimsen Dixit, AIR 1972 SC 2466, wherein the legal position was reiterated in the following words (at page 2469) :
	"It would be anomalous to suggest that a Tribunal over which the High Court has superintendence can ignore the law declared by that court and start proceedings in direct violation of it. If a Tribunal can do so, all the subordinate courts can equally do so, for there is no specific provision, just like in the case of Supreme Court, making the law declared by the High Court binding on subordinate courts. It is implicit in the power of supervision conferred on a superior Tribunal that all the Tribunals subject to its supervision should conform to the law laid down by it. Such obedience would also be conducive to their smooth working; otherwise there would be confusion in the administration of law and respect for law would irretrievably suffer,"
(ii)	*CIT v. Svnil Kumar (1995) 212 ITR 238 (Raj.), it was observed as under:*
	"The point which has been raised could have been considered to be debatable because other High Courts have taken a different view. But since the view taken by this court is binding on the Tribunal and other authorities under the Act in this State, it could not be considered to be a debatable point in view of the decision of this court in the case of CIT v. M.L., Sanghi [1988] 170 ITR 670."
(iii)	*Indian Tube Company Ltd. v. CIT & others (1993) 203 ITR 54 (Col.) , it was observed as under:*
	"In the impugned order, respondent No.1 has rejected the petitioner's contention by stating that, although the Calcutta High Court had held that an assessee was entitled to interest on such refund calculated up to the date of the order passed consequent upon

	an appeal or revision of the original assessment, this view had not been accepted by the Bombay High Court, the Allahabad High Court and the Kerala High Court. Respondent No.1, accordingly, chose to accept the view of the Bombay, Allahabad and Kerala High Courts in preference to the view of the Calcutta High Court.
	In my view, the order of respondent No. 1 cannot be sustained on the simple ground that respondent No. 1 is an authority operating within the State of West Bengal and is bound by the decisions of the High Court of this State (see CIT v. Indian Press Exchange Ltd. [1989] 176 ITR 331 (Cal) ; East India Commercial Co. Ltd. v. Collector of Customs AIR 1962 SC 1993, paragraph 29).
	In that view of the matter, the impugned order must be set aside and the Commissioner is directed to consider the matter afresh in keeping with the decisions of this court after giving the petitioners an opportunity of being heard. At least 48 hours clear notice must be given to the petitioners. The Commissioner will communicate the final order to the petitioner within eight weeks from the date of hearing.
(iv)	*CIT v. J.K. Jain [1998] 230 ITR 839 (P&H), observing as under:*
	"We have carefully examined the records and have heard learned counsel representing the parties. We are in respectful agreement with the view expressed by the Allahabad High Court in Omega Sports and Radio Works' case [1982] 134 ITR 28, as also the decision of this court in Mohan Lal Kansal's case [1978] 114 ITR 583. Following the decision in the two cases referred to above, we hold that it was not a case of divergence of opinion inasmuch as the opinion expressed by this court was binding upon the Tribunal."'

11.16 Therefore, in our considered opinion, no contrary view can be taken under these circumstances. We, accordingly, hold that only those investments are to be considered for computing average value of investment which yielded exempt income during the year.

11.17 As far as argument relating to meaning to be ascribed to the phrase 'shall not' used in Rule 8D(2)(iii) is concerned, the Revenue's contention is that it refers to those investments which did not yield any exempt income during the year but if income would have been yielded it would have remain exempt. There is no dispute that if an investment has yielded exempt income in a particular year then it will enter the computation of average value of investments for the purposes of Rule 8D(2)(iii). The assessee's contention that if there is no certainty that an income, which is exempt in current year, will continue to be so in future years and, therefore, that investment should also be excluded, is hypothetical and cannot be accepted.

11.18 In view of above discussion, the matter is restored back to the file of AO for recomputing the disallowance u/s 14A in terms of above observations. Thus, revenue's appeal is dismissed and assessee's cross-objection, on the issue in question, stand allowed for statistical purposes, in terms indicated above.

12. Thus, as could be seen from the aforesaid observations of ld. Special Bench in case of *Vireet Investments Pvt. Ltd.* (supra), the disallowance under Rule 8D so far as administrative/indirect expenses are concerned, can only be made with reference to average value of investment giving rise to exempt income during the year. If any investment has not given rise to exempt income during the year, such investment cannot

be considered for the purpose of computing disallowance under Rule 8D. Needless to mention, as per rules of stare decisis, a decision of the Special Bench of ITAT would be binding on all Division and Single benches of ITAT. It is interesting to note, though, the decision of ld. Special Bench in case of *Vireet Investments Pvt. Ltd.* (supra) was specifically brought to the notice of ld. first appellate authority by the assessee, however, he has conveniently overlooked it. Suffice to say, the Division Bench decision of ITAT in case of *Williamson Financial Services Ltd.* (supra) forcefully relied upon by ld. first appellate authority, in the meanwhile, has been reversed by the Hon'ble High Court of Guwahati in case of *Williamson Financial Services Ltd. vs. CIT* [2024] 166 taxmann.com 607 (Guwahati). While reversing the decision of the Tribunal, the Hon'ble High Court applied the well settled principle of law that in absence of any exempt income in a particular assessment year, no disallowance u/s. 14A read with Rule 8D can be made. The principle laid down by ld. Special Bench in case of *Vireet Investments Pvt. Ltd.* (supra) is founded on these very legal principles.

13. Once we apply the aforesaid legal principles to the facts at hand, only issue which remains to be addressed is the quantification of disallowance under rule 8D(2)(ii) read with section 14A of the Act. From the observations of ld. first appellate authority at para 6.1 of the order, inasmuch as, the other facts and materials on record clearly reveal that the exempt income of Rs.5,09,75,022/- received during the year was from a single investment of Rs.10 crores in DSP Emerging Stars Fund Category III AIFs. Except the aforesaid investment, no other investments held by the assessee have given rise to exempt income during the year. In fact, before the A.O., the assessee has furnished all the details of investments held during the year, based on which the A.O. has computed the average

value of investment. Therefore, there cannot be any dispute regarding the fact that the only investment giving rise to exempt income during the year is DSP Emerging Stars Fund Category III AIFs. From the computation of *suo motu* disallowance furnished before the A.O., it emerges that the opening balance of the investment is Rs.10 crores and in January, 2021, the fund has matured. Therefore, the value has been shown as zero. The so called mismatch between the opening value of investment shown at Rs.10 crores for computing disallowance and value shown in the account of Rs.7,28,29,699/- has been explained before me by ld. Counsel for the assessee by stating that applying Indian Accounting Standard 109 issued by ICAI dealing with the financial instruments, the assessee has recorded the fair market value of the investment on marked to market basis (MTM) of the said fund at Rs.7,28,29,699/- in the annual accounts. Whereas, for the purpose of computing disallowance under Rule 8D(2)(ii), the assessee has adopted the actual higher figure of investment made of Rs.10 crores. Thus, in my view, the mismatch pointed out by the ld. first appellate authority is irrelevant and inconsequential so far as the issue at hand is concerned. In any case of the matter, the assessee has computed the disallowance under Rule 8D(2)(ii) by considering the higher figure of Rs.10 crores, instead of Rs.7,28,29,699/-. Hence, no prejudice has been caused to the department. Therefore, the disallowance under Rule 8D(2)(ii) has to be quantified by working out the average value of the investment of DSP Emerging Stars Fund Category III AIFs.

14. Upon examination of working furnished before the A.O., which is incorporated at pg. nos. 6 & 7 of the assessment order, it is evident that the assessee has worked out monthly average value of investment and, thereafter, computed the disallowance on the annual average value of investment. Therefore, the *suo motu* disallowance computed by

the assessee at Rs.7,91,667/-, is correct. Hence, the disallowance u/s. 14A read with Rule 8D has to be restricted to that amount. Accordingly, upon due consideration of facts and materials on record, I agree with the view expressed by ld. AM. In view of my decision on the core issue, the various other questions proposed by ld. Members, being academic and inconsequential for the purpose of determining the limited dispute arising in the present appeal, need not be gone into. Appeal records be returned back to the Registry and the Registry is directed to place the matter before the ld. Division Bench for passing the confirmatory order, as per majority view.

Sd/-

(Saktijit Dey)
Vice President

Mumbai; Dated : 13.11.2025
Roshani, Sr. PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT - concerned
5. DR, ITAT, Mumbai
6. Guard File

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai

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

BEFORE MS. KAVITHA RAJAGOPAL, JM
AND
SHRI GIRISH AGRAWAL, AM

ITA Nos.3925/Mum/2023
(Assessment Years:2021-22)

DSP Finance Pvt. Ltd., (Formerly known as DSP Investment Managers Pvt Ltd.), 10th Floor, Mafatlal Centre, Nariman Point, Mumbai- 400 021	Vs.	Deputy Commissioner of Income Tax- 3(1)(1),Mumbai
PAN/GIR No.AAACD 3069 K		
(**Appellant**)	:	(**Respondent**)

Assessee by	:	ShriNitesh Joshi
Revenue by	:	ShriPushkarajBhangepatil, SR DR

Date of Hearing	:	13.12.2024
Date of Pronouncement	:	.03.2025

O R D E R

Per KavithaRajagopal, J M:

The captioned appeal filed by the assessee was heard at length by the bench and the Hon'ble Accountant member has passed the draft order dated 11.03.2025 partly allowing the appeal filed by the assessee. On perusal of the said draft and on giving a careful consideration of the same, I am not in agreement with the view taken by the Hon'ble Accountant member and I hereby pass a separate order taking a dissenting view as opposed to that of the Hon'ble Accountant Member, only to a limited extent which will be discussed in the following paras.

2. As the facts have already been culled out in the order of Hon'ble Accountant Member I restrict only to the extent of the facts that are required for adjudication of the present issue in hand. In the present appeal, though the initial arguments of the

Ld. AR on behalf of the assessee was that the investment made in Alternate Investment Fund category III (AIF Cat-III) will not attract disallowance under Rule 8D(iii) of the IT Rules as it was in the nature of distribution as aunitholderof AIF cat-III which is a Trust.Further it was argued that the amount of Rs. 5,09,75,022/- is not an exempt income but would rather be capital gain or dividend income which are not liable to be taxed u/s 10(38) & 10(34) of the Act.

3. It is pertinent to point out that AIF is a special Investment Category which is a privately pooled investment vehicle which invests in assets like private equity,hedge funds and real estate. These are not funds governed by SEBI regulations 1996, 1999 or any other regulations of the board.There are 3 categories namely:

1. Category I AIF

- Venture capital fund (Including Angel fund)
- SME Funds
- Social Venture funds
- Infrastructure funds

2. Category II AIF

3. Category III AIF

The diffferent categories of the AIFs are taxed differently where income (other than business income) from category I and II are taxed in the hands of the investor whereas category III income are tax free/exempt in the hands of the

investor as they have not been given a pass through status and the same has to be taxed in the hands of the fund.

4. The assessee declared total income of Rs. 2,64,90,28,800/- in its ROI dated 25.02.2022 where it had earned exempt income of Rs.5,09,75,022/- from DSP Emergingstars fund and claimed that no expenses were incurred for earning of the exempt income and also stated that it had no borrowed funds utilized for the said investment which had earned exempt income. It has also stated that the dividend income is taxable in the hands of the investor other than that received from DSP Emergingstarsfund which is the only investment which had yielded exempt income during the year under consideration. It also contended that since the investment was a mandatory requirement as per SEBI regulations, no expenditure was incurred for the same. The assessee *Suo Motto* made a disallowance of Rs.7,91,667/- being 1% of the annual average.

5. The Learned Assessing Officer (ld. A.O. for short) recorded has dissatisfaction towards the computation and the correctness of the claim of the assessee thereby invokingsection 14A r.w.r. 8D and computed the disallowance to Rs.60,80,245/-. The Ld. CIT(A) in an appeal preferred by the assessee dismissed the grounds raised by the assessee and directed the Learned Assessing Officer (ld. A.O. for short) to recompute the disallowance in accordance with Rule 8D.

6. The assessee was in appeal before us challenging the order of Ld. CIT(A). The Ld. AR initially argued that it is neither a taxable income nor an exempt income in

the hands of the assessee. Based on the arguments, the Ld. Accountant Member proposed a draftorder which I was not in agreement with, were the arguments of the Ld. AR found favour in the views of the Hon'ble Accountant Member. On the request for further clarification in the matter, the appeal was again heard extensively where the Ld. AR fairly agreed that it would be exempt income in the hands of the assessee. The ld. AR relied on the decision of Hon'ble Special Bench (Delhi) in the case of *ACIT vs. Vireet Investment Pvt. Ltd. [2017] 82 taxmann.com 415* which held that only investment which yielded exempt income is to be taken into consideration for computing disallowance u/Rule 8D.

7. In the present scenario, the Hon'ble Accountant Member, had proposed the draft order, wherein the disallowance was restricted to the *Suo Motto* disallowance made by the assessee. To that extent, I am in disagreement with the view taken by the Hon'ble Accountant Member. The other argument pertaining to recording of satisfaction has already been dealt with by Hon'ble Accountant Member. I am in line with the finding of the Hon'ble Accountant Member on this issue. The only remaining issues which requires adjudication is as follows:

1. Whether the assessee's*Suo motto* computation of disallowance is in accordance with section 14 r.w.r. 8D?

2. In the absence of any documentary evidences neither before the lower authorities not before us by way of additional evidences, the disallowance be restricted to the *Suo Motto* disallowance made by the assessee?

3. When the assessee has failed to furnish the monthly opening and closing balance, can it be remanded back to the Ld. AO for verifying the details to compute the disallowance in accordance with Rule 8D?

4. In the event of discrepancies found in the opening investment in DSP Emerging starsfund at the beginning of the year which was Rs. 10 crore and a different figures of Rs.7,28,29,699/- and ZERO closing balance at the end of the year, which was not duly explained by the assessee, can the *Suo Motto* disallowance be upheld?

The issue in dispute is narrowed down to the extent of determining whether the *Suo Motto* disallowance is rightly arrived at by the assessee for calculating the expenditure or requires verification on the basis of any documentary evidence which are to be filed by the assessee. It is observed that the distributed amount of Rs.5,09,75,022 included net capital gain, dividend and interest which the ld. CIT(A) has categorically held that,the same could be verified only on perusal of the distribution documents which was not furnished by the assessee at any point in time. The ld. CIT(A) further held that opening investment in DSP Emerging stars fund was Rs. 10 crore at the beginning of the years at the time of calculating monthly average of investment and was Rs.7,28,29,699 given in the details of MF investments and further it was ZERO closing balance at the end of the year. These anomaly were not explained by the assessee before us as well. The ld.CIT(A) further held that either the MF should have been discontinued and distributed

amongst investors or the assessee must have retired from the MF as an investor and received distribution.

8. It is also evident that the Ld. AO has requisitioned the assessee to furnish the complete details of the monthly opening and closing balance of the investment for which the assessee has given a working which was not to the satisfaction of the ld. AO. Though the assessee has declared the total investment in AIF as on 01.04.2020 at Rs. 4955.63 lakhs and as on 31.03.2021 at Rs. 7204,86 lakhs, it had failed to give the complete details of investment which has yield exempt income and has merely stated that only Emergingstarsfund category III AIF investment has earned exempt income. In the failureto furnish the same, the ld. AO computed the disallowances by taking the opening and closing balance of the total investment, whether or not it had earned exempt income during the year and consideration.The ld. CIT(A) has rightly directed the ld. AO to compute the disallowance after calculating the monthly average first and then to calculate annual average and to determine the disallowance accordingly.I do not find any infirmity in the order of Ld. CIT(A) in directing so, for the reason that the assessee has not provided those details which are required for determining the disallowance in a scientific manner in accordance with the provision of Rule 8D of the IT Rule 1962. It is a settled preposition that when the assessee has claimed expenditure and has earned both taxable and exempt income, where the expenditure is not bifurcated and when the ld. AO is not satisfied as to the correctness of the claim,

he shall record his dissatisfaction and proceed to compute the disallowance in accordance with Rule 8D. Neither the Learned Assessing Officer (ld. A.O. for short) nor the assessee has the liberty to deviate from the provision of law. There is no iota of doubt that the assessee's*Suo Motto* disallowance is merely on estimation basis without prescribing to any systematic or scientific method prescribed as per rule 8Din the absence of supporting documentary evidences.

9. From the above observation, I deem it fit to hold that the assessee's Suo Motto disallowance is not in accordance with the provisions and therefore, has to be remanded back to the Ld. AO to thelimitated extent of determining the disallowance as per Rule 8D, for which the assessee is directed to furnish all the required evidences before Ld. AO for determination of the same.

10. In the result to present appeal is disposed of in the above terms.

Order pronounced in the open court on .03.2025

Sd/-
(KavithaRajagopal)
Judicial Member

(Girish Agrawal)
Accountant Member

Mumbai, Dated : .03.2025
Disha Raut

Copy of the Order forwarded to :

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

BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Mumbai

IN THE INCOME TAX APPELLATE TRIBUNAL "D" BENCH MUMBAI

BEFORE MS. KAVITHA RAJAGOPAL, JUDICIAL MEMBER
AND
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER

ITA No. 3925/MUM/2023
Assessment Year: 2021-22

DSP Finance Pvt. Ltd., (Formerly known as DSP Investment Managers Pvt Ltd.), 10th Floor, Mafatlal Centre, Nariman Point, Mumbai – 400 021 (PAN : AAACD3069K)	Vs.	Deputy Commissioner of Income Tax – 3(1)(1), Mumbai
(Appellant)		**(Respondent)**

Present for:

Assessee : Shri Nitesh Joshi, Advocate

Revenue : Shri Pushkaraj Bhangepatil, SR DR

Date of Hearing : 13.12.2024
Date of Pronouncement : .03.2025

O R D E R

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/250/2023-24/1055938513(1), dated 11.09.2023 passed against the assessment order by Assessing Officer, Faceless Assessment Unit, u/s. 143(3) r.w.s. 144B of the Income-tax Act (hereinafter referred to as the "Act"), dated 26.12.2022 for Assessment Year 2021-22.

2. The moot point contested by the assessee in this appeal is towards disallowance of Rs.60,80,245/- u/s. 14A r.w.r. 8D(2)(iii) of the

Income-tax Rules, 1962 (The Rules) being 1% of average investment when claim of the assessee is that investments made by it in 'Alternate Investment Funds' Category III ('AIF CAT III') which are constituted as trust cannot be considered for the purpose of said disallowance since assessee receives the distribution as a unit holder on which AIF CAT III trust had already paid the due taxes. As a sub-ground, assessee is also contesting that amount received by the assessee as distribution by the AIF CAT III trust is a capital receipt and not in the nature of income exempt u/s.10 of the Act. Assessee thus, has not earned any tax free/exempt income from any of its investments and therefore no disallowance could be made u/s.14A of the Act. Without prejudice to these grounds, assessee has submitted that disallowance u/s.14A could be restricted to Rs.7,91,667/-, i.e., to the extent of investments from which it has received a distribution during the year.

3. From the appeal folder, it was noted that Form No.36 was originally filed by the assessee on 03.11.2023, with the name of the assessee as DSP Investment Managers Pvt. Ltd. Subsequently, the name of the assessee was changed to DSP Finance Pvt. Ltd. vide certificate issued by the Ministry of Corporate Affairs, dated 28.12.2023. Accordingly, revised Form No.36 was placed on record with the changed name of the assessee on 12.03.2024, there being no change in the grounds of appeal raised by the assessee in both the Form No.36.

3.1. Further, registry has noted a delay of 252 days in filing the present appeal before the Tribunal. In this respect, ld. Counsel pointed out that in the original Form 36, inadvertently the date of order was mentioned 26.12.2022 which happens to be the date of impugned assessment order passed u/s.143(3), whereas the date

should have been of the order passed by ld. CIT(A), which is 11.09.2023. When this date of order of ld. CIT(A) is considered, this present appeal filed on 03.11.2023 is within the stipulated limitation of 60 days, hence no delay. This correction has also been incorporated in the revised Form 36 placed on record.

4. Brief facts of the case are that assessee is a company incorporated under the Companies Act, 1956 which acts as an Investment Manager to the schemes under the DSP Black Rock mutual fund in accordance with the provisions of Investment Management Agreement, trust deed of the fund, SEBI regulations and the objectives of the schemes.

4.1. History of organisational set up is noted as under:

i. DSP Alternative Investment Fund Category III (Fund) was constituted as a trust on 28.05.2013 in accordance with the provisions of Indian Trust Act, 1882. Fund is registered with SEBI under SEBI (Alternative Investment Funds) Regulations, 2012 on 13.06.2013.

ii. DSP Trustee Pvt Ltd. (Trustee) is the Trustee of the fund. The trust deed is registered under the Indian Registration Act, 1908.

iii. DSP Investment Managers Pvt Ltd. now name changed to DSP Finance Pvt. Ltd., i.e., the assessee (Investment Manager) was appointed as the Investment Manager of the Fund and the schemes launched by the Fund thereunder by the Trustee vide executing Investment Management Agreement for every scheme launched by the Fund between the Trustee and the Investment Manager.

4.2. The Fund manages DSP Emerging Stars Fund, i.e., the scheme under the Investment Management Agreement with the Investment Manager, i.e. the assessee. To corroborate the registration of the Fund as a Category III Fund with SEBI, copy of registration certificate issued by SEBI is placed on record, dated 13.06.2013 granting registration as a Category III Fund.

4.3. Assessee had invested an amount of Rs.10 Crores in the DSP Emerging Stars Fund Category III AIF on 24.12.2015 and 20.07.2016 i.e., in the assessment years 2016-17 and 2017-18 in order to fulfil the requirement of Regulation 10(d) of SEBI (AIF) Regulations, 2012. This Regulation mandates that the Investment Manager shall have a continued interest in the Category III AIF, where such interest shall not be less than 5% of the corpus or Rs.10 Crores whichever is lower. Copy of the said SEBI Regulation is placed at page 9 and 10 of the paper book. According to assessee, it was a mandatory investment to comply with the said SEBI Regulations.

5. Assessee filed its return of income on 25.02.2022 reporting its total income at Rs.264,90,28,800/-. In the course of assessment proceedings, from the perusal of the profit and loss account, ld. Assessing Officer observed that assessee had earned exempt income of Rs.5,09,75,022/-. Despite this exempt income, no disallowance u/s. 14A r.w.r. 8D was made by the assessee in the return filed by it for expenses incurred in connection with such income earned and claimed exempt, observed the ld. Assessing Officer. Explanations were called for and assessee furnished its details along with documentary evidences. Assessee claimed that no expenditure was incurred for making investment which was in compliance for meeting the

mandatory requirement under the SEBI Regulations, no borrowed funds were utilised for making the investment and the investment so made yielded income which was subjected to tax.

5.1. In the alternative, assessee submitted that disallowance to the extent of Rs.7,91,667/- could be made which was worked out by it on the basis of actual amount of investment made by it of Rs.10 Crores. In this respect, assessee furnished the working of disallowance so adopted by it which is produced in para 5.2 of the impugned assessment order and is extracted below for ready reference.

Working of disallowance under Section 14A as per Rule 8D of the Income tax Rules, 1962

Sr No	Descpription	Amount (Rs.)	Amount (Rs.)
a	Amount of expenses directly relating to such income		Nil
b	Annual average of the monthly average of the opening and closing balances of the value of investment, income from which does not or shall not form part of total income	7,91,66,667	
c	1% of the (b) above		7,91,667
	Total disallowance u/s 14A		7,91,667

Working of disallowance under Section 14A as per Rule 8D of the Income tax Rules, 1962 Ass. Year : 2021-12

Particulars of Investment that can generate or has actually generated Exempt Income in FY 2020-21

Month	Name of the Investment	Opening Value	Closing Value	Monthly Average
Apr-20	DSP Emerging Stars Fund - Category III AIF	10,00,00,000	10,00,00,000	10,00,00,000
May-20	DSP Emerging Stars Fund - Category III AIF	10,00,00,000	10,00,00,000	10,00,00,000
Jun-20	DSP Emerging Stars Fund - Category III AIF	10,00,00,000	10,00,00,000	10,00,00,000
Jul-20	DSP Emerging Stars Fund - Category III AIF	10,00,00,000	10,00,00,000	10,00,00,000
Aug-20	DSP Emerging Stars Fund - Category III AIF	10,00,00,000	10,00,00,000	10,00,00,000
Sep-20	DSP Emerging Stars Fund - Category III AIF	10,00,00,000	10,00,00,000	10,00,00,000
Oct-20	DSP Emerging Stars Fund - Category III AIF	10,00,00,000	10,00,00,000	10,00,00,000
Nov-20	DSP Emerging Stars Fund - Category III AIF	10,00,00,000	10,00,00,000	10,00,00,000
Dec-20	DSP Emerging Stars Fund - Category III AIF	10,00,00,000	10,00,00,000	10,00,00,000
Jan-21	DSP Emerging Stars Fund - Category III AIF	10,00,00,000	0	5,00,00,000
Feb-21	DSP Emerging Stars Fund - Category III AIF			0
Mar-21	DSP Emerging Stars Fund - Category III AIF			0
		Annual Average		7,91,66,667
		1% of the above		7,91,667

5.2. However, ld. Assessing Officer observed that assessee had shown investment in AIF as on 01.04.2020 at Rs.4955.63 lakhs and as on 31.03.2021 at Rs.7204.86 lakhs. According to him, since monthly

average breakup was not provided, he proceeded to compute the disallowance by taking average investment of the opening and closing balance and applied 1% on the same to arrive at disallowance of Rs.60,80,245/- u/s. 14A r.w.r. 8D(2)(iii). On this computation, ld. Assessing Officer issued a show cause notice against which a detailed reply was furnished which is reproduced in para 5.6 of the impugned assessment order. In the said reply, assessee categorically submitted that it received the amount of Rs.5,09,75,022/- towards maturity proceeds in respect of units in DSP Emerging Star Fund Category III AIF. Assessee submitted that it is an investment manager to the schemes of DSP Alternative Investment Fund. These schemes are Category III AIFs under Regulation 10 of SEBI (AIF) Regulations, 2012 (SEBI Regulations) which provides/deals with the conditions on the investment to be made. The aforesaid Regulations require/mandate an AIF to have investments subject to the conditions prescribed in the aforesaid Regulations without which the AIF cannot be floated.

5.3. Accordingly, assessee made investments of Rs.10 Crores as initial seed investments for setting up of AIF Category III. The extent of the investment to be made in the AIF is mandated by law in accordance with the SEBI regulations and does not require any decisions making process or any expenditure for making the investment.

6. Ld. Assessing Office did not find himself convinced with the correctness of the assessee's claim and proceeded to make a disallowance of Rs.60,80,245/- u/w.14A r.w.r. 8D(2)(iii). Aggrieved, assessee went in appeal before the ld. CIT(A).

7. Before the ld. CIT(A), submissions were reiterated. Assessee also submitted that it has made investments only in units of AIF. It receives distribution from AIF on maturity of units. These AIFs are Category III registered AIF which are subjected to tax at Maximum Marginal Rate (MMR). The distribution made by the AIF are not in the nature of any income, they represent capital assets which do not bear income character. According to the assessee, since the AIF are not in the nature of income and are capital receipts, therefore provisions of Section 14A have no application on such receipts. Ld. CIT(A) did not agree with the contentions and submissions made by the assessee. However, in para 6.5.4, he observed that the calculation of the Assessing Officer for disallowance is strictly not in accordance with Rule 8D, since he has calculated annual average by taking opening balance of total investments in all eight schemes of DSP mutual fund at Rs.49,55,62,352/- and similarly the closing balance of Rs.72,04,85,469/-, without working out monthly averages. He further, observed that the Rule does not confer any power or jurisdiction to deviate from statutory Rules. He thus, directed the ld. Assessing Officer to ascertain the correct opening balances and calculate monthly averages first and then calculate annual average to ascertain correct amount of disallowance. With these observations of directing the Assessing Officer to re-compute the disallowance, the addition was confirmed and the appeal was dismissed.

8. Before us, ld. Counsel for the assessee furnished his submissions on three aspects-

i) The amount received by the assessee upon maturity of the units is not liable to tax in its hands since tax on the income during the continuance of the scheme has been paid by the Trustees of the said Fund in the capacity of repre-

sentative assessee. The receipt in the hands of the assessee towards maturity proceeds is a capital receipt. Thus, assessee has not claimed any exemption within the meaning of Section 10 on the said receipts and therefore no disallowance u/s. 14A can be made.

ii) Assessee acquired the units of DSP Emerging Star Fund as an Investment Manager in compliance with Regulation 10(d) of the SEBI (AIF) Regulation, 2012 in the AY 2016-17 and 2017-18. In the year under consideration, assessee has only received maturity proceeds in respect to the said units. Accordingly, there is no administrative effort or cost involved on receipt of such maturity proceeds. Hence disallowance made by the ld. AO u/s,14A is not justified.

iii) In the alternative and without prejudice, it was submitted that disallowance cannot be extended to entire investments but has to be restricted to such investments which have yielded exempt income during the year and therefore it cannot exceed the amount of Rs.7,91,667/- being the amount already offered as an alternative in the course of assessment proceedings itself.

9. Ld. Sr. DR placed reliance on the order of ld. CIT(A) and referred to para 6.4.4 to point out that ld. Assessing Officer had subsequently recorded that he is not satisfied with the correctness of the claim of the assessee. She asserted to set aside the matter to the file of ld. Assessing Officer for the verification and re-computation of the disallowance as directed by the ld. CIT(A) in para 6.5.4.

10. We have heard the rival contentions and perused the material on record. We have also given our thoughtful consideration to the various

contentions raised by the assessee. On the contention of the assessee that the scheme is a Category III AIF registered with SEBI which does not call for any exemption u/s.10 of the Act and the fund from where the assessee has received the money has been subjected to tax, a hearing was fixed on 13.09.2024, seeking clarification. In this course of hearing, ld. Counsel for the assessee emphasised on ground No.2(a) whereby, ld. Assessing Officer had failed to record his dis-satisfaction vis-à-vis the manner of computation as worked out by assessee and furnished during the course of assessment.

10.1. For this, he made a statement to proceed on the issue as if receipt in the hands of assessee is an exempt income. According to him, assessee has not incurred any expenditure towards receipt of this income during the year as no administrative effect was involved on this account. On the stance taken by the ld. Counsel as aforesaid to lead the issue in this appeal by emphasising on the ground 2(a), the impugned order of assessment was perused. From para 5.1, of this order, it is noted that ld. Assessing Officer, from the perusal of the profit and loss account observed that assessee had earned exempt income of Rs.5,09,75,022/- for which no disallowance u/s.14A r.w.r. 8D was made in the Income-tax return for the expenses incurred in connection with such income earned and claimed exempt. A notice was issued seeking various details on this aspect which is reproduced as under:

> *"Expenses debited to P&L A/c for earning exempt income is significantly lower as compared to investments made to earn exempt income.*
>
> *a. Please furnish the details of exempt income earned, if any, during the year.*
>
> *b. Please furnish the details of expenses incurred for earing exempt income during the year under consideration if any.*
>
> *C. Please furnish the details of investment made and held by you as on 31.03.2021 along with nature of investment.*

d. Please furnish the details of sources of funds for investments

e. Please furnish the details of interest paid during the year on borrowed funds utilized for making investments.

f. Computation as per Rule: BD read with section 14A of the Income Tax Act, 1961.

g. Please explain the reason for non-disallowance of expenditure u/s 14A r.w.r. 8D of the IT Act, 1961 in the ITR despite having huge investments held by you.

h. Please furnish the average of monthly opening and closing balance of Investments in the following format:

Month	*Opening balance of investments*	*Closing balance of investment*	*Monthly average of investment*

10.2. Assessee furnished its reply. According to ld. Assessing Officer, in this submission, assessee contended that it had received proceeds from the fund which is exempt in the hands of the assessee for which it is claimed that no expense has been incurred. Assessee also claimed that no borrowed funds have been utilised for making the investment. According to the assessee, other than the proceeds from DSP Emerging Start Fund, there is no investment which has yielded exempt income. Further, this investment was made under mandatory requirement under SEBI towards seed capital of the said fund which would not require any effort for taking decision to invest. Assessee furnished working of *suo moto* disallowance by applying Rule 8D(2)(ii) to arrive at a figure of Rs.7,91,667/-, details of which are already extracted above.

10.3. While considering the submissions made by the assessee, ld. Assessing Officer in para 5.3, noted about his satisfaction about incurring of expenditure in relation to income which does not form part of total income within the meaning of section 14A r.w.r. 8D. He worked out disallowance of Rs.60,80,245/- by taking opening and

closing balance of investments in AIF reported by the assessee in its balance sheet for this purpose. On this computation, another show cause notice was issued on the assessee which was replied wherein the submissions made earlier were reiterated. This reply submitted by the assessee is reproduced in the impugned order. In para 8 of its submission as reproduced in the impugned order, assessee reiterated without prejudice working of *suo moto* disallowance which was worked out at Rs.7,91,667/- and requested to restrict the disallowance to this amount.

10.4. In para 5.8, in the conclusion, ld. Assessing Officer noted that he is not satisfied having regard to the accounts of the assessee as to the correctness of the claim of the assessee in respect of any expenditure incurred in relation to such income which does not form part of the total income under the Act. According to him, in such a situation, Section 14A r.w.r. 8D is very much applicable. Having recorded the dissatisfaction, he proceeded to make a disallowance of Rs.60,80,245/-.

10.5. Ld. Counsel also contended that only those investments need to be considered while making the disallowance for applying Rule 8D(2)(ii) which has yielded exempt income during the year, pursuant to the decision of Hon'ble Special Bench (Delhi) in the case of ACIT vs. Vireet Investments Pvt. Ltd. *[2017] 82 taxmann.com 415*. Thus, ld. Counsel asserted that ld. Assessing Officer has not been able to prove about incurring of expenditure by the assessee to earn the exempt income and has also not followed the decision of Hon'ble Special Bench in the case of Vireet Investments (supra) but has taken the entire portfolio of investment while applying Rule 8D(2)(ii).

11. Since, ld. Counsel for the assessee led the issue in the present appeal, by submitting before the Bench to proceed as if the sum received by the assessee is exempt income, other grounds raised are left open and not adjudicated upon. From the observations and findings of the ld. Assessing Officer as noted above, we find that ld. Assessing Officer has recorded his satisfaction for invoking Rule 8D to make disallowance u/s. 14A having regard to the accounts of the assessee. Thus, ground raised by the assessee in this regard is held against it. Further, ld. Assessing Officer has not made any disallowance to the interest expenditure. Even assessee in the alternate has submitted the working of making a *suo moto* disallowance by applying Rule 8D(2)(ii). Now that the ld. Counsel has proceeded on the premise of receipts in the hands of the assessee being exempt income and ld. Assessing Officer recording his dissatisfaction for invoking Rule 8D having regard to the accounts of the assessee, the only point which we need to consider is whether the working made by the assessee by taking only the investment which yielded exempt income for applying Rule 8D(2)(ii) giving a figure of Rs.7,91,667/- for disallowance is to be accepted or the calculation done by ld. Assessing Officer by taking the opening and closing balance of investment in AIF as reported in the balance sheet for the year, which includes all the investments to arrive at a figure or Rs.60,80,245/- should be accepted for the purpose of making the disallowance.

11.1. Respectfully considering the decision of Hon'ble Special Bench in the case of Vireet Investments (supra) which held that only those investments are to be considered for computing average value of investment which yielded exempt income during the year, we are in agreement with the working given by the assessee, by taking into

account investment which yielded exempt income to arrive at disallowance of Rs.7,91,667/- u/r. 8D(2)(ii). Accordingly, we restrict the disallowance u/s.14A r.w.r. 8D(2)(ii) to Rs.7,91,667/- against the disallowance of Rs.60,80,245/- computed by the ld. Assessing Officer. Accordingly, ground no. 3 and 4 taken by the assessee are allowed.

12. In the result, appeal of the assessee is partly allowed.

Order is pronounced in the open court on March, 2025

Sd/-

(Kavitha Rajagopal)
Judicial Member

(Girish Agrawal)
Accountant Member

Dated: 11 March, 2025

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