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

BEFORE SHRI MAHAVIR SINGH, JM
&
SHRI M.BALAGANESH, AM

ITA No.3953/Mum/2015& 3954/Mum/2015
(**Assessment Year :2010-11 & 2011-12**)

M/s. The Bombay Dyeing & Manufacturing Company Limited (As a successor to Archway Investment Company Ltd., Neville House, J.N. Heredia Marg, Ballard Estate Mumbai – 400 001	Vs.	Deputy Commissioner of Income Tax, Circle-2(1) Mumbai
PAN/GIR No.AAACA5507H		
(Appellant)	..	**(Respondent)**

Assessee by	Shri Yogesh Thor / Shri Gunjan Kakkad & Shri Chaitanya Joshi
Revenue by	Shri Chaudhary Arunkumar Singh
Date of Hearing	**28/02/2019**
Date of Pronouncement	**06/03/2019**

आदेश / O R D E R

***PER M. BALAGANESH (A.M)*:**

These appeals filed by assessee are directed against the order of Commissioner of Income Tax (Appeals)-4, Mumbai [hereinafter referred to as the ld CITA] dated 16/03/2015 for A.Y.2010-11 & 2011-12 in the matter of order passed u/s.143(3) of the Income Tax Act, 1961. Since identical issues are involved in these appeals, they were heard together and are being disposed off by this consolidated order for the sake of convenience.

ITA No.3953/Mum/2015 for A.Y.2010-11

2. The first issue to be decided in this appeal is as to whether the ld CITA was justified in upholding the action of the ld AO in treating the gains

received from sale of shares as income from business as against capital gains reported by the assessee, in the facts and circumstances of the case. The inter connected issue involved therein is as to whether the ld CITA was justified in upholding the action of the ld AO in not allowing the set off of brought forward capital loss of earlier years and not allowing the set off of current year long term capital loss against the income determined during the year, in the facts and circumstances of the case.

3. The brief facts of this issue are that the assessee is engaged in the business of investment and had filed its return of income for the Asst Year 2010-11 on 30.9.2010 declaring total income of Rs 41,58,420/- under the head short term capital gains. The assessee declared short term capital gains of Rs 1,34,86,643/- on the purchase and sale of delivery based shares and had set off a sum of Rs 93,28,220/- being the brought forward short term capital loss of Asst Years 2008-09 and 2009-10 and offered the remaining short term capital gains of Rs 41,58,423/- (rounded off to Rs 41,58,420/-) in the return of income. The ld AO observed that the own capital of the assessee is Rs 78.25 crores and out of which, a sum of Rs 53.90 crores had been invested in shares which apparently is rotated / recycled throughout the year in sale and purchase of shares only. The ld AO called for the workings of short term capital gains derived by the assessee during the year in the sum of Rs 1,34,86,643/- which were duly furnished by the assessee. From the said details, the ld AO observed that the assessee had rotated the available capital for several times in the share purchase and sale activity, which is a typical character of the business. He observed from the workings of short term capital gains that barring few transactions in the year, almost all the sales are of shares / units purchased at the short intervals which means that these shares were purchased with the sole intention of selling it and at profit or loss

with the risk elements embedded therein. The transactions of purchase and sale of shares was very frequent and the period of holding is less than few months. The assessee had paid portfolio management services (PMS) fees of Rs 68,30,708/- to look after the share transactions of the assessee and also to have an expert advise about the daily market for share trading. With regard to the argument of the assessee that it had been investing in shares for several years and had been treating the same as investments and not as business activity, the ld AO observed that the assessee is making investments as per the advice given by the PMS provider (expert) and that the assessee himself is knowledgeable and well aware of the commerce and the market and economic conditions and also keeps abreast of state of economy and about the various companies in whose shares the assessee had dealt within the year. The purchase of shares have been made after applying mind and on the main criteria of how much the share will rise/ fetch in return etc and sales were made when the shares reached the expected levels. The ld AO observed that the assessee had availed loans and utilized the same for the purpose of share trading and had paid interest of Rs 3,52,397/- and further observed that no prudent person will make investment by taking loan. The ld AO observed further that the associate concerns of the assessese viz. Amol Securities Pvt Ltd and Komac Investments & Finance Pvt Ltd are mainly engaged in the business of shares and securities. Based on these observations, the ld AO treated the assessee as a trader in shares and accordingly brought the short term capital gains reported by the assessee at Rs 1,34,86,643/- as business income of the assessee.

3.1. In view of the aforesaid decision of treating assessee as a trader in shares, the ld AO did not grant set off of short term capital loss brought forward from Asst Years 2008-09 and 2009-10 to the tune of Rs

93,28,220/- and current year long term capital loss of Rs 2,61,24,603/- while computing the taxable income of the assessee, eventhough no discussion was made by him in the assessment order regarding the same.

4. The ld CITA upheld the action of the ld AO. Aggrieved, the assessee is in appeal before us.

5. We have heard the rival submissions. At the outset, we find that the following points would be pertinent to note from the balance sheet of the assessee and the behaviourial conduct of the assessee as per the materials available on record:-

a) The assessee had made investments in shares by engaging the services of Discretionary Portfolio Management Service Provider , who is an expert on the said field. This goes to prove that the assessee does not have the requisite expertise of making investments on its own. Hence the argument made by the ld AO in this regard is not appreciated as the ld AO himself had agreed to the fact that the assessee had paid PMS fees of Rs 68,30,708/- to PMS provider. We find that the following terms of the agreement entered into with Discretionary PMS provider (HDFC Asset Management Company Ltd) by the assessee (copy of agreement enclosed in pages 37 to 65 of Paper Book) are relevant for the sake of adjudication of the issue before us and the same are reproduced herein for the sake of convenience :-

> "***2. SCOPE***
>
> *2.1. The Portfolio Manager will manage the portfolio as per the investment objectives and restrictions, if any, stated in the agreement as well as in accordance with the SEBI regulations, as amended from time to time. Subject to such objectives and restrictions, the Portfolio*

Manager, normally acting as an agent, will have complete discretion (including without prior reference, intimation or discussions with the Client) to buy, sell, retain, exchange or otherwise deal in any investments, place deposits, subscribe to issues and offers for sale and accept placing, of any investments, effect transactions in any markets, take day to day decisions in respect of the funds of the Client and otherwise act as the Portfolio Manager judges appropriate in relation to the management of the Portfolio. It is clarified that in providing such services, the Portfolio Manager is not guaranteeing or assuring any return either directly or indirectly.

2.2. HDFC AMC shall be entitled to take such steps or may be from time to time necessary, incidental, ancilliary or conducive to the fulfillment of the objectives of this Agreement.

2.3. HDFC AMC shall act in a fiduciary capacity and as a trustee and agent with regard to the Client's funds.

4. INVESTMENT OBJECTIVES AND RESTRICTIONS

4.1. The Portfolio Manager shall invest the Client's funds in such capital and money market instruments and / or derivatives of any description (by whatever name called) as may be permitted under applicable law including any regulations, guidelines or notifications issued by the Securities and Exchange Board of india in such manner and through such markets as it deems fit in the interest of the Client, including, but not limited to the following:-

- *(i) Equity, stock and preferences shares of Indian companies;*
- *(ii) Debentures, bonds and secured premium notes, including tax exempt bonds of Indian companies and corporations;*
- *(iii) Government securities and trustee securities;*
- *(iv) Units and other instruments of mutual funds including units of HDFC Mutual Fund;*
- *(v) Bank deposits;*
- *(vi) Commercial papers, trade bill, treasury bills, certificate of deposit and usance bills;*
- *(vii) Options, futures, swaps and such other derivatives as may be permitted from time to time;*
- *(viii) Warrants of both listed and unlisted securities;*
- *(ix) Private placements, arrangements, treaties, contracts or agreements for facilitating acquisition and / or disposing of investments , as the case may be, provided that the portfolio shall not be leveraged by the use of derivatives or otherwise.*

4.2. The Portfolio Manager shall have the sole and absolute discretion to invest the Client's funds in accordance with Clause 4.1 above and make changes to the investment pattern and / or invest all or some of the Client's funds in a manner and in markets that it deems fit. Further, with respect to the Client's funds invested in units of schemes of HDFC Mutual Fund , HDFC AMC will be entitled to charge the investment management fee applicable to the respective schemes.
……."

b) The assessee while filling up the PMS Client Registration Form to HDFC Asset Management Company Ltd had clearly stated its investment goals (intention) that it is intending to make investments in shares and mutual funds only for the purpose of capital appreciation with medium risk tolerance. This clearly goes to prove the intention of the assessee at the time of making investments through the Discretionary PMS provider.

c) The assessee had been making investment in shares for the last several years and majority of the value of investments were held by it from 1998-99 and 2002-03 onwards which fact is clearly reflected in the audited balance sheet of the assessee itself, forming part of the paper book filed before us. We find from Schedule 5 of Balance Sheet under the head 'Investments', the assessee had held investment in quoted shares of Bombay Burmah Trading Corp. Ltd from 1998-99 onwards to the tune of Rs 49.38 crores ; investment in quoted shares of National Peroxide Ltd from 1998-99 onwards to the tune of Rs 2.37 crores ; investment in unquoted shares of Scal Services Ltd from 2002-03 onwards to the tune of Rs 41.04 lakhs ; investment in unquoted shares of Pentafil Investment Ltd from 2002-03 onwards to the tune of Rs 46.17 lakhs. The total investments held by the assessee as on 31.3.2010 was Rs 53.90 crores. Out of this, 97.64% of value of investments were held from 1998-99 and 2002-03 , as the case may be. Moreover, we also find

that the assessee had duly explained the frequency of transactions during the year in view of the fact that during the year , the assessee had completely divested off all the investments made through PMS provider which is quite evident from Schedule 5 of audited balance sheet. In this regard, we find that the assessee had made investments through PMS provider as on 31.3.2009 to th extent of Rs 12.05 crores in shares and mutual funds. The entire investments made through PMS provider had been completely disposed off by the assessee during the year under consideration thereby leading to increase in volume of transactions. The assessee had made fresh investments during the year in shares of Bombay Dyeing Real Estate Limited for Rs 8.02 lakhs and DB Realty Ltd for Rs 1.18 crores. The assessee had totally dealt with 63 transactions during the year and out of this, 40 transactions pertain to shares already held by the assessee in the earlier year. All the investments in quoted and unquoted shares and mutual funds made by the assessee are stated at cost which is quite evident from the audited balance sheet of the assessee.

d) The average period of holding of investments made by the assessee works out to 144 days.

e) The treatment in books as an investor had been duly accepted by the revenue in the past and there is no need to take a divergent stand during the year. In this regard, the income tax assessments framed on the assessee company would be pertinent to be noted :-

(i) Asst Year 2007-08 - Assessment completed u/s 143(3) of the Act dated 20.11.2009 , wherein the short term capital gains of Rs 27,55,602/- was accepted by the ld AO. Dividend income earned during

the year was Rs 82,29,300/- and disallowance u/s 14A of the Act made by the ld AO.

(ii) Asst Year 2008-09 – Assessment completed u/s 143(3) of the Act dated 22.11.2010 , wherein the short term capital loss of Rs 16,44,517/- and long term capital loss of Rs 28,08,339/- were accepted by the ld AO. Dividend income earned during the year was Rs 98,18,860/- and disallowance u/s 14A of the Act made by the ld AO.

(iii) Asst Year 2009-10 - Assessment completed u/s 143(3) of the Act dated 30.9.2011 , wherein the short term capital loss of Rs 76,83,703/- and long term capital loss of Rs 5,65,800/- were accepted by the ld AO. Dividend income earned during the year was Rs 1,01,03,160/- and disallowance u/s 14A of the Act made by the ld AO.

Hence it could be safely concluded that the revenue had accepted the stand of the assessee being an investor in shares and mutual funds made through Discretionary PMS provider in the earlier years and there is absolutely no change in the facts and circumstances of the case during the year under consideration warranting the ld AO to take a divergent stand. Reliance in this regard is placed on the decision of the Hon'ble Supreme Court in the case of Radhasaomi Satsang reported in 193 ITR 321 (SC) wherein it was held that :-

> *As we are aware of the fact that, strictly speaking res judicata does not apply to income tax proceedings. Again, each assessment year being a unit, what is decided in one year may not apply in the following year but where a fundamental aspect permeating through the different assessment years has been found as a fact one way or the other and the parties have allowed that position to be sustained by not challenging the order, it would not be at all appropriate to allow the position to be changed in a subsequent year.*

f) It is not in dispute before us that all the shares and mutual funds , on which short term capital gains /loss and long term capital loss were derived by the assessee, were invested by the assessee through the Portfolio Management Service Provider. In this regard, we find that the Hon'ble Delhi High Court in the case of Radial International vs ACIT reported in 367 ITR 1 (Del) had held that where shares invested through a portfolio management scheme, profits arising therefrom had to be assessed only as capital gains and not business income. The reliance placed by the ld AR on the decision of the co-ordinate bench of this tribunal in the case of ITO vs Radha Birju Patel in ITA No. 5382/Mum/2009 dated 30.11.2010 is also very well founded wherein it was held as under:-

> *"5. We have heard the rival contention and perused the record of the case. We have noted that so far as the present transactions are concerned, these transactions are undisputedly carried out by the assessee's Portfolio Manager and, therefore, these items are clearly in the nature of transactions meant for maximization of wealth rather encashing the profits on appreciation in value of shares. The very nature of Portfolio Management Scheme is such that the investments made by the assessee are protected and enhanced and in such a circumstance, it cannot be said that Portfolio Management is scheme of trading in shares and stock. Whether, the assessee is engaged in the business of dealing in shares or investment in shares is essentially a question of fact and t has to be determined with regard to the entirety of the circumstances. In our considerati n view, in circumstance, in which the assessee is engaged in a systematic activities of holding portfolio through a PMS Manager, it cannot, by any stretch of imagination, be said that the main object of holding the portfolio is to make profit by sale of shares during the course of maintaining the portfolio investment over the period. As regards the high number of transactions, which have been referred to by the Assessing officer, we have noted, on a perusal of statement filed before us, that the number of transaction reflected in the statement do not constitute independent transaction inasmuch as when, in a computer based trading system, let us say the assessee buy 1000 shares and this purchase is split over 10 transactions from different persons , while over all transactions is of only one purchase 100 shares, the statement reflect of the individual component of the transaction and will thus show a misleading high figure. Keeping it in mind all these factors as also the entirety of the case, we are in considered agreement with the conclusions arrived by the CIT (A) which needs no interference. Grievances raised by the Assessing officer are thus rejected."*

5.1. We find that the assessee had held the shares for an average period of 144 days from the date of its purchase. We find that the Hon'ble Jurisdictional High Court in the case of PCIT vs Viksit Engineering Ltd reported in 100 taxmann.com 436 (Bombay HC) had held that merely

holding of shares for a lesser period of time would not make it fall under the head business income and that the gains derived thereon should be taxed only as capital gains depending upon the intention of the assessee and considering the totality of the facts and circumstances of each case.

5.2. We find that the CBDT in its recent circular no. 6/2016 dated 29.2.2016 had observed as under:-

SECTION 45, READ WITH SECTION 28(i), OF THE INCOME-TAX ACT, 1961 - CAPITAL GAINS, CHARGEABLE AS - ISSUE OF TAXABILITY OF SURPLUS ON SALE OF SHARES AND SECURITIES - CAPITAL GAINS OR BUSINESS INCOME - INSTRUCTIONS IN ORDER TO REDUCE LITIGATION

CIRCULAR NO.6/2016 [F.NO.225/12/2016-ITA-II], DATED 29-2-2016

Sub-section (14) of section 2 of the Income-tax Act, 1961 ('Act') defines the term "capital asset" to include property of any kind held by an assessee, whether or not connected with his business or profession, but does not include any stock-in-trade or personal assets subject to certain exceptions. As regards shares and other securities the same can be held either as capital assets or stock-in-trade/trading assets or both. Determination of the character of a particular investment in shares or other securities, whether the same is in the nature of a capital asset or stock-in-trade, is essentially a fact-specific determination and has led to a lot of uncertainty and litigation in the past.

2 *Over the years, the courts have laid down different parameters to distinguish the shares held as investments from the shares held as stock-in-trade. The Central Board of Direct Taxes ('CBDT') has also, through Instruction No. 1827, dated August 31, 1989 and Circular No. 4 of 2007 dated June 15, 2007, summarized the said principles for guidance of the field formations.*

3. *Disputes, however, continue to exist on the application of these principles to the facts of an individual case since the taxpayers find it difficult to prove the intention in acquiring such shares/securities. In this background, while recognizing that no universal principal in absolute terms can be laid down to decide the character of income from sale of shares and securities (i.e. whether the same is in the nature of capital gain or business income), CBDT realizing that major part of shares/securities transactions takes place in respect of the listed ones and with a view to reduce litigation and uncertainty in the matter, in partial modification to the aforesaid Circulars, further instructs that the Assessing Officers in holding whether the surplus generated from sale of listed shares or other securities would be treated as Capital Gain or Business Income, shall take into account the following—*

(a) Where the assessee itself, irrespective of the period of holding the listed shares and securities, opts to treat them as stock-in-trade, the income arising from transfer of such shares/securities would be treated as its business income,

(b) In respect of listed shares and securities held for a period of more than 12 months immediately preceding the date of its transfer, if the assessee desires to treat the income arising from the transfer thereof as Capital Gain, the same shall not be put to dispute by the Assessing Officer. However, this stand, once taken by the assessee in a particular Assessment Year, shall remain applicable in subsequent Assessment Years also and the taxpayers shall not be allowed to adopt a different/contrary stand in this regard in subsequent years;

(c) In all other cases, the nature of transaction (i.e. whether the same is in the nature of capital gain or business income) shall continue to be decided keeping in view the aforesaid Circulars issued by the CBDT.

***4.** It is, however, clarified that the above shall not apply in respect of such transactions in shares/securities where the genuineness of the transaction itself is questionable, such as bogus claims of Long Term Capital Gain/Short Term Capital Loss or any other sham transactions.*

***5.** It is reiterated that the above principles have been formulated with the sole objective of reducing litigation and maintaining consistency in approach on the issue of treatment of income derived from transfer of shares and securities. All the relevant provisions of the Act shall continue to apply on the transactions involving transfer of shares and securities.*

5.2.1. We find that the aforesaid circular though rendered in the context of treatment of long term capital gains, the analogy therein could be drawn and applied to short term capital gains going by the overall intent of the ci cula issued by the CBDT namely to reduce litigation and maintain consistency in approach on the issue of treatment of income / loss derived from transfer of shares and securities.

5.3. In view of the aforesaid findings in the facts and circumstances of the case and respectfully following the judicial precedents relied upon hereinabove and the circular of the CBDT supra, we direct the ld AO to treat the gains received from shares and securities to the tune of Rs 1,34,86,643/- as short term capital gains and consequentially allow the set off of brought forward short term capital loss of Asst Years 2008-09 and 2009-10 to the extent of Rs 93,28,220/-. Accordingly, the Ground No. 1 raised by the assessee is allowed. In view of this decision, the

adjudication of Ground No.2 would be consequential. Correspondingly, the deduction allowed by the ld CITA towards PMS fees of Rs 68,30,708/- should be disallowed in the order giving effect to this order by the ld AO. Infact we find that this sum was voluntarily disallowed by the assessee itself in the return of income in view of the fact that the same is not allowable as deduction under the head 'capital gains'.

6. The next issue to be disallowed in this appeal is as to whether the ld CITA was justified in upholding the action of the ld AO in disallowing a sum of Rs 3,22,36,736/- u/s 14A of the Act read with Rule 8D of the Rules in the facts and circumstances of the case under the normal provisions of the Act. The inter connected issue involved therein is as to whether the ld CITA was justified in upholding the similar disallowance u/s 14A of the Act while computing the book profits u/s 115JB of the Act.

6.1. The brief facts of this issue are that the assessee derived dividend income of Rs 57 58,138/- and no disallowance was made by the assessee specifically u/s 14A of the Act. The assessee only made disallowance of Rs 68,30,708/- towards PMS fees in the return of income in view of the fact that the assessee had reported profit on sale of shares and securities as short term capital gains. The ld AO showcaused the assessee as to why disallowance u/s 14A of the Act could not be made by applying the computation mechanism provided in Rule 8D(2) of the Rules. In response thereto, the assessee replied that it is in the business of lending and borrowing money and hence interest expenditure is directly attributable to interest income. Accordingly no disallowance u/s 14A of the Act is called for. The ld AO did not heed to these contentions of the assessee and proceeded to compute the disallowance under all the three limbs of Rule

8D(2) of the Rules in the sum of Rs 3,22,36,736/- and disallowed the same u/s 14A of the Act, both under normal provisions of the Act as well as in the computation of book profits u/s 115JB of the Act. This action of the ld AO was upheld by the ld CITA. Aggrieved, the assessee is in appeal before us.

6.2. We have heard the rival submissions. We find that the assessee had voluntarily disallowed a sum of Rs 68,30,708/- towards PMS fees which is a direct expenditure for earning dividend income. We find that even the ld AO had disallowed the very same sum under the first limb of Rule 8D(2) of the Rules treating it as direct expenditure for the purpose of earning exempt income. Whereas the dividend income earned by the assessee is only Rs 57,58,138/- and it is now well settled by the decision of Hon'ble Delhi High Court in the case of Joint Investments (P) Ltd vs CIT reported in 372 ITR 694 (Del) wherein it was held that the disallowance u/s 14A of the Act cannot exceed the exempt income claimed by the assessee. Respectfully following the said decision, we direct the ld AO to restrict the disallowance u/s 14A of the Act to the extent of dividend income of Rs 57,58,138/- for the purpose of determination of income under normal provisions of the Act. Accordingly, the Ground No. III raised by the assessee is partly allowed.

6.3. With regard to computation of book profits u/s 115JB of the Act, the Special Bench of Delhi Tribunal in the case of Vireet Investments reported in 165 ITD 27 had held that computation mechanism provided in Rule 8D of the Rules cannot be applied for making disallowance for the purpose of clause (f) of section 115JB of the Act and that the actual expenses incurred for the purpose of earning exempt income are to be worked out and then disallowance is to be made. It is not in dispute that the actual

expenses incurred are towards PMS fees in the sum of Rs 68,30,708/- . We hold that even under the computation of book profits u/s 115JB of the Act, the disallowance made u/s 14A of the Act cannot exceed the exempt income. Since the exempt income in the instant case in the form of dividend is only Rs 57,58,138/-, we direct the ld AO to disallow a sum of Rs 57,58,138/- u/s 14A of the Act while computing the book profits u/s 115JB of the Act. Accordingly, the Ground No. IV is partly allowed.

7. The Ground No. V raised by the assessee is general in nature and does not require any specific adjudication.

8. In the result, the appeal of the assessee in ITA No. 3953/Mum/2015 for Asst Year 2010-11 is partly allowed.

ITA No. 3954/Mum/2015 for Asst Year 2011-12

9. The Ground No. I & III raised by the assessee for this assessment year is towards the disallowance u/s 14A of the Act read with Rule 8D of the Rules to the tune of Rs 94,00,650/-. We find that the ld AO had made disallowance by applying second and third limb of Rule 8D(2) of the Rules both under normal provisions of the Act as well as in the computation of book profits u/s 115JB of the Act. We find that the total dividend income derived by the assessee and claimed as exempt during the year was Rs 1,19,78,220/-. We find that the assessee had pleaded for netting of interest income with the interest paid and if so done, there is only positive interest income in view of the line of business of lending in which it is engaged. The ld AO however did not heed to the contentions of the assessee and proceeded to make disallowance u/s 14A of the Act read with Rule 8D of the Rules ,both under normal provisions of the Act as well

as in the computation of book profits u/s 115JB of the Act. The action of the ld AO was upheld by the ld CITA. Aggrieved, the assessee is in appeal before us.

9.1. We find that the aspect of netting off of interest paid with interest income has already been decided in favour of the assessee by the Hon'ble Gujarat High Court in the case of PCIT vs Nirma Credit & Capital (P) Ltd reported in (2017) 85 taxmann.com 72 (Gujarat) dated 31.8.2017. We find that the Hon'ble Gujarat High Court in the case referred to supra had held that where assessee pays interest on borrowings as also earns taxable interest on investments, then for the purpose of applying factors in clause (ii) of sub-rule (2) of Rule 8D, prior to its amendment with effect from 2.6.2016, amount of expenditure by way of interest would be interest paid by assessee on borrowings minus taxable interest earned during the financial year In the instant case before us, the assessee had earned taxable interest of Rs 91,57,242/- and paid interest on borrowings to the tune of Rs 90,96,111/-. Hence there is only positive interest income and accordingly the computation mechanism under second limb of Rule 8D(2) of the Rules fails. Hence no disallowance is called for under second limb of Rule 8D(2) of the Rules. With regard to third limb of Rule 8D(2) of the Rules towards administrative expenses, we direct the ld AO to consider only those investments which had actually yielded exempt income to the assessee and apply 0.5% thereon and work out the disallowance u/s 14A of the Act. The ld AO is directed to recomputed the same under normal provisions of the Act. Accordingly , the Ground No. I for the Asst Year 2011-12 is partly allowed for statistical purposes.

9.2.With regard to disallowance to be made in the book profits u/s 115JB of the Act, as held by the Special Bench of Delhi Tribunal in the case of

Vireet Investments reported in 165 ITD 27 , the ld AO is directed to work out the actual expenses debited in the profit and loss account and make disallowance on a proportionate basis thereon vis a vis the exempt income. While doing so, the ld AO should not resort to computation mechanism provided in Rule 8D(2) of the Rules as has been held in the Special Bench of Delhi Tribunal supra. Accordingly, the Ground No. III for the Asst Year 2011-12 is partly allowed for statistical purposes.

10. The Ground No. II raised by the assessee is with regard to set off of brought forward losses which is only consequential to decision taken in Asst Year 2010-11. Hence we deem it fit and appropriate to remand this issue to the file of ld AO for denovo adjudication and pass order in accordance with law. Accordingly, the Ground No. II for the Asst Year 2011-12 is allowed for statistical purposes.

11. The Ground No. IV raised by the assessee for the Asst Year 2011-12 is general in nature and does not require any specific adjudication.

12. In the result, the appeal of the assessee in ITA No. 3953/Mum/2015 for Asst Year 2010-11 is partly allowed and appeal of the assessee in ITA No. 3954/Mum/2015 for Asst Year 2011-12 is partly allowed for statistical purposes.

Order pronounced in the open court on this 06/03/2019

Sd/-	**Sd/-**
(MAHAVIR SINGH)	**(M. BALAGANESH)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Mumbai; Dated 06/03/2019

Karuna Sr.PS

Copy of the Order forwarded to :

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

BY ORDER,

सत्यापित प्रति //True Copy//

(Asstt. Registrar)
ITAT, Mumbai