

IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” BENCH, MUMBAI
BEFORE SMT. BEENA PILLAI (JUDICIAL MEMBER)
I.T.A. No. 6023/Mum/2025
Assessment Year: 2017-18

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| Apcotex Industries Limited MIDC Taloja Raigarh (MH) Maharashtra - 410208 [PAN: AAACA3427G] | Vs. | Assistant Commissioner of Income Tax, Circle - 15(1)(1) |
| (Appellant) | | (Respondent) |

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| Assessee by | Shri Piyush S. Chhaged, A/R |
| Revenue by | Shri Limbasiya Kavan Nareshkumar, Sr. DR |

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| Date of Hearing | 04.02.2026 |
| Date of Pronouncement | 13.03.2026 |

ORDER

Per Smt. Beena Pillai, JM:

The present appeal filed by assessee arises out of the order dated 24/07/2025 passed by the NFAC, Delhi [hereinafter “the Ld.CIT(A)"] for A.Y. 2017-18 on the following grounds of appeal:-

“1. On the facts and circumstances of the case, the learned Commissioner of Income Tax (Appeal) erred in upholding the disallowance of Rs. 15,59,529/- u/s 14A without appreciating that appellant had not incurred any direct or indirect expenses, nor any satisfaction to that effect was recorded by assessing office and, the appellant had already suo moto disallowed direct expenses in return of income.

2. On the facts and circumstances of the case, the learned Commissioner of Income Tax (Appeal) erred in upholding disallowance of depreciation of Rs. 6,92,248/- on the office premises without appreciating that the office premises was part of the block of assets and used for business and therefore depreciation ought to have been allowed.

3. The Appellant craves the leave to add, amend, alter and/or delete any of the above grounds of appeal at/or before the time of hearing.”

2. Facts in brief are as under:-

The assessee filed its return of income declaring total income at Nil on 01/11/2017. Subsequently, the case was selected for scrutiny and notices u/s 143(2) and 142(1) were issued to the assessee. In response to the statutory notices, the representative of the assessee appeared before the Ld.AO and filed the requisite details as called for. The Ld.AO noticed that the assessee is engaged in the business of manufacturing of synthetic rubber and lattices.

2.1. The Ld.AO, after considering the submissions of the assessee, made additions/disallowances under the following heads:-

1. Disallowance of employees' contribution towards provident fund – Rs. 8,83,195/-.
2. Disallowance in respect of deduction u/s 35(2AB) of the Act – Rs. 3,73,243/-.
3. Disallowance of expenses incurred for earning exempt income u/s 14A – Rs. 15,59,529/-.
4. Disallowance of interest on MSMED payments – Rs. 1,69,000/-
5. Disallowance of depreciation on assets (house properties) – Rs. 6,92,248/-.

Aggrieved by the additions made by the Ld. AO, the assessee preferred an appeal before the Ld.CIT(A).

3. The Ld.CIT(A), after considering the submissions of the assessee, upheld the disallowance made u/s 14A amounting to Rs. 15,59,529/- and the disallowance of depreciation on assets amounting to Rs. 6,92,248/-.

Aggrieved by the order of the Ld.CIT(A), the assessee is in appeal before this *Tribunal*.

4. Ground No. 1 raised by the assessee is in respect of the disallowance made u/s 14A of the Act.

The Ld.AR submitted that the assessee had invested in equity-oriented mutual funds and equity instruments which yielded exempt income. While computing the disallowance under section 14A, the assessee had *suo motu* disallowed a sum of ₹63,03,077/- being the portfolio management service (PMS) fees paid, along with STT of ₹2,79,446/-. It was submitted that, apart from the aforesaid amounts, the assessee had not incurred any direct or indirect expenditure for earning the exempt income.

4.1. The Ld.AR further submitted that, apart from the portfolio management service (PMS) fees paid by the assessee, no other expenditure had actually been incurred for maintaining the investments. It was contended that the said cost effectively covers both direct as well as indirect expenditure, which would otherwise be debited to the Profit & Loss Account under various heads such as personnel cost, administrative expenses, and interest cost in respect of the funds invested.

4.2. In support of the aforesaid contention, the Ld. AR placed reliance on the decision of the Mumbai Bench of the Tribunal in the case of *JM Financial Corporation Ltd. vs. ACIT* in ITA No. 4521/Mum/2012, to submit that the expenditure already offered by the assessee is

sufficient to cover both direct and indirect costs for the purposes of section 14A read with Rule 8D.

4.3. The Ld.AR further submitted that the Ld. AO, while computing the disallowance under section 14A read with Rule 8D(2)(ii), considered the average monthly total deposits and, on that basis, computed the disallowance at ₹15,59,529/-. However, Without prejudice to the above submissions, it was further contended that while determining the disallowance under section 14A, the principle laid down by the *Hon'ble Special Bench of the ITAT, Delhi*, in the case of *ACIT vs. Vireet Investment Pvt. Ltd.* (82 taxmann.com 415) ought to be applied, wherein it has been held that the disallowance is to be restricted only to those investments which have actually yielded exempt income during the relevant previous year.

4.4. On the contrary, the Ld. DR submitted that the disallowance of expenditure relatable to exempt income must be computed strictly in accordance with the mechanism prescribed under Rule 8D(2). He, therefore, relied upon the orders of the authorities below.

We have considered the submissions advanced by both sides in light of the records placed before this *Tribunal*.

5. It is noted that under the amended Rule 8D, introduced by the Finance Act, 2016 with effect from 01/04/2016, the disallowance under Rule 8D(2)(i) covers all direct and indirect expenditure incurred in relation to earning exempt income. In the present case, the assessee has offered a *suo moto* disallowance under the said limb.

5.1. However, admittedly, the assessee has not computed any disallowance under the second limb of Rule 8D(2), being 1% of the annual average of the monthly averages of the opening and closing balances of the value of investments. Since the disallowance contemplated under the second limb of Rule 8D(2) is mandatory, we are unable to accept the contention of the Ld.AR that the *suo moto* disallowance made by the assessee sufficiently covers the expenditure relatable to exempt income or that the same is in compliance with the computation mechanism prescribed under Rule 8D(2).

5.2. At the same time, the year under consideration being A.Y. 2017–18, the disallowance under section 14A read with Rule 8D has to be computed keeping in view the principle laid down by the *Hon'ble Special Bench of the Tribunal in ACIT vs. Vireet Investment Pvt. Ltd.* reported in *82 taxmann.com 415*. Accordingly, we direct the Ld.AO to restrict the computation of disallowance by considering only those investments which have yielded exempt income during the year under consideration, and to compute the disallowance under the second limb of Rule 8D(2) in accordance with the aforesaid principle.

Accordingly, Ground No. 1 raised by the assessee stands partly allowed.

6. Ground No.2 raised by the assessee is in respect of the disallowance of depreciation on assets relating to rented properties.

6.1. During the year under consideration, the assessee declared income from house property in respect of four office premises which were let out during the year. The Ld.AO disallowed proportionate depreciation amounting to ₹6,92,248/- on such immovable properties on the ground that the said properties were not used for the purposes of the assessee's business during the relevant year.

6.2. The Ld.AR submitted that the said immovable properties, being buildings, formed part of the block of assets. It was contended that once an asset forms part of a block, depreciation on the block cannot be denied merely because a particular asset within the block was not used for business purposes during the year. It was further submitted that once the immovable properties forming part of the block lose their individual identity, it is neither permissible nor practicable to segregate such assets from the block for the purpose of disallowing depreciation, and therefore depreciation cannot be disallowed on a proportionate basis in respect of such assets.

In support of the above contention, the Ld.AR placed reliance on the following decisions:

- *R. Shipping Ltd. Vs DCIT in ITA No.822/Mum/2005*
- *Hon'ble Gujarat High Court in CIT Vs. Sonal Gems Industries reported in 322 ITR 542*

6.3. On the contrary, the Ld.DR relied on the orders passed by the authorities below.

I have heard the submissions advanced by both sides in light of the records placed before this *Tribunal*.

7. It is noted that the assessee has earned rental income from the properties being office premises which were let out during the year. The said rental income has been offered to tax by the assessee under the head “Income from House Property”, after claiming deduction under section 24 at 30%. It is further noted that the assessee has included the said office premises in the block of assets and has claimed depreciation thereon under section 32. Thus, while the rental income has been assessed by the assessee under the head “Income from House Property”, the claim of depreciation has been made under section 32, which pertains to income assessable under the head “Profits and Gains of Business or Profession.”

7.1. Under the scheme of the Act, the allowability of deductions is determined by the head under which the income is assessed. Where income is assessed under the head “Income from House Property,” only the deductions specifically provided under section 24 are permissible. On the other hand, where income is assessed under the head “Profits and Gains of Business or Profession,” the assessee may claim deductions allowable under that head, including depreciation under section 32. Consequently, the same income stream cannot simultaneously be subjected to the provisions governing both heads for the purpose of claiming deductions.

7.2. In the present case, the assessee has offered the rental income under the head “Income from House Property” and claimed the

statutory deduction under section 24. Once the income is so assessed, the claim of depreciation under section 32 in respect of the same property would ordinarily not be allowable. The scheme of the Act does not contemplate allowance of depreciation against income assessed under the head "Income from House Property."

7.3. However, it is equally well settled that where a property forms part of the commercial assets of the assessee's business and the letting out thereof constitutes commercial exploitation of such asset, the income derived therefrom may, in appropriate circumstances, fall to be assessed under the head "Profits and Gains of Business or Profession." In such a case, the property would continue to remain part of the block of business assets, and the assessee may be entitled to claim depreciation under section 32.

7.4. This position would apply only where the letting of the property constitutes a commercial exploitation of a business asset, and not where the property is merely let out for earning rental income. In the absence of such circumstances, the rental income would ordinarily fall to be assessed under the head "Income from House Property," in which event the deduction would be governed solely by section 24, and depreciation under section 32 would not be allowable.

7.5. In the present case, there is nothing on record placed by the assessee to demonstrate that the letting of the property constituted commercial exploitation of a business asset. At the same time, it is also noted that no specific enquiry appears to have been carried out by the Ld. AO on this aspect.

8. In view of the above, and in the interest of justice, we deem it appropriate to restore this issue to the file of the Ld. AO for the limited purpose of examining the actual utilisation and nature of exploitation of the property. The Ld.AO shall verify whether the property formed part of the commercial/business assets of the assessee and whether the letting out thereof constituted commercial exploitation in the course of business, or whether the property was merely let out for earning rental income.

8.1. The Ld.AO shall afford adequate opportunity of being heard to the assessee and examine the relevant facts and supporting material that may be furnished. Thereafter, the issue shall be decided afresh in accordance with law, keeping in view the principles discussed hereinabove.

Accordingly, the ground No.2 raised by the assessee stands allowed for statistical purposes.

In the result the appeal filed by the assessee stands partly allowed.

Order pronounced in the open court on 13/03/2026

Sd/-

**(BEENA PILLAI)
Judicial Member**

Mumbai
Dated: 13/03/2026
SC Sr. P.S.

Copy of the order forwarded to:

- (1) The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

True Copy
By order

(Asstt. Registrar)
ITAT, Mumbai