

**IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH, BANGALORE**

**BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
and
SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER**

ITA No.633/Bang/2014
(Assessment year: 2011-12)

M/s.Manipal Technologies Ltd.,
(formerly known as Manipal Press Ltd.)
Udayavani Building,
Manipal-576104. ... Appellant
PAN: AABCM9516H

Vs.

Addl. Commissioner of Income-tax
Udupi Range,
Udupi-576103. ... Respondent

Appellant by : Smt. Sheetal Borkar, Advocate
Respondent by : Shri Sunil Kumar Agarwal, JCIT(DR)

Date of hearing : 21/04/2016
Date of pronouncement : 29/04/2016

O R D E R

Per INTURI RAMA RAO, AM :

This is an appeal filed by the assessee directed against the order of the Id. CIT(A) , Mysore dated 17/3/2014 for the assessment year 2011-12.

2. The assessee raised the following grounds of appeal:

"I. The order of the learned Commissioner of Income tax (Appeals), Mysore is opposed to law and on facts of the case.

II. Disallowance made under Section 14A amounting to Rs.1,330,84,166/-:

- a) The learned CIT(A). Mysore has erred in law in confirming the disallowance made by the Assessing Officer amounting to Rs.1,30,84,166/- under Section 14A read with Rule 8D of the Income tax Act. 1961. as expenditure pertaining to exempted income (amount of expenses on interest not directly related to particular income amounting to Rs.1,18,32,908/- and 0.5% of average value of investment in shares amounting to Rs. 12,51,258/-)
- b) The learned CIT(A) Mysore has erred relying on his own orders dated - 30.5.2012 and 14.3.2013 in ITA No.1 57/UDP/CIT(A)MNG/11-12 and ITA No.142/MNG/CIT(A)MNG/12-13 for the preceding assessment years assessment year 2009-2010 and 2010-2011 respectively in the appellant's own case. for confirming the above disallowance. In fact appellant's appeal against the said orders dated 30.5.2012 and 14.3.2013 are pending for disposal before the Hon'ble Appellate Tribunal.
- c) The learned CTT(A) Mysore has overlooked the following decisions of the Hon'ble Tribunal in Appellant's group companies cases.
 - i. *Manipal Prakashan Private Limited Vs. DCIT, Circle-1, Udupi* in ITA No. 1208/Bang/2012, order dated 30.8.2013.

Page 3 of 10

- ii. *Manipal Media Network Limited Vs. DCIT, Circle-1. Udupi*, in ITA No. 1266/Bang/2012 order dated 25.10.2013
- d) The learned CIT(A) Mysore has overlooked the following decisions relied on by the Appellant.
 - i. CCI Ltd. vs. JCIT [250 ITR 291](Kar)
 - ii. ACIT Vs. Jindal Aluminium Ltd. (ITA No.799/Bang/2012,dated 30.4.2013)
 - iii. DCIT Vs. Ashish Jhunjunwala (ITA No.1899/Kol/2012, dated 14.5.2013)
- e) The learned CIT(A) Mysore has failed to consider that Assessing Officer is not justified in making additions to the adjusted book profits computed under Section 115JB a sum of Rs.1,30,84,166/-, being disallowance made by him under Section 14A read with Rule 8D.

III Additions to Book Profit Computed under Section 115JB amounting to Rs.3,09,75,967/- being provision made for bad debts:

- a) The learned CIT(A) Mysore is not justified in law in confirming the additions made to the Book Profits Computed under Section 115.IB amounting to Rs.3,09,75,967/, being provisions made for bad debts.
- b) The learned CIT(A) Mysore has failed to distinguishing the decisions relied on by the Appellant.
 - i) CIT Vs. Yokogawa India Limited (17 Taxmann.com 15) (Kar).

Page 4 of 10

ii) Vodafone Essar(Gurjarat) Vs. Dept.
of Income tax (ITA No.1999/Ahd/
2008) ITAT Ahmedabad).

IV. The Appellant craves leave to add, amend or alter any of the forgoing grounds.

V. For these and any other grounds that may be urged before the Hon'ble ITAT, it is prayed that the Hon'ble ITAT may allow the appeal with cost.

3. Briefly facts of the case are that the appellant is a domestic company duly incorporated under the provisions of the Companies Act, 1956. It is engaged in the business of printing and sale of books. Return of income for the assessment year 2011-12 was filed on 29/9/2011 declaring a loss of Rs.6,49,07,664/- under the normal provisions of the Income-tax Act,1961 [‘the Act’ for short] and book profit was returned under the provisions of sec.115JB of the Act. Against the said return of income, assessment was completed by the Addl.CIT, Udupi Range, Udupi at a loss of Rs.4,18,23,498/- after making disallowance of Rs.1,30,84,166/- under the provisions of sec.15A of the Act. As regards the computation of tax liability under the provisions of sec.115JB(2), the Assessing Officer (AO) made addition of provision for bad debts of Rs.3,09,74,967/- and also made addition to the book profits amount of disallowance made u/s 14A of the Act of Rs.1,30,84,166/- and computed tax thereon.

Page 5 of 10

4. Being aggrieved but the above additions, an appeal was filed before the Id. CIT(A). It was contended before the Id. CIT(A) that no expenditure was incurred for earning exempt income. That apart, investments in shares were made out of own funds and no borrowed funds were used for making investment in shares and therefore it was claimed that no amount should be disallowed invoking provisions of sec.14A of the Act. The contention of the appellant was rejected by the Id. CIT(A) and held that without incurring expenditure no exempt income can be earned and placing reliance on the decision of the Hon'ble Bombay High Court in the case of *Godrej Boyce Mfg.Co. Ltd. vs. DCIT* (328 ITR 81), the Id. CIT(A) confirmed disallowance of Rs.1,30,84,166/- under the provisions of sec.14A of the Act. As regards the issue of addition of the amount disallowed u/s 14A to book profit u/s 115JB, the Id. CIT(A) failed to adjudicate this ground of appeal. Regarding addition of provisions for bad and doubtful debts, the Id. CIT(A) confirmed the addition by holding that the decision of the jurisdictional High Court in the case of *CIT vs. Yokogawa India Ltd.*, (17 taxman 15) is not applicable as the facts of the present case are different from the facts in that case. Being aggrieved, assessee is in present appeal before us.

5. The learned counsel for assessee stated that the issue of disallowance of 14A was covered by the earlier order of this Tribunal for earlier year and wherein the matter was set aside to

the file of the AO for computing disallowance u/s 14A. The relevant para is reproduced hereunder :

5. On due consideration of the facts and circumstances, we find that identical issue was considered by the Tribunal in assessment year 2010-11 in assessee's own case in ITA No.890/Bang/2013. The findings recorded by the Tribunal read as under:

"This is an appeal by the assessee and is directed against the order of the CIT(A), Mysore, dated 14-3-2013 for the assessment year 2010-11. The assessee is aggrieved by the order of the CIT(A) in confirming the disallowance made by the AO u/s 14A of the Income-tax Act, 1961[hereinafter referred to as 'the Act'] read with rule 8D of the Income-tax Rules, 1962 [hereinafter referred to as 'the Rules']. The assessee has also raised a ground that the CIT(A) has erred in not considering the fact that the AO is not justified in making additions of disallowance made by him u/s 14A of the Act r.w. rule 8D of the Rules to the adjusted book profits computed u/s 115JB of the Act.

2. Brief facts of the case are that the assessee-company had filed its return of income on 30-9-2010 declaring loss of Rs.13,52,48,391/- and book profits u/s 115JB of Rs.5,24,71,734/-. Subsequently, revised return was filed on 30-10-2010 declaring the same quantum of loss as well as book profit. During the assessment proceedings u/s 143(3) of the Act, the AO observed from the balance-sheet of the assessee as on 31-3-2010 that the assessee has invested in shares/mutual funds at Rs.19,35,58,090/- on which dividend income of Rs.18,30,232/- is claimed as exempt u/s 10(34) of the Act. The AO observed that the assessee has not made any disallowance u/s 14A as expenses incurred on earning of the exempt income. Therefore, show cause notice was issued to the assessee. The assessee filed its reply stating that the investment in shares of Indian companies and the mutual funds till 31-3-2010 is less than 15% of the net owned funds and the borrowed funds had not been utilized for making these investments. The assessee claimed that no expenses had been incurred by the assessee to earn income of Rs.18,30,232/- and therefore no disallowance is necessary. However, the AO, following the decision of the Hon'ble Bombay High Court in the case of Godrej &

Page 7 of 10

Boyce Mfg. Co. Ltd. vs. DCIT reported in 328 ITR 1, has held that disallowance u/s 14A has to be made. Accordingly, he made the disallowance of a sum of Rs.83,74,057/- u/s 14A of the Act read with rule 8D of the IT Rules. Further, while computing the book profits u/s 115JB of the Act, the AO made the addition of disallowance made u/s 14A of the Act. Aggrieved, the assessee preferred an appeal before the CIT(A) who confirmed the order of the AO and the assessee is in second appeal before us.

3. Learned counsel for the assessee, Smt.Sheetal, while reiterating the contentions raised by the assessee before the authorities below, submitted that in the case of the sister concern of the assessee viz. M/s.Manipal Media Networks Ltd., in ITA No.889/Bang/2013 dated 4-3-2014 for the assessment year 2010-11, 'B' Bench of this Tribunal had remanded the issue to the file of the AO for de novo consideration in view of the decision of the Bombay High Court in the case of Godrej & Boyce Mfg. Co. Ltd. (cited supra). A copy of the said order is produced before us. Para.6 of the said order is as under:

"6. Having heard both the parties and having considered the rival contentions, we find that this Tribunal, in ITA No.1266/Bang/2012 dated 25-10-2013, in the assessee's own case for the assessment year 2009-10, has considered the issue at length and after considering the judicial precedent in the case of Godrej & Boyce Mfg. Co. Ltd. Vs. DCIT(supra) and the provisions of rule 8D, has remanded the issue to the file of the AO for re-examination. The relevant portion of the order at para.5.3.5 at page 7 is reproduced hereunder:

"5.3.5 In this appeal, the dispute in respect of the disallowance under section 14A r.w. Rule 8D is with regard to expenditure under Rule 8D(2)(ii) i.e. expenditure which is not directly attributable to any particular income or receipt and Rule 8D(2)(iii) i.e. other indirect expenditure than that referred to in Rule 8D(2)(i) and 8D(2)(ii). It is seen from the facts on record that the assessee has not deducted any expenses direct or indirect, while computing its income from dividend income which is exempt under section 10(34) of the Act. In this regard on a similar issue, a co-ordinate bench of this Tribunal in the case of

Page 8 of 10

Jindal Aluminium Ltd. in ITA Nos.799 & 864/Bang/2012 dt.30.4.2012 cited by the assessee (supra) has held that it is necessary for the assessee to point out how each item of expense debited to its profit and loss account is wholly incurred for the purpose of earning income which is taxable and therefore remanded the matter for re-examination to the file of the Assessing Officer. In the case on hand too, similarly, we find that the position is that the assessee has merely taken the stand that it has not incurred any direct or indirect expenditure in earning its dividend income which is exempt under section 10(34) of the Act. We are therefore of the view that it would be in the interest of equity and justice if the assessee makes its claim in this regard before the Assessing Officer. The Assessing Officer will examine the claim of the assessee and thereafter decide the issue in accordance with law and as explained in the judicial decisions referred to (supra). It is ordered accordingly."

Since the facts and circumstances of the case before us are similar, we remand this issue back to the file of the AO for re-examination with similar directions. The first ground of appeal is accordingly allowed for statistical purposes.

4. As regards the addition of disallowance u/s 14A of the Act, while computing book profit u/s 115JB of the Act is concerned, the learned counsel for the assessee has placed reliance upon the decision of the 'D' Bench of the Tribunal at Mumbai in the case of Reliance Industrial Infrastructure Ltd. vs. Addl.CIT in ITA Nos.69 & 70/Mum/2009 dated 5-4-2013 wherein, by following the decision of the Delhi Bench of the Tribunal in the case of Goetze (India) Ltd., it was held that while computation of adjusted book profits, the provisions of sec.14A cannot be imported into clause (f) of the Explanation to sec.115JB of the Act. Copy of the said order is produced before us.

Learned Departmental Representative, Shri Balakrishnan, on the other hand, supported the orders of the authorities below.

5. Having heard both the parties and having considered the material on record, we find that the issue is also covered in favour of the assessee by the decision of the

Page 9 of 10

Tribunal at Mumbai cited supra. Therefore, we direct that the addition of disallowance made u/s 14A cannot be made while computing book profit u/s 115JB of the Act. The AO is directed accordingly. This ground of appeal is accordingly allowed for statistical purposes.

6. In the result, the appeal is partly allowed for statistical purposes".

6. In addition to the above, we observed that the Assessing Officer has to record a categorical finding as to how he was not satisfied with the claim of the assessee regarding the expenditure incurred for earning the exempt income. The learned Assessing Officer shall examine this issue as per the observations of the Tribunal in assessment year 2010-11 and also consider the judgments of the Hon'ble Delhi High Court in the case of Maxopp Investments Ltd v. CIT reported in 347 ITR 272. With regard to the 2nd issue, there is no disparity on facts. The disallowance made u/s 14A cannot be included in the book profit for the purpose of section 115JB.ö

Following the decision of this Tribunal for earlier year, we restore this ground of appeal to the file of the AO to examine the claim of the assessee that no expenditure was incurred for earning exempt income.

6. As regards the ground relating to addition of amount disallowed u/s 14A, book profit tax liability u/s 115JB, since the ground was not adjudicated by the Id. CIT(A), we restore this ground of appeal to the file of the Id. CIT(A) for adjudicating this ground of appeal.

As regards the ground relating to addition of provision for bad and doubtful debts, reliance was placed on the earlier order. However, we find that no details were filed before us showing that the provision was made in respect of ascertained liabilities. In

Page 10 of 10

absence of details, it is not possible for us to hold that the provision was made for ascertained liabilities. In order to meet the ends of justice, we restore this ground of appeal to the file of the AO with a direction to adjudicate this ground afresh after affording due opportunity to the assessee-company.

7. In the result, appeal filed by the assessee is partly allowed for statistical purposes.

Order pronounced in the open court on this 29th April, 2016

sd/-
(VIJAY PAL RAO)
JUDICIAL MEMBER

sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

Place : Bangalore
D a t e d : 29/04/2016

srinivasulu, sps

Copy to :

- 1 Appellant
- 2 Respondent
- 3 CIT(A)-II Bangalore
- 4 CIT
- 5 DR, ITAT, Bangalore.
- 6 Guard file

By order

Assistant Registrar
Income-tax Appellate Tribunal
Bangalore