

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCHES "A", MUMBAI**

**BEFORE SHRI G.S.PANNU (AM) AND SHRI RAM LAL NEGI (JM)**

**ITA No 6488/MUM/2013  
Assessment Year: 2010-11**

The DCIT 8(2),(OSD), Room No. 209, 2 <sup>nd</sup> Floor, Aayakar Bhavan, M.K.Road, Mumbai- 400 020	<b>Vs.</b>	M/s. Khanna Hotels Pvt.Ltd. 197, D.N.Nagar, Andheri (W), Mumbai- 400053. PAN : AAACK0075E
<b>(Appellant)</b>		<b>(Respondent)</b>

Appellant by : Shri. Vikram Batra  
Respondent by : Shri. Anuj Kisnadwala

Date of Hearing: 24/09/2015  
Date of Pronouncement: 29/01/2016

**ORDER**

**PER RAM LAL NEGI, JM**

The present appeal has been filed by the revenue against order dated 27/02/2013 passed by the Ld. CIT(Appeals)-17, Mumbai pertaining to the assessment year 2010-11.

2.1 Brief facts of the case emanating from the record are that the assessee company being engaged in the business of running club having various facilities such as indoor and outdoor games, sports, health club, Bars and restaurants banquet hall for its member apart from the business of export of precious stones, filed its return of income for the assessment year 2010-2011 declaring the total income of Rs. 4,33,37,260/-. The return was processed and assessment order was accordingly passed. The assessee had suo moto made disallowance of

Rs. 6,07,845/- u/s 14A of the Income Tax Act, 1961( in short the Act) read with Rule 8D of the Income Tax Rules, instead of Rs. 65,76,251/- as expenditure disallowable under section 10 of the Act (pro rata for dividend income). The AO added Rs. 65,76,251/- to the income of the assessee holding that there is no provisions u/s 115JB of the Act, The expenditure disallowed u/s 14A read with Rule 8D is directly attributable to the exempt income u/s 10 of the Act, the entire disallowance of Rs. 65,76,251/- is liable to be added to the book profit u/s 115JB of the Act. Accordingly the AO computed the total income of the assessee at Rs. 10,13,46,870/-

2. Aggrieved by the assessment order the assessee challenged the order before the Ld. CIT(A). The CIT(A) relying upon the ratio laid down by the Hon'ble Delhi Court in Maxopp Investment Ltd. Vs CIT(2012)247CTR(Del) and other cases relied upon by the appellant/assessee allowed the appeal of the assessee holding as under:-

*“Now in the light of the forgoing, I find that Ld. AO has mechanically applied the provisions of section 14A. The appellant clearly brought out the facts that both the STCG of Rs. 56,62,674 and LTCG of Rs. 6,52,06,426 are included in the computation of Book Profit and only Rs. 92,41,515/- which are attributable to the dividend income are exempt. The entire investment transactions of the appellant had been carried out through Portfolio Management Services(PMS) for which a sum of Rs. 44,96,864/- have been incurred as PMS fees and Rs. 3,95,101/- towards depository charges which are debited to the Profit & Loss Account. Therefore the entire expenditure are ascertainable and the Ld. AO has applied Rule 8D to the entire*

*income ignoring the fact that the income from capital gain is not exempt for the purposes of book profit”.*

3. Dissatisfied with the impugned order passed by the Ld. CIT(A), the revenue has preferred the present appeal on the following defective grounds:-.

*“1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition of Rs.65,76,251/- u/s 14A of the Act by the Assessing Officer to the Assessing Officer to the assessee’s book profit and instead upholding the addition of Rs.6,07,845/- made by the assessee to its book profit on account of disallowance u/s 14A of the Act, without considering the fact that the assessee had itself computed disallowance of Rs.65,76,251/- u/s 14A read with Rule 8D and offered the same for tax in its computation of total income.*

*2. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition of Rs.65,76,251/- u/s 14A of the Act by the Assessing Officer to the assessee's book profit and consequently upholding the assessee's claim of different computations of disallowance u/s 14A of the Act for the purpose of computation of book profit u/s 115JB and for the purpose of computation of total income under the regular provisions of the Act, without appreciating that such different computations of disallowance u/s 14A have not been provided in Section 14A or in Section 115JB of the Act”*

4. Before us, the Ld. DR has submitted that the Ld. CIT(A) has wrongly deleted the additional of Rs. 65,76,251/- u/s 14A of the

Act made by the Assessing Officer to assessee's book profit and instead of upholding the addition of Rs. 6,07,845/- made by the assessee to its book profit on account of disallowance u/s 14A of the Act, without considering the fact that the assessee had itself computed disallowance of Rs. 65,76,251/- u/s 14A r/w Rule 8D.

5. On the other hand the Ld. Counsel for the appellant/assessee has submitted that income computed as per normal provisions of the Act was Rs. 4,33,37,260/- however, the appellant being a company, computed Book Profit as per Section 115JB of the Act which worked out to Rs. 9,53,78,463/-. The tax as per normal provisions of the Act was worked out at Rs. 1,22,18,362/- whereas the tax on the book profit computed at 15% of the Book Profit was worked out at Rs. 1,43,06,769/-. Since the tax so computed on the Book Profit u/s 115JB was higher than the tax computed on the normal income, the return of income was filed declaring the Book Profit computed under section 155JB at Rs. 9,53,78,463/- as deemed total income.

6. The Ld. AR further contended that, as per sub-clause (ii) below the Explanation [1] to section 115JB the dividend of Rs. 92,41,515/- was not required to be included in book profit. However, the assessee is entitled for deduction of an amount Rs. 44,96,864/- incurred as Portfolio Management Services (PMS) fees and Rs. 3,95,101/- incurred as depository charges as the entire investment transaction had been carried out through PMS for earning Short term Capital gain of Rs. 56,62,674/- and Long term capital gain of Rs. 6,52,06,426/-. The Ld. AR further relied on the

decision of Chandigarh Bench of ITAT in the case of Spray Engineering Pvt. Ltd. (53 SOT 70).

7. We have heard the rival submissions and perused the documents on record in the light of the respective submissions of the parties. The only grievance of the revenue is that the Ld. CIT(A) has wrongly deleted the addition of Rs. 65,76,251/- made by AO to the book profit of the assessee under section 14A of the Act.

8. The assessee has calculated the disallowance under section 14A of the Act r/w Rule 8D of the Income Tax Rules 1962 to ascertain as to whether the tax is required to be paid under the normal provisions of the Act or to be paid under the provisions of section 115JB of the Act. Since the tax calculated on book profit was more than the tax calculated under general provisions of the Act, the assessee was required to pay tax on book profit. It is due to this reason that the assessee has calculated the disallowance proportionate to the aggregate expenses incurred on earning exempt income. As per the facts emanating from the record the major component of investment income is Long Term Capital Gain, which is 81.40% that has been included in book profit. Dividend constitutes 11.53% which is not required to be included in book profit and the third is Short Term Capital Gain which constitutes 7.06% and the same has also been included in the book profit. As per the record total expenditure incurred to earn the said income comes to Rs. 52,69,140/- therefore, the assessee has calculated the amount of addition proportionate to the dividend amount. On the other hand the AO has made addition of the entire amount i.e.,

Rs 65,76,251/- calculated by the assessee himself u/s 14A of the Act r/w Rule 8D.

9. The aforesaid facts give rise to a question that whether in the present case addition of disallowance calculated by the AO is justified or the proportionate amount calculated by the assessee needs to be added to the book profit?

10. Section 14A of the Act bars allowance of any expenditure for earning income which does not constitute total income of the assessee and the expenses incurred can be allowed only to the extent the same are relatable to earning of taxable income. Hence, only the actual expenditure which is made for earning exempt income is disallowable under section 14A. Rule 8D(2) of the Income Tax Rules, prescribes the method for determining the amount of expenditure in relation to the income not includable in the total income within the meaning of section 14A of the Act and Rule 8D(1) stipulates conditions under which the AO shall determine the amount of expenditure as per the method prescribed under rule 8D(2).

11. In the present case, the finally assessed income of the assessee has been computed in terms of section 115JB of the Act. The disallowance under section 14A of the Act under the normal provisions of the Act was determined at Rs.65,76,251/-, wherein income by way of long term and short term capital gains and dividend was exempt. On the contrary, in the context of computing income under section 115JB of the Act, the income on account of long term and short term capital gain was includable and only

dividend income was excludable or exempt. In such a situation, proportion of the amount disallowable under section 14A of the Act vis-à-vis the income treated as exempt under the MAT provisions (i.e. 115JB of the Act) would vary. As per the calculation furnished by the assessee at the time of hearing, such disallowance works out to Rs.7,58,633/- as against suo-moto disallowance of Rs.6,07,845/- made by the assessee in the return of income. Therefore, in our view though the action of the CIT(A) is accepted in principle, the entire amount disallowed by the Assessing Officer could not have been deleted. As a consequence, it is directed that the total disallowance be fixed at Rs.7,58,633/- (inclusive of suo-moto disallowance of Rs.6,07,845/- made by the assessee).

11. In the result, the appeal filed by the revenue is partly allowed.

*Order pronounced in the open court on 29<sup>th</sup> January, 2016.*

Sd/-  
(G.S.PANNU)  
ACCOUNTANT MEMBER

Sd/-  
(RAM LAL NEGI)  
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated:29/01/2016

**आदेश प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR,  
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

**आदेशानुसार/ BY ORDER,**

सत्यापित प्रति //True Copy//

**उप/सहायक पंजीकार (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai****Pramila**