

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'C' : NEW DELHI

BEFORE SHRI G.D. AGRAWAL, VICE PRESIDENT AND
SMT. BEENA A. PILLAI, JUDICIAL MEMBER

ITA No.1169/Del/2013
Assessment Year : 2007-08

Assistant Commissioner of
Income Tax,
Circle-12(1),
New Delhi.

(Appellant)

Vs. M/s H.B. Portfolio Limited,
10th Floor, DCM Building,
Barakhamba Road,
New Delhi – 110 001.
PAN : AAACH3112P.

(Respondent)

Cross Objection No.168/Del/2013
Assessment Year : 2007-08

M/s H.B. Portfolio Limited,
H-72,
Connaught Circus,
New Delhi – 110 001.
PAN : AAACH3112P.

(Appellant)

Vs. Assistant Commissioner of
Income Tax,
Circle-12(1),
New Delhi.

(Respondent)

Revenue by : Shri T. Vasanthan, Senior DR.
Assessee by : Shri Santosh K. Aggarwal, Advocate.

Date of hearing : 13.07.2016
Date of pronouncement : 20.07.2016

ORDER

PER G.D. AGRAWAL, VP :-

The appeal by the Revenue and the cross-objection by the assessee are directed against the order of learned CIT(A)-XXVII, New Delhi dated 2nd November, 2012.

2. The Revenue has raised the following grounds in its appeal :-

“1. On the facts and circumstances of the case and in law, the Id.CIT(A) has erred in holding that the amount of disallowance u/s 14A of the Act cannot be added to book profit u/s 115JB despite the fact that there is a specific provision as per clause (f) of section 115JB.

2. On the facts and circumstances of the case and in law, the Id.CIT(A) has erred in deleting the addition of Rs.1,03,01,375/- made in the computation of book profit u/s 115JB on account of disallowance u/s 14A of the Act relating to dividend income of Rs.1,79,01,805/- claimed by the assessee as exempt u/s 10(34).”

3. In the cross-objection, the assessee has raised the following grounds :-

“1. That the order of the Commissioner of Income-tax (Appeals)-XXVII, New Delhi, the Commissioner (Appeals), dated 02.11.2012, the impugned order, is wrong on facts and bad in law;

2. That Commissioner (Appeals) erred in not deciding the issue that the disallowance of expenditure of Rs.1,03,01,375/- under Section 14A of the Act was wrong and illegal;

2.1 That on the facts and in the circumstances of the case and in law the Commissioner (Appeals) failed to appreciate that the disallowance of expenditure of Rs.1,03,01,375/- under Section 14A of the Act was wrong and illegal;

2.2 That the Commissioner (Appeals) failed to appreciate that the entire expenditure was incurred for the purposes of its business and no expenditure was incurred for the dividend income and/or capital gains and as such the provisions of Section 14A of the Act were not applicable and no disallowance under the said provisions was to be made;

2.3 That the Commissioner (Appeals) failed to appreciate that the provisions of Section 14A of the Act were applicable after recording with reasons as to why the claim of the Appellant that no expenditure was incurred or the expenditure incurred was not more than the expenditure

added by the Appellant for the dividend income and/or capital gains was incorrect. He failed to appreciate that the disallowance under Section 14A of the Act was wrong as there was no such finding;

2.4 That the Commissioner (Appeals) failed to appreciate that the disallowance of Rs.1,03,01,375/- under Section 14A of the Act was excessive and unreasonable;

3. That the conclusions and inferences of the Assessing Officer and/or Commissioner (Appeals) are based in suspicions, conjectures, surmises and extraneous and irrelevant considerations;

4. That the reliefs prayed for may kindly be allowed and the order(s) of the Assessing Officer and/or Commissioner (Appeals) may kindly be quashed, set aside, annulled or modified;

5. That the aforesaid grounds of cross-objection are without prejudice to each other;

6. That the appellant craves leave to vary, alter, amend or add to the aforesaid grounds of cross-objection before or at the time of hearing of the above appeal."

4. At the time of hearing before us, it was pointed out by the learned counsel that in this case, the assessee had filed a return declaring nil income under the regular provisions of the Income-tax Act and book profit u/s 115JB at ₹12,66,49,549/-. The Assessing Officer made the addition of ₹1,03,01,375/- to the book profit on the ground that this amount is disallowable u/s 14A. On appeal, learned CIT(A) has decided the issue in favour of the assessee by holding that disallowance u/s 14A cannot be added to book profit. However, the assessee has challenged that the disallowance worked out by the Assessing Officer u/s 14A is not in accordance with law. He pointed out that in the preceding year i.e., assessment year 2005-06, in assessee's own case in ITA No.2241/Del/2010, the ITAT set aside the issue of working of the disallowance u/s 14A to the file of the Assessing Officer. He referred to paragraph 5 of the ITAT's order and pointed out that the

ITAT had set aside the matter to the Assessing Officer with the direction to re-work the disallowance as per the judgement of Hon'ble High Court of Bombay in the case of Godrej & Boyce Mfg. Pvt.Ltd. He further submitted that now, a similar view is taken by Hon'ble Jurisdictional High Court in the case of Maxopp Investment Ltd. – 347 ITR 272 (Del). He also submitted that the assessment year under consideration is 2007-08 and therefore, Rule 8D was not applicable. The disallowance, if any, can be made only in respect of the expenditure which has a nexus with the earning of exempt income. He, therefore, submitted that the issue of quantification of the disallowance u/s 14A should be set aside to the file of the Assessing Officer.

5. Learned DR, on the other hand, has stated that if the issue relating to quantification of disallowance u/s 14A is set aside to the file of the Assessing Officer, then the issue which is adjudicated by the CIT(A) in favour of the assessee i.e., whether such disallowance can be considered while computing the book profit, should also be set aside. He stated that while computing the income, the first step is working out of disallowance u/s 14A and the second step would be whether such amount which is to be disallowed u/s 14A is to be added to the book profit or not. If the issue at first stage is set aside, then all subsequent issues should also be set aside to the file of the Assessing Officer.

6. We have carefully considered the submissions of both the sides and perused the material placed before us. We find that Hon'ble Jurisdictional High Court in the case of Maxopp Investment Ltd. (supra) held as under:-

“The requirement of the Assessing Officer embarking upon a determination of the amount of expenditure incurred in

relation to exempt income would be triggered only if the Assessing Officer returns a finding that he is not satisfied with the correctness of the claim of the assessee in respect of such expenditure. Therefore, the condition precedent for the Assessing Officer entering upon a determination of the amount of the expenditure incurred in relation to exempt income is that the Assessing Officer must record that he is not satisfied with the correctness of the claim of the assessee in respect of such expenditure."

7. Admittedly, Rule 8D has not come into existence during the accounting year relevant to assessment year under consideration. Therefore, disallowance u/s 14A, if any, is to be computed in the light of above decision of Hon'ble Jurisdictional High Court. We also find that under similar circumstances, the ITAT has already set aside a similar issue to the file of the Assessing Officer in assessment year 2005-06. In view of the above, we set aside the orders of authorities below with regard to quantification of disallowance u/s 14A and restore the same to the file of the Assessing Officer.

8. Since the issue of quantification of disallowance u/s 14A has been set aside, the second related issue whether the amount of disallowance u/s 14A is to be added to the book profit or not is also set aside to the file of the Assessing Officer. Accordingly, Assessing Officer is directed to readjudicate both these issues as per law after allowing adequate opportunity of being heard to the assessee.

9. In the result, the appeal of the Revenue and the cross-objection of the assessee both are deemed to be allowed for statistical purposes.

Decision pronounced in the open Court on 20.07.2016.

Sd/-

(BEENA A. PILLAI)
JUDICIAL MEMBER

Sd/-

(G.D. AGRAWAL)
VICE PRESIDENT

VK.

Copy forwarded to: -

1. Revenue : Assistant Commissioner of Income Tax,
Circle-12(1), New Delhi.
2. Assessee : M/s H.B. Portfolio Limited,
H-72, Connaught Circus, New Delhi – 110 001.
3. CIT
4. CIT(A)
5. DR, ITAT

Assistant Registrar