

आयकर अपीलिय अधिकरण, 'सी' न्यायपीठ, चेन्नई।
IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH: CHENNAI

श्री महावीर सिंह, उपाध्यक्ष एवं डॉ दीपक पी. रिपोटे, लेखा सदस्य के समक्ष
BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.312/Chny/2022
निर्धारण वर्ष /Assessment Year: 2017-18

M/s. Sundaram Finance Holdings Limited,
No.21, Pattulos Road,
Chennai – 600 002.
[PAN: AAACS-3116-J]

The Asst. Commissioner of Income Tax,
Vs. Corporate Circle-3(1),
Chennai.

(अपीलार्थी/**Appellant**)

(प्रत्यर्थी/**Respondent**)

अपीलार्थी की ओर से/ Appellant by
प्रत्यर्थी की ओर से /Respondent by

: Shri R. Vijayaraghavan, Advocate
: Shri M. Rajan, CIT

सुनवाई की तारीख/Date of Hearing

: 18.08.2022

घोषणा की तारीख /Date of Pronouncement

: 18.08.2022

आदेश / ORDER

Per Mahavir Singh, Vice President :

This appeal by the assessee is arising out of the revision order u/s 263 of the Income Tax Act, 1961 (hereinafter 'the Act') of Principal Commissioner of Income Tax, Chennai-3 in Revision No. PCIT, Chennai-3/Revision-263/100000321493/2022 dated 30.03.2022. The Assessment was framed by Asst. Commissioner of Income Tax, Corporate Circle-6(2), Chennai for the relevant Assessment Year 2017-18 vide order dated 29.12.2019 u/s. 143(3) of the Act.

2. The only issue in this appeal of assessee is as regards to the revision order passed by PCIT u/s. 263 of the Act for re-computing the disallowance of expenses relatable to exempt income by invoking the provisions of s. 14A of the Act r/w Rule 8D(2) of the Income Tax Rules, 1962 (hereinafter 'the Rules') for computing book profit u/s. 115JB of the Act.

3. We have heard the rival contentions and gone through the facts and circumstances of the case and also gone through the case records and the documents filed before us including the case laws referred.

4. Briefly stated facts are that the assessment was completed by the ACIT, Corporate Circle-6(2), Chennai u/s. 143(3) of the Act vide order dated 29.12.2019, wherein the issue of disallowance u/s. 14A of the Act was considered by the A.O and he worked out the disallowance at Rs. 76.91 Lakhs. Subsequently, the PCIT, Chennai on perusal of profit and loss account noticed from the details of miscellaneous expenses and computation of taxable book profit that no amount was added towards the expenditure incurred to earn the exempt income. According to PCIT, the A.O failed to consider the disallowance of Rs. 76.91 Lakhs while computing the book profit u/s.

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115 JB of the Act and therefore, he issued show cause notice to the assessee as to why this amount of Rs. 76.91 Lakhs be not brought to tax while computing taxable book profit u/s. 115JB of the Act.

5. The assessee replied that the assessee-company has not incurred any expenses relating to exempt income as the dividend income itself was transferred as a result of approved scheme of demerger by National Company Law Tribunal, Chennai vide order No.CP/210/214/CAA/2017 Dated 12.01.2018. The PCIT was not convinced and according to PCIT, the assessment order passed by A.O u/s. 143(3) of the Act dated 29.12.2019 is erroneous on this point and therefore, he directed the A.O to compute the disallowance of expenses of Rs. 76.91 Lakhs while computing book profit u/s. 115 JB of the Act. For this, he gave direction in Para 8 as under:

“8. From the above, it is clear that the assessment order passed by the Assessing Officer u/s 143(3) on 29.12.2019 is erroneous on this point, as it is prejudicial to the interests of revenue and to be revised u/s 263 of the Income tax Act. Hence the assessment order is set aside with a direction to the Assessing Officer to recompute the income for the purposes of MAT under the provisions of Section 115JB of Income Tax Act, after providing sufficient opportunities of being heard to the Assessee.”

6. Aggrieved, the assessee is in appeal before the Tribunal. Now before us, the Ld. Counsel for the assessee submitted that this issue is settled by the decision of Hon'ble Karnataka High Court and that is the solitary judgment till now in the case of *Sobha Developers Ltd. v.*

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DCIT, LTU, Bangalore [2021] 434 ITR 266 (Kar.), wherein the entire provision of s. 115JB of the Act was discussed in Para 7 and held that the provisions of s. 115JB of the Act will not apply while making disallowance u/s. 14A of the Act. The relevant Para 7 referred by the Ld. Counsel for the assessee reads as under:

“7. Thus from perusal of the relevant extract of section 115JB, it is evident that sub-section (1) of section 115JB provides the mode of computation of the total income of the assessee and tax payable on the assessee under section 115JB of the Act. Sub-section (5) of section 115JB provides that save as otherwise provided in this section, all other provisions of this Act shall apply to every assessee being a company mentioned in this section. Therefore, any expenditure relatable to earning of income exempt under section 10(2A) and section 10(35) of the Act is disallowed under section 14A of the Act and is, added back to book profit under clause (f) of section 115JB of the Act, the same would amount to doing violence with the statutory provision viz., sub-sections (1) and (5) of section 115JB of the Act. It is also pertinent to mention here that the amounts mentioned in clauses (a) to (i) of Explanation to section 115JB(2) are debited to the statement of profit and loss account, then only the provisions of section 115JB would apply. The disallowance under section 14A of the Act is a notional disallowance and therefore, by taking recourse to section 14A of the Act, the amount cannot be added back to book profit under clause (f) of section 115JB of the Act. It is also pertinent to mention here that similar view, which has been taken by this court in Gokaldas Images (P.) Ltd. (supra) was also taken by High Court of Bombay in CIT v. Bengal Finance & Investments (P.) Ltd. [IT Appeal. No. 337 of 2013, dated 10-2-2015]. It is pertinent to note that in Rolta India Ltd., the Supreme Court was dealing with the issue of changeability of interest under sections 234B and 234C of the Act on failure to pay advance tax in respect of tax payable under section 115JA/115JB of the Act and therefore, the aforesaid decision has no impact on the issue involved in this appeal. Similarly, in Maxopp Investment Ltd. (supra) the Supreme Court has dealt with section 14A of the Act and has not dealt with section 115JB of the Act. Therefore, the aforesaid decision also does not apply to the fact situation of the case. In view of preceding analysis, the substantial questions of law framed by a bench of this court are answered in favour of the assessee and against the revenue. In the result, the order passed by the tribunal dated 9-1-2015 insofar as it pertains to the findings recorded against the assessee is hereby quashed.”

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7. We also noted that exactly an identical issue, the Co-ordinate Bench of this Tribunal i.e., Special Bench in the case of *ACIT Vs. Vireet Investment Pvt. Ltd. dated 16.06.2017* has considered this issue and held that the scheme of the Act is that the computation is first made under the normal provisions of the Act and, thereafter, under an alternate scheme provided u/s 115JB for computing total income as per the prescribed method. If the tax liability on the basis of total income as per MAT provisions is more than the tax computed under the normal provisions of the Act then the former becomes the final tax liability of the assessee. The mode of computation of book profit has been prescribed under MAT provisions. Clause (f) of Explanation 1 to section 115JB(2) of the Act is in conformity to matching principles of accounting. As per the provisions of section 115JB(1) of the Act, a comparison of the total income computed under the normal provisions of the Act is to be made with the book profits as computed u/s 115JB of the Act. This makes it clear that total income as contemplated under normal provisions is inextricably linked with book profits under MAT provisions and it is wrong to suggest that both operate in entirely different fields. The Tribunal further held that if different modes of computation are followed u/s 14A and in clause (f) of Explanation 1 to section 115JB(2) of the Act, then the comparison will not be on same

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footing and will produce absurd results. The phrase "in relation to" used in section 14A of the Act and the phrase "expenditure relatable to earning of exempt income", under clause (f) of Explanation 1 to section 115JB(2) of the Act, the word "relatable to" has wider connotation than the words "in relation to", where the proximate relationship is required. The computation under clause (f) of Explanation 1 to section 115JB(2) of the Act, is to be made without resorting to the computation as contemplated u/s 14A of the Act read with Rule 8D of the Rules.

8. The Ld. CIT-DR relied on the revision order. We have considered the facts and circumstances of the case and gone through the entire case laws and we are of the view that the issue is covered in favour of the assessee and against Revenue that no disallowance of expenses can be made in respect of exempt income by invoking the provisions of s. 14A of the Act r/w Rule 8D of the Rules while computing book profit u/s. 115JB of the Act. Since, the issue is covered by Special Bench of this Tribunal in the case of *ACIT Vs. Vireet Investment Pvt. Ltd.*, supra, and by the decision of Hon'ble Karnataka High Court in the case of *Sobha Developers Ltd. v. DCIT, LTU, Bangalore*, supra, we quash the revision order passed by PCIT and allowed the appeal of the assessee.

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9. In the result, the appeal of the assessee is allowed.

Order pronounced in the Open Court on 18th August, 2022.

Sd/-
(डॉ दीपक पी. रिपोटे)
(Dr. Dipak P. Ripote)
लेखा सदस्य /Accountant Member

Sd/-
(महावीर सिंह)
(Mahavir Singh)
उपाध्यक्ष / Vice President

चेन्नई/Chennai, दिनांक/Dated: 18th August, 2022.

EDN/-

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF