

आयकर अपीलिय अधिकरण, मुंबई न्यायपीठ "ए" मुंबई
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, MUMBAI

BEFORE HON'BLE S/SHRI JOGINDER SINGH (JM), AND RAJESH KUMAR,(AM)

आयकर अपील सं./I.T.A. No.4774/Mum/2015

(निर्धारण वर्ष / Assessment Year :2011-12)

M/s Starlight System Pvt Ltd, 5 th ,9 th floor, Housefin Bhavan, Bandra Kurla complex, Bandra (E), Mumbai-400051	बनाम/ Vs.	Asstt. Commissioner of Income Tax –Central Circle-21, Mumbai.
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

स्थायी लेखा सं./जीआइआर सं./PAN No. :AAFCS7733L

अपीलार्थी ओर से / Appellant by:	Shri Rishabh Shah
प्रत्यर्थी की ओर से/Respondent by	Shri Kailash Kanojiya

सुनवाई की तारीख / Date of Hearing : 21.7.2016

घोषणा की तारीख /Date of Pronouncement : 22.08.2016

आदेश / O R D E R

Per RAJESH KUMAR, Accountant Member:

This is an appeal filed by the assessee and is directed against the order of the Principal Commissioner of Income Tax (OSD), Mumbai dated 10.6.2015 pertaining to assessment year 2011-12.

2. The issue raised in ground No.1 of appeal is against the confirmation of addition/disallowance of Rs.1,81,118/- by the Id.CIT(A) as made by the AO u/s 14A of the Income Tax Act, 1961(hereinafter called and referred to the Act) read with Rule 8D of the Income Tax Rules, 1962 (hereinafter called and referred to as the Rules). In the ground No.2, the issue raised is

against the confirmation of action of the AO by the Id. CIT(A) by making disallowance u/s 14A read with rule 8D while computing book profit u/s 115JB of the Act.

3. Brief facts of the case are that a search action u/s 132(1) of the Act was carried out by the Dy. Director of Income Tax (Inv), Unit –II-3, Mumbai in the case of M/s Sunteck Realty Limited and its Group Companies, promoters and executives on 11.01.2012 of which the assessee was a group company and was also covered under the said operation. Accordingly, a notice u/s 153A dated 8.2.2013 was issued and served upon the assessee which was complied by the assessee by filing return of income on 14.8.2013 declaring a total income of Rs.3,81,80,690/-. It is pertinent to mention that the assessee had filed original return u/s 139(1) of the Act on 29.9.2011 declaring total income of Rs.3,81,81,227/-. Thereafter, scrutiny proceedings were initiated against the assessee and statutory notices under section 143(2) and 142(1) were issued and served upon the assessee. During the course of assessment proceedings, the AO observed that the assessee has earned dividend income to the tune of Rs.1,12,52,583/- and made suo mottu disallowance of Rs.43,832/- u/s 14A r.e.w.rule 8D of the Rules which was not in consonance with the formula as provided in rule 8D and accordingly, the AO issued notice to the assessee as to why the said method as prescribed under rule 8D should not be invoked to calculate disallowance. In response to the said query the assessee replied that it had suo mottu made disallowance of Rs.43,832/- and no more further disallowance was

required to be made. The AO ,not finding the reply of the assessee convincing ,invoked the provisions of Rule 8D of the Rules and worked out the disallowance at Rs.2,24,950/- and after allowing credit of suo mottu disallowance of Rs.43,832/- and made net addition of Rs.1,81,118/- made by framing assessment u/s 143(3) r.w.s.153A of the Act vide order dated 28.3.2014 by assessing the income at Rs.3,83,61,800/- and also worked out the book profit by allowing the disallowance of Rs.2,24,950/- under the normal provisions of Act and Rs.2,82,77,337/- under the provisions of section 115JB of the Act. Aggrieved by the order of the AO the assessee preferred an appeal before the Id. CIT(A) who also confirmed the action of the AO by upholding as under :

"5.3 I have very carefully considered the matter. At the very outset it is observed that the appellant had itself claimed certain expenses under s. 14A, thereby confirming that the expenditure relatable to the exempt income is indeed to be computed and added back in the hands of the appellant. The instant year being A.Y. 2011-12, it is settled position in law that the disallowance under s.14A has to be computed in accordance with the formula laid down under Rule 8D. In the circumstances, the action of the AO has to be confirmed and is accordingly confirmed. Further, as per clause (f) of Explanation to Sec. 115JB, the amount of any expenditure relatable to exempt income has to be added back to the book profit under the provisions of Sec. 115JB. The appellant had itself added back a certain sum considering the same as expenditure relatable to income exempt from tax. The AO has, however, computed the disallowance as per Rule 8D, which is as per law. Therefore, I decline to interfere with the action of the AO."

4. We have carefully considered the submissions of the parties, perused the material placed before us including the orders of authorities below. The Id.AR submitted before us that since the assessee has suo mottu disallowed

an amount of Rs.43,832/- and the addition as made by the AO and confirmed by the Id.CIT(A) was wrong and deserved to be deleted and the same is the position of law with regard to the calculation of income u/s 115JB of the Act in which also the AO added the disallowance to the income of the assessee which is contrary to the provision of the Act. Per contra, the Id. DR heavily relied upon the orders of authorities below. We find from the facts before us that the provisions of section 14A r.w.r.8D of the Rules are applicable in the instant year under consideration before us and therefore, the AO has rightly invoked the provisions while passing the order as regard the computation of book profit under section 115JB of the Act subject to clause (f) to Explanation (1) to section 115JB of the Act has been inserted from the assessment year 2007-08 and in view of the said clause, the AO has rightly added the amount of disallowance as calculated u/s 14A r.w.r.8D to the book profit also. In view of the above observations, we do not find any infirmity in the order of the Id.CIT(A) who has rightly upheld the order of the AO and accordingly, the appeal of the assessee is dismissed.

5. In the result the appeal of the assessee is dismissed.

The above order was pronounced in the open court on 22nd Aug, 2016.

घोषणा खुले न्यायालय में दिनांक: 22nd Aug, 2016 को की गई ।

Sd

(JOGINDER SINGH)
Judicial Member

मुंबई Mumbai: 22nd

Aug, 2016.

sd

(RAJESH KUMAR)
Accountant Member

व.नि.स./ SRL , Sr. PS

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

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

True copy

आदेशानुसार/ BY ORDER,

सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई /ITAT, Mumbai