

**IN THE INCOME TAX APPELLATE TRIBUNAL  
BANGALORE BENCHES "B" BENCH: BANGALORE**

**BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER  
AND  
SMT BEENA PILLAI, JUDICIAL MEMBER**

**ITA. No. 1908/Bang/2019  
Assessment Year: 2016-17**

<b>M/s. Matheson Bosanquet Enterprises Pvt. Ltd., No. 26/1, Sua House, Kasturba Cross Road, Bangalore – 560 001. PAN: AABCM9747J</b>	<b>vs.</b>	<b>The Assistant Commissioner of Income Tax, Circle 4 (1) (2), Bengaluru.</b>
<b>(Appellant)</b>		<b>(Respondent)</b>

<b>For Assessee:</b>	<b>Smt. Jinita Chaterjee, Advocate</b>
<b>For Revenue :</b>	<b>Shri Priyadarshi Mishra, Addl. CIT (DR)</b>

<b>Date of Hearing :</b>	<b>30.08.2021</b>
<b>Date of Pronouncement :</b>	<b>08.10.2021</b>

**ORDER**

**PER BEENA PILLAI, JM.**

Present appeal has been filed by assessee against order dated 11/07/2019 passed by the Ld.CIT(A)-4, Bangalore for assessment year 2016-17 on following grounds of appeal:

<i>Grounds of Appeal</i>		<i>Tax effect relating to each Ground of appeal (see note below)</i>
1.	<i>The Assessing Officer erred in computing the disallowance of Rs.9,68,872/- u/s 14A of the Income Tax Act read with rule 8D(2)(i), 8D(2)(ii) and 8D(2)(iii) The Assessing officer while apportioning the interest expenditure ought to have observed that the investments</i>	<i>Rs. 2,99,381/-</i>

	<p><i>made by the assessee are from out of its own reserves and the interest paid on loans, were for its working capital requirements only. The Assessing officer ought to have observed that the major part of its investments were in group companies and there are cross investments by the group companies in the assessee company more than the investments made by it. There were no disallowance in the previous years. The CIT(A) did not make a reference to and follow the decision of the Hon'ble Karnataka High Court in CIT Vs Micro Labs 383 ITR 490. The Jurisdictional High Court decision is binding on him. The relevance of Rule 80(1) was not considered. On the facts and the circumstances no disallowance u/s 14A is called for.</i></p>	
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**Brief facts of the case are as under:**

2. The assessee is engaged in the business of trading in tea, warehousing and advisory services and had declared income from Brent. It filed its return of income declaring loss of Rs.1,43,46,691/- for year under consideration. The case was selected for scrutiny and notice under section 143(2) was issued to assessee. In response to statutory notices, the representative of assessee appeared before the Ld.AO and filed requisite details as called for.

3. From the details filed, the Ld.AO observed that assessee had an investment of Rs.3,85,82,000/- quoted/non-quoted equity shares. It was also observed that assessee had shown dividend income of Rs.62,62,497/- having earned during the year under consideration. The Ld.AO observed that assessee had suo Moto disallowed sum of Rs.60,000/- under section 14A of the Act.

4. Not satisfied with the suo moto disallowance made by assessee, Ld.AO computed disallowance is of Rs.9,68,872/- under section 14A read with rule 8D(2)(i)-(iii).

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

5.The Ld.CIT(A) upheld the disallowance made by the Ld. AO by observing as under:

*“Further, the reasons for applying Rule 8D(2)(ii) are that there was no direct nexus between the interest expenditure incurred by the appellant and the funds used for the purpose of investment. Appellant claims that there are no borrowings which have been used for making investment and the borrowed funds have been completely utilized for the purposes of business only. Therefore, the Assessing Officer has observed that various Courts have held that there should be a close proximity between the expenses attracted for disallowance u/s and the tax exempt investment portfolio of the appellant. In this regard it becomes essential to go through the exact wording of Rule 8D(2)(ii). The sub clause 2(ii) of Rule 80 has been specifically added to the computation of disallowable expenditure to take care of such cases where the assessee may have interest expenditure with the earning of exempt income. Further observed that even on logical grounds, assessee's contention that there is no interest cost involved in making investments because these investments have been made out of own funds is not tenable. Even if the assessee is able to establish a direct nexus between the borrowed funds and their application for the purpose of business, we can't take it to mean that there is no interest cost involved in making the investments. There may be an indirect or notional cost but there's cost nonetheless. The above discussion is merely to prove the point that no matter which funds are utilized for the purposes of making the investments, there is an interest for the purposes of making the investments, there is an interest cost involved if the assessee has borrowed funds at the same time. And Rule 8D(2)(ii) is mathematically efficient enough to calculate exactly the proportion of total interest expenditure pertaining to investments. Therefore, the Assessing Officer has determined the amount of expenditure as per the provisions of Sec.14A read with Rule 80 of the IT Rules, 1962 in relation to earning of exempt income.”*

Aggrieved by the order of Ld.CIT(A) assessee is in appeal before us now.

6. All the grounds raised by assessee is related to the disallowance made under section 14A read with Rule 8D(2)(i)-(iii) of the Act.

6.1. The Ld.AR submitted that, assessee has not incurred any expenditure to earn this income. He submitted that the interest free funds i.e. share capital, Reserves and Surplus and Interest free loans are sufficient to meet the investments and the borrowed funds were not utilized for making the investments. He submitted that the interest disallowance u/s. 14A r.w. Rule 8D(2)(ii) cannot be made. Further he submitted that the investments from which exempt income earned alone to be considered for the purpose of arriving at average investments in computation of disallowance u/s. 14A r.w. Rule 8D(2)(ii) and 8D(2)(iii) of the Act. The contention of the ld. AR is that the interest cost has to be considered as Rs.2,00,54,050. He relied on the following judgments :-

*(i) DCIT vs. Microlabs bracket (2015) 62 Taxmann.com 60*

*(ii) ACIT Vs. Vireet Investments (2017) 82 Taxmann.com 415  
(Del.-SB)*

6.2. On the contrary the Ld.Sr.DR relied on orders passed by authorities below.

6.3. We have perused submissions advanced by both sides in light of records placed before us.

6.4. It is submitted by the Ld.AR that assessee had sufficient funds in the form of share capital and reserve and surplus in order to make investments. Further referring to page 17 of paper book, the Ld.AR submitted that during the year there has been no new investments that has been made by assessee. It has been thus advocated by the Ld.AR that no disallowance could be made under

Rule 8D(2)(ii) of the Act. The Ld.AR has also placed reliance on coordinate bench decision in case of *DCIT vs Microlabs (supra)*.

6.5. We are in agreement with the contention of the Ld.AR however assessee has to prove the availability of interest free funds to make such investment by filing necessary cash flow statements as on the date of investment. The Ld.AO is directed to verify the same in accordance with law.

6.6. Insofar as disallowance under Rule 8D(2)(iii) is concerned, it would be fair enough to restrict the disallowance to such investments that has yielded dividend income. We place reliance on the decision of *Hon'ble Special Bench of ITAT Delhi* in case of *ACIT vs Vireet Investments Pvt.Ltd.*, (supra) in support. The Ld.AO is directed to compute the disallowance under rule 8D(2)(iii) in accordance with the ratio laid down in case of *ACIT vs Vireet Investments Pvt.Ltd.*, (supra) .

6.7. We also direct the Ld.AO to grant exemption of the *suo moto* disallowance made by assessee in computation under section 14A.

**7. Accordingly the grounds raised by assessee stands allowed for statistical purposes.**

**8. In the result the appeal filed by assessee stands allowed for statistical purposes.**

Order pronounced in the open court on 08<sup>th</sup> October, 2021.

Sd/-  
**(B.R. BASKARAN)**  
**ACCOUNTANT MEMBER**

Dated: 08<sup>th</sup> October, 2021.  
/MS/

Sd/-  
**(BEENA PILLAI)**  
**JUDICIAL MEMBER**

Copy to

1. The Appellant
2. The Respondent
3. CIT(A)
4. Pr. CIT
5. DR, ITAT, Bangalore.
6. Guard File

By order

Assistant Registrar  
Income-tax Appellate Tribunal  
Bangalore

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