IN THE INCOME TAX APPELLATE TRIBUNAL, 'D' BENCH MUMBAI

BEFORE: SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER
&
SHRI SUNIL KUMAR SINGH, JUDICIAL MEMBER

ITA No. 3341/MUM/2023
(**Assessment Year : 2017–18**)

Dy. Commissioner of Income Tax Circle–3(3)(1), Room no. 609, Aaykar Bhavan, M.K. Road, Churchgate, Mumbai–400020	Vs.	Radha Madhav Investments Pvt. Ltd. 122, Maker Chambers III, Nariman Point, Mumbai–400021
PAN/GIR No. AAACR4063M		
(Appellant)	..	**(Respondent)**

Assessee by	Shri. Madhur Agrawal
Revenue by	Ms. Mahita Nair, Sr. AR
Date of Hearing	**06/05/2024**
Date of Pronouncement	**04/07/2024**

आदेश / O R D E R

PER SUNIL KUMAR SINGH (J.M):

1. This appeal is directed against the impugned order dated 02.08.2023 passed in appeal no. CIT(A)8, Mumbai/10275/2019–20 by the Ld. Commissioner of Income–tax(Appeals), National Faceless Appeal Centre(NFAC) [hereinafter referred to as the "CIT(A)"] u/s. 250 of the Income–tax Act, 1961 [hereinafter referred to as

"Act"] for the Assessment year [A.Y.] 2017–18, wherein assessee's appeal has been allowed and the addition made by the Assessing Officer, vide assessment order dated 24.12.2019 have been deleted.

2. The brief facts related to the appeal state that:–

2.1. The assessee company is engaged in the business of Trading in Commodities and Financing and e–filed its return of income for A.Y.2017–18 on 30.10.2017, declaring total income of Rs. 6,33,44,790/– and book profit of Rs. 9,41,64,555/– u/s. 115JB of the Act. Revised return of income was filed by it on 19.02.2019, declaring total income again of Rs. 6,33,44,790/– but book profit of Rs. 9,17,03,453/– in order to rectify an arithmetical error in the computation of book profit, whereby an amount of Rs. 12,30,551/– ,being re–measurement loss on defined benefit plan was wrongly added by the assessee in the original return, instead of reducing the same in the net profit for computing the book profit.

2.2. The original return of income was processed u/s. 143(1) of the Act. The return of income was selected for scrutiny. Statutory notices u/s. 143(2) and 142(1) of the Act were issued and served upon the assessee. Assessee submitted the required details in response to the aforesaid notices. During the assessment proceedings, assessing officer noticed that the assessee company earned dividend income from shares held in domestic company amounting to Rs. 5,26,095/– and claimed the same as exempt from tax

u/s.10(34) of the Act. Further, the assessee also claimed profits from partnership firms namely (i) N.S & Co. and (ii) N.S.E.K Partners, amounting to Rs. 25,62,55,721/– as exempt from tax u/s. 10(2A) of the Act. In the tax audit report at clause 21(h) as well as in computation of income, the assessee has disallowed Rs. 8,16,949/– and depository charges of Rs. 23,382/– as suo–moto disallowance u/s. 14A of the Act. The assessee company was found to have computed the disallowance u/s. 14A of the Act @ 1% of the annual average of monthly averages of investment in equity shares.

2.3. Assessing Officer further noticed that the assessee has considered only the investments from which it has earned dividend income and the investments made in the partnership firms have not been considered for disallowance despite claiming the profit from such partnership firm as exempt from tax.

2.4. After taking into consideration the submissions made by the assessee company, the assessing officer worked out the expenses attributable to exempt income as per section 14A of the Act r/w rule 8D of the Income Tax Rules 1962 [hereinafter referred to as "rules"] by taking the annual average of the monthly averages of the opening and closing balances of the value of investments as per assessee's accounts at Rs. 2,02,39,996/– [(Rs.1085711084 + Rs. 2962288257)/2].

2.5. After adjustment of assessee's suo–moto disallowances of Rs. 8,40,331/– (Rs. 8,16,949+Rs. 23,382), the disallowance was restricted to Rs. 1,93,99,665/– (Rs. 2,02,39,996 – Rs. 8,40,331).

2.6. Assessing Officer further added Rs. 1,93,99,665/– to the book profit of the assessee under clause (f) to explanation 1 to section 115JB(2) of the Act and concluded that the provisions of section 115JB of the Act were not applicable to assessee since tax liability on the income computed under normal provision of the Act were more than MAT liability.

2.7. Aggrieved by the assessment order dated 24.12.2019, assessee company preferred an appeal before learned CIT(A), who allowed assessee's appeal and deleted the addition made by assessing officer.

3. The revenue department has approached this tribunal on the following grounds:

> *"1. Whether on the facts and under the circumstances of the case, and in Law, the Ld. CIT(A) was Justified in holding that for the disallowance u/r. 8D(2), only those investment should be considered which has earned exempt income?*
> *2. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in deleting the disallowance on account of expenditure u/s. 14A of the Act read with rule 8D of the IT Rules, 1962, covered under clause (f) of explanation 1 to section 115JB(2) of Income Tax Act, 1961?"*

4. In response to the notice issued by the tribunal, learned assessee's representative appeared and participated in the proceedings.

5. We have perused the material on record and heard learned representatives for both the parties.

6. The following points are to be determined under appeal:

1) Whether the disallowance of Rs. 1,93,99,965/– as expenditure attributable to the exempt income in respect of profits earned by the assessee from investments made in the partnership firms is tenable under law?
2) Whether the disallowance of Rs. 1,93,99,965/– is required to be added in the book profit of the assessee u/s. 115JB of the Act for the purpose of Minimum Alternate Tax (MAT) liability?

7. Learned representative for the appellant revenue has submitted that learned CIT(A) has erred in deleting the disallowance made by the Assessing Officer in respect of the expenditure incurred in earning profits from the partnership firms. Further submitted that Assessing Officer has rightly computed tax on the basis of Minimum Alternate Tax (MAT) liability. Prayed to set aside the impugned order and to confirm the assessment order.
8. Learned representative for the assessee has fairly submitted that the assessee has yielded income from partnership firm, however the principle of MAT liability cannot be applied by resorting to sec. 115JB of the Act.
9. We shall first take up aforesaid point no. 1, covering first ground of appeal. According to the appellant revenue, the assessee company, while determining his income for the relevant A.Y. 2017–18, has not taken into consideration, the disallowance in respect of the investments made in the partnership firm despite claiming the profit from such partnership firm, which is exempt from tax u/s. 10(2A) of the Act. As regards the applicability of section 14A of the

Act, assessee has suo-moto offered an amount of Rs. 8,16,949/- as expenditure disallowable u/s. 14A of the Act and also disallowed depository charges of Rs. 23,382/- as direct expenditure but, according to assessee, incurred for trading business and for maintaining corporate legal structure and have no relation with the partnership firm and hence according to assessee, no disallowance is required to be made u/s. 14A on account of any expense on the profit from partnership firms. Assessee submitted that there is no relation of any expenses debited in the profit and loss account with investment in partnership firms and no expenses are incurred to earn any income from investments in partnership firm hence no disallowance u/s. 14A of the Act r/w 8D of the rules is warranted.

10. The relevant section 14A of the Act, reads as under:

"14A. [(1)] [Notwithstanding anything to the contrary contained in this Act, for the purposes of] computing the total income under this Chapter, no deduction shall be allowed in respect of expenditure incurred by the assessee in relation to income which does not form part of the total income" under this Act.]

[(2) The Assessing Officer shall determine the amount of expenditure incurred in relation to such income which does not form part of the total income under this Act in accordance with such method as may be prescribed, if the Assessing Officer, having regard to the accounts of the assessee, is not satisfied with the correctness of the claim of the assessee in respect of such expenditure in relation to income which does not form part of the total income under this Act.

(3) The provisions of sub-section (2) shall also apply in relation to a case where an assessee claims that no expenditure has been incurred by him in relation to income which does not form part of the total income under this Act:]

Provided that nothing contained in this section shall empower the Assessing Officer either to reassess under section 147 or pass an order enhancing the assessment or reducing a refund already made or otherwise increasing the liability of the assessee under section 154, for any assessment year beginning on or before the 1st day of April, 2001.]

Explanation. For the removal of doubts, it is hereby clarified that notwith- standing anything to the contrary contained in this Act, the provisions of this section shall apply and shall be deemed to have always applied in a case where the income, not forming part of the total income under this Act, has not accrued or arisen or has no

not been received during the previous year relevant to an assessment year and the expenditure has been incurred during the said previous year in relation to such income not forming part of the total income.]

11. The essential components of above referred Section 14A are that, for making disallowances from the total income of the assessee, there has to be an expenditure incurred in relation to the exempt income. The assessee has submitted before AO that no expenses have been incurred by it which are directly related to the exempt income i.e the income from the partnership firm. In this view of the fact, the AO can determine the expenses incurred in earning exempt income in accordance with rule 8D(2) of the rules. The condition precedent is that before resorting to the computation under the aforesaid provision, the AO, having regard to the accounts of the assessee, is required to record his dissatisfaction with regard to the correctness of the claim of the assessee in respect of such expenditure related to exempt income. Assessing Officer, has, in the assessment order, recorded that assessee company was partner in the two firms namely N S & Co. and in N S E K, holding shares @60% and @90% respectively. AO has also noted the factum, that the place of operating of both the firms was from the premises of the assessee company itself. The AO has further noted that the assessee company earned profit of Rs. 25,62,55,721/- on the basis of assessee's accounts as exempt from tax u/s. 10(2A) of the Act. This fact is substantiated at page 74 of assessee's paper book. AO also made note of the fact that in the tax audit report at clause 21(h) and in the computation of

income, assessee has disallowed Rs. 8,16,949/- and depository charges of Rs.23,382/- as Suo-moto disallowance u/s. 14A of the Act.

12. It is an unambiguous fact that the assessee company considered only those investments from which, it earned dividend income which is exempt from tax u/s. 10(34) of the Act, but did not consider the investments made in the partnership firm for disallowance despite claiming the huge profit of Rs. 25,62,55,721/-, which is exempt from tax u/s. 10(2A) of the Act. The dissatisfaction recorded by the AO is based on common prudence that certain expenses like employer's salary including the managerial salaries for monitoring the investments in the two partnership firms yielding huge profits are bond to occur, keeping in view the opening and closing balance of investments in partnership firm as shown at page 74 of assessee's paper book as Rs. 37,50,00,000/-as on 31.03.2017 and Rs. 2,04,00,00,000/- as on 31.03.2016. In view of sub section 3 of Section 14A, provisions of sub section 2 of Section 14A will be attracted in the present case as the assessee has denied to have any expenses in relation to the exempt income received from the partnership firm. The Assessing Officer, having regard to the accounts of the assessee, has prudently recorded his dissatisfaction against the assessee's claim that no expenses incurred in respect of the earning of exempt income from partnership firm.

13. It is an undisputed fact that the appellant assessee has earned Rs. 25,62,55,721/- as profit from the two

partnership firms which is exempt from tax u/s. 10(2A) of the Act, which reads as under:

> *"[10(2A)in the case of a person being a partner of a firm which is separately assessed as such, his share in the total income of the firm.*
> *Explanation. For the purposes of this clause, the share of a partner in the total income of a firm separately assessed as such shall, notwithstanding anything contained in any other law, be an amount which bears to the total income of the firm the same proportion as the amount of his share in the profits of the firm in accordance with the partnership deed bears to such profits ;]"*

14. A Three member special bench of ITAT Ahmedabad in ITA No. 3002 (Ahd) of 2009, Vishnu Anant Mahajan V Assistant Commissioner of Income Tax, circle 5, Baroda, for the A.Y. 2006-07, vide order dated 25.05.2012, reported in [2012]22taxman.com 88 (Ahd) (SB) has held as under:

> *"…….In so far as share income is concerned, the field is occupied by the tax law, as it is enacted that the share income shall not form part of total income of the partners. Therefore, in view of this specific provision and the fact that the firm and partners are separately assessable entities, it will be difficult to hold that the share income is not excluded from the total income of the partner because the firm has already been taxed thereon. When section 10(2A) speaks of its exclusion from the total income, it means, the total income of the person whose case is under consideration. The instant case is that of the partner and therefore what is to be examined is whether the share income is excluded from his total income. The answer is obviously in the affirmative. In such a situation, provision contained in section 14A will come into operation and any expenditure incurred in earning the share income will have to be disallowed……."*

15. The legal position is settled thus that the profit from the partnership firm is taxable in the hands of the firm and it is excluded from the total income of partners u/s. 10(2A) of the Act. The learned Assessing Officer has rightly invoked section 14A of the Act and computed the expenditure on assessee's exempt income by resorting to rule 8D of the rules after prudently recording his dissatisfaction, which is "sine qua non" before invoking rule 8D(2) of the rules, which reads as under:

"8D. (1) Where the Assessing Officer, having regard to the accounts of the assessee of a previous year, is not satisfied with-

(a) the correctness of the claim of expenditure made by the assessee; or

(b) the claim made by the assessee that no expenditure has been incurred in relation to income which does not form part of the total income under the Act for such previous year, he shall determine the amount of expenditure in relation to such income in accordance with the provisions of sub-rule (2).

(2) The expenditure in relation to income which does not form part of the total income shall be the aggregate of following amounts, namely:

(i) the amount of expenditure directly relating to income which does not form part of total income; and

(ii) an amount equal to one per cent of the annual average of the monthly averages of the opening and closing balances of the value of investment, income from which does not or shall not form part of total income:

Provided that the amount referred to in clause (1) and clause (ii) shall not exceed the total expenditure claimed by the assessee.]

(3)[*]]

Royalties or copyright fees, etc., for literary or artistic work.

9. (1) Where a claim for an allocation is or has been made under section 12AA"

16. In Maxopp Investment Ltd. Vs. CIT–[2018] 91 taxmann.com 154 (SC), Hon'ble Supreme Court has held that the objective of holding the investment are immaterial and disallowance has to be applied in all cases irrespective of the fact whether the same was held as stock–in–trade or as an investment.

17. The figures taken by the AO from the accounts of the assessee company, in making computation as provided under aforesaid rule 8D(2) are in consonance with the details submitted by assessee in his paper book as stated above. This computation mechanism has been brought into the Act by IT (14th amendment) Rules 2016. with effect from 02.06.2016 and is attracted in the instant case which relates to the A.Y. 2017-18. The Assessing Officer has thus rightly worked out disallowance of Rs. 1,93,99,665 [20239996 – 816949 – 23382], as expenses incurred on profit of Rs. 25,62,55,721/– from the partnership firm,

claimed by the assessee as exempt from tax u/s. 10(2A) of the Act after the aforesaid adjustment of suo–moto disallowances made by the assessee.

18. We find that learned CIT(A) has partly erred in passing impugned order to the extent of deleting aforesaid disallowance made by AO. Revenue's referred ground is answered accordingly. The first point is thus determined in favour of the revenue and against the assessee.

19. The second point of determination covers second ground of revenue's appeal with regard to the adjustments of disallowance of Rs. 1,93,99,665/– worked out u/s. 14A of the Act r/w rule 8D of the rules for the purpose of section 115JB of the Act.

20. Section 115 JB of the Act reads as under:

"115JB. (1) Notwithstanding anything contained in any other provision of this Act, where in the case of an assessee, being a company, the income-tax, payable on the total income as computed under this Act in respect of any previous year relevant to the assessment year commencing on or after the Ist day of April, 48[2012], is less than 49 [eighteen and one-half per cent] of its book profit, 50[such book profit shall be deemed to be the total income of the assesse and the tax payable by the assessee on such total income shall be the amount of income-tax at the rate of 49 [eighteen and one-half per cent]]:

Provided that for the previous year the relevant to the assessment year commencing 1st day of April, 2020, the provisions of this sub-section shall have affect asat for the words "eighteen and one-hall per cent occurring at both the or after place the words "fifteen per cent had been substituted.]

(2)Every assessee,-

(a) …… ...

(b) ……..

Provided ……..

Provided further……

Explanation [1]. For the purposes of this section, "book profit" means the profit] as shown in the [statement of profit and loss for the relevant previous year prepared under sub-section (2), as increased by-

(a) ……

(b) ……..

(c) ……..

(d) ……..

(e) ……

(f)The amount or amounts of expenditure relatable to any income to which [section 10 (other than the provisions contained in clause (38) thereof) or [*] section 11 or section 12 apply; or]

……."

21. A three member special bench of ITAT Delhi in ITA no. 502(Delhi) of 2012, Assistant Commissioner of Income–tax, Circle 17(1), New Delhi V. Vireet Investment (P) Ltd, vide order dated 16.06.2017, reported in (2017) 82 taxmann. Com 415(Delhi Trib.)(Special bench), has elaborately dealt with the matter in respect of the applicability of section 115JB (2) r.w.s. 14A of the Act r/w rule 8D of the Rules. The Hon'ble special bench framed the following question for determination:- "Whether the expenditure incurred to earn exempt income computed u/s. 14A could not be added while computing book profit u/s. 115JB of the Act." Hon'ble special Bench, after discussing at length, answered the above referred question in favour of assessee by holding that "the computation under clause (f) of explanation 1 to section 115JB (2) is to be made without resorting to the computation as contemplated u/s. 14A r/w rule D of the Income Tax Rule 1962." Similarly, coordinate bench of ITAT Mumbai in ITA no. 1028/MUM/2017, Deputy Commissioner of Income Tax–3(3)(1) V Radha Madhav Investments Limited, for A.Y. 2013-14, vide para 5.8 of the order dated 27.07.2018 held as under:

"5.8 So far as adjustment of disallowance u/s 14A in computation of book profit u/s 115JB is concerned, we find that the matter stood squarely in assessee's favour by the cited judgment of Delhi Tribunal (Special Bench) rendered in ACIT Vs. Vireet Investment (P.) Ltd. [82 Taxmann.com 415]. Upon perusal of the same, we find that Special Bench, after considering two contrary decision of Hon'ble Delhi High Court titled as CIT Vs. Goetze (India) Ltd. [2014 361 ITR 505] & PCIT Vs. Bhushan Steel Ltd. [ITA 593/2015 dated 29/09/2015], took the view favorable to the assessee in terms of ratio of decision of Hon'ble Supreme Court rendered in CIT Vs. Vegetable Products Limited [1973 88 ITR 192]. The

decision in PCIT Vs. Bhushan Steel Ltd., in turn, placed reliance on the decision of Hon'ble Supreme Court rendered in Apollo Tyres Ltd. Vs. CIT [255 ITR 273] which held that the Assessing Officer did not have the jurisdiction to go behind the net profit shown in the Profit & Loss Account except to the extent provided in Explanation to Section 115J. Similar view has been expressed by our jurisdictional Bombay High Court rendered in CIT Vs. JSW Energy Limited [2015 60 Taxmann.com 303], CIT v. Essar Teleholdings Ltd. [ITA No. 438 of 2012, dated 07/08/2014] & CIT Vs. Bengal Finance & Investments Pvt. Limited [ITA No. 337 of 2013 dated 10/02/2015). Therefore, respectfully following the catena of judgment in assessee's favour, we hold that adjustment of disallowance u/s 14A was not required to be made in Book Profits for the purpose of Section 115JB. The ground of assessee's appeal stands allowed to that extent."

22. In view of the decisions rendered by special bench in Vireet(Supra) and coordinate bench decision in Radha Madhav (Supra), we hold that learned CIT(A) was partly right in holding that the adjustment of disallowance u/s.14A of the Act r/w rule 8D of the rules was not required to be made in the book profit for MAT liability by resorting to section 115JB of the Act. This point related to the second ground of revenue's appeal is accordingly determined against the revenue and in favour of the assessee.

23. In the result the appeal is partly allowed.

Order pronounced on 04.07.2024.

Sd/–	**Sd/–**
(GIRISH AGRAWAL)	**(SUNIL KUMAR SINGH)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Mumbai; Dated 04/07/2024
Anandi Nambi, *Steno*

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai