



**आयकर अपीलीय अधिकरण “ बी” न्यायपीठ मुंबई में।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**“B” BENCH, MUMBAI**

**माननीय श्री महावीर सिंह, उपाध्यक्ष एवं**  
**माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।**  
**BEFORE HON'BLE SHRI MAHAVIR SINGH, VP AND**  
**HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM**  
**(Hearing Through Video Conferencing Mode)**

आयकर अपील सं./ I.T.A. No.63/Mum/2019  
 (निर्धारण वर्ष / Assessment Year: 2013-14)

<b>Bahar Agrochem &amp; Feeds P. Ltd.</b> (Since merged with Godrej Agrovvet Ltd.) C/o. M/s. Kalyaniwalla & Mistry LLP Esplanade House, 2 <sup>nd</sup> Floor, 29, Hazarimal Somani Marg, Fort, Mumbai 400 001.	<b>बनाम/</b> Vs.	<b>DCIT-14(1)(1),</b> Room No.460, 4 <sup>th</sup> Floor, Aaykar Bhavan MK Road, Mumbai 400 020.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. <b>AAACB-2147-C</b>		
(पीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

<b>Assessee by</b>	:	Shri M.M.Golvala, Ld. AR
<b>Revenue by</b>	:	Ms. Kavita P. Kaushik, Ld. DR

सुनवाई की तारीख/ <b>Date of Hearing</b>	:	06/07/2020
घोषणा की तारीख / <b>Date of Pronouncement</b>	:	08/07/2020

**आदेश / ORDER**

**Manoj Kumar Aggarwal (Accountant Member)**

1. Aforesaid appeal by assessee for Assessment Year [AY] 2013-14 contest the order of Ld. Commissioner of Income-Tax (Appeals)-21, Mumbai, [CIT(A)], *Appeal No. CIT(A)-21/DCIT-14(1)(1)/IT-371/2016-17* dated 21/08/2018 on following grounds of appeal:-



1. The appellant submits the assessment order passed on an entity which has been dissolved is illegal and invalid and requires to be cancelled.
2. The Commissioner of Income Tax (Appeals) erred in confirming the disallowance made by the Assessing Officer of Rs.33,31,551/- under section 14A read with Rule 8D.
3. The appellant submits that the disallowance u/s.14A is required to be restricted to Rs.14,10,146/-.
4. The Learned Commissioner of Income Tax (Appeals) erred in not directing the Assessing Officer to reduce the investments made in Aadhaar Retailing Ltd. while calculating Average value of Total investments under Rule 8D(2)(ii).
5. The appellants submit that the Assessing Officer further be directed to exclude investments which have not earned exempt income, while computing disallowance u/s.14A read with Rule 8D.
6. Both the lower authorities erred in applying section 14A read with Rule 8D while computing book profits u/s.115JB.
7. The Learned Commissioner of Income Tax (Appeals) erred in ignoring the ratio of the decision of the Special Bench of the Tribunal in ACIT v/s. Vireet Investment (P) Ltd. (165 ITD 27).
8. Without prejudice to all that is stated above, and in any event, the appellant submits that the disallowance u/s.14A read with Rule 8D cannot exceed Rs.21,14,836/- in any view of the matter.”

During hearing, Ground No.1 has not been urged before us. It is evident that sole issue under appeal is disallowance u/s 14A while computing assessee's income under normal provisions as well as while computing Book Profits u/s 115JB.

2. The Ld. AR, drawing attention to the appellate order, pleaded for exclusion of non-income yielding investments while computing the said disallowance. The Ld. AR also advanced other arguments to contest the disallowance as confirmed by Ld. CIT(A). On the other hand, Ld. DR submitted that the disallowance has been made as per Rule 8D and therefore, the appellate order requires no interference.



3. We have carefully heard the rival submissions and perused relevant material on record. Our adjudication to the subject matter of appeal would be as given in succeeding paragraphs.

4.1 The documents on record would show that the assessee has been assessed u/s 143(3) at Rs.42.37 Lacs under normal provisions. The Book Profits has been determined at Rs.75.42 Lacs. An additional disallowance of Rs.12.16 Lacs has been made u/s 14A while computing such income under normal provisions as well as while computing Book Profits u/s 115JB. This is over and over suo-moto disallowance of Rs.21.14 Lacs offered by assessee in its computation of income while computing income under normal provisions as well as while computing Book Profits u/s 115JB.

4.2 During assessment proceedings, it transpired that the assessee earned exempt income of Rs.35.91 Lacs and attributed suo-moto disallowance of Rs.21.14 Lacs while computing its return of income. The said disallowance has been worked out as per Rule 8D in following manner: -

No.	Particulars	Amount (Rs.)
1.	Direct interest expenditure u/r 8D(2)(i)	13.83 Lacs
2.	Pro-rate interest expenditure u/r 8D(2)(ii)	2.12 Lacs
3.	Expense disallowance u/r 8D(2)(iii)	5.19 Lacs
	<b>Total</b>	<b>21.14 Lacs</b>

However, Ld. AO reworked disallowance to the extent of Rs.33.31 Lacs and enhanced the disallowance by Rs.12.17 Lacs. The difference came due to computations made u/r 8D(2)(ii) on account of pro-rata interest expenditure. For the purpose of said computations, the assessee has



taken average value of investments at Rs.154.17 Lacs as against Rs.1039.17 Lacs taken by Ld. AO. The assessee had excluded investments made in an entity namely *Aadhar Retailing Ltd.* since the same was stated to be made out of borrowed funds against which direct interest disallowance was already offered u/r 8D(2)(i). The learned CIT(A), disregarding assessee's submissions, confirmed the stand of Ld. AO. Aggrieved, the assessee is under further appeal before us.

5. Before us, the only relief sought by Ld. AR is exclusion of non-income yielding investments while computing the said disallowance. The working of the disallowance has been placed on record wherein the assessee has computed aggregate disallowance of Rs.14,10,146/- after considering exempt income yielding investments only. In the said computations, the disallowance u/r 8D(2)(i) remain the same at Rs.13,83,288/- whereas disallowance u/r 8D(2)(ii) & 8D(2)(iii) has been computed at Rs.19,695/- & Rs.7,163/- respectively. To support the said submissions, reliance has been placed, *inter-alia*, on the decision of Hon'ble Delhi High Court in **CIT V/s Holcim India Pvt. Ltd. (272 CTR 282)** and **Cheminvest Ltd. V/s CIT (378 ITR 33)**.

6. Considering the facts of the case and in terms of cited judicial pronouncements, we agree with the submissions of Ld. AR that only exempt income yielding investments were to be considered to compute the disallowance u/s 14A. Therefore, Ld. AO is directed to verify the computations and if found correct, restrict the disallowance to Rs.14,10,146/-. The said disallowance would be made under normal provisions as well as while computing Book Profits u/s 115JB since the disallowance substantially comprise-off of direct expenditure u/r 8D(2)(i).



7. The appeal stands partly allowed to the extent indicated in the order. This order is pronounced under Rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1962, by placing the details of the same on the notice board.

**Sd/-**  
**(Mahavir Singh)**

उपाध्यक्ष / **Vice President**

मुंबई Mumbai; दिनांक Dated : 08/07/2020

*Sr.PS, Jaisy Varghese*

**आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT– concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)  
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.