

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "H", MUMBAI**

**BEFORE SHRI C.N. PRASAD, HON'BLE JUDICIAL MEMBER AND
SHRI G. MANJUNATHAN, HON'BLE ACCOUNTANT MEMBER**

ITA NO.4415/MUM/2012 (A.Y: 2008-09)

ITA NO.1855/MUM/2013 (A.Y: 2009-10)

ITA NO.5716/MUM/2013 (A.Y: 2010-11)

D.C.I.T., Circle – 3(3),
Room No. 609, 6th Floor,
Aayakar Bhavan, M.K. Road
Mumbai – 400 020

v. M/s Kail Ltd.,
171-C, Mittal Court, Nariman Point,
Mumbai 400 021

PAN: AAACK 7417 L

(Appellant)

(Respondent)

Assessee by : Shri Bhupendra Karkhanis

Department by : Shri M.C. Omi Ningeshen

Date of Hearing : 09.08.2017

Date of Pronouncement : 13.09.2017

ORDER

PER C.N. PRASAD (JM)

1. These appeals are filed by the Revenue for the Assessment Years 2008-09 to 2010-11 against the different orders of the Commissioner of Income Tax (Appeals)-7 Mumbai.

2. The first common issue in the grounds of appeal is regarding the deletion/restricting the disallowance u/s 14A r.w. Rule 8D(2)(ii)/(iii) of the Act while computing the income under normal provisions of the Act. In all these three Assessment Years the Assessing Officer computed the disallowance u/s 14A r.w. Rule 8D of the Act as under: -

<u>Assessment Year</u>	<u>Disallowance u/s 14A r.w. Rule 8D2(i)</u>	<u>Disallowance u/s 14A r.w. Rule 8D2(ii)</u>	<u>Disallowance u/s 14A r.w. Rule 8D2(iii)</u>	<u>Dividend income earned</u>
2008-09	-Nil-	1,22,47,472	12,16,787	9,62,500
2009-10	-Nil-	1,64,73,251	19,02,859	8,75,200
2010-11	-Nil-	2,50,17,377	20,12,296	5,50,000

3. The assessee preferred appeals before the Ld.CIT(A) contending that the investments were made out of surplus own funds which are much more than the investments made in the shares by the assessee. The Ld.CIT(A) taking note of the fact that the own funds of the assessee in the form of share capital, reserves and surplus are more than the investments in all these years and also in view of the decision of the Hon'ble Jurisdictional High Court in the case of CIT v. Reliance Utilities and Power Ltd. [313 ITR 340], wherein it was held that if there are sufficient interest free funds available to assessee to meet its investments and at the same time the assessee also raised a loan it can be presumed that investments were from interest free funds available, the Ld.CIT(A) deleted the

disallowance made in respect of the interest disallowance made under Rule 8D(2)(ii) of the I.T. Rules. Coming to the disallowance u/s 14A r.w. Rule 8D(iii) of the Act the Ld.CIT(A) sustained the disallowance for the Assessment Year 2008-09 and restricted the disallowance for the Assessment Years 2009-10 and 2010-11 to ₹.9,50,000/- and ₹.8,75,000/- respectively.

4. The Ld. DR submits that Ld.CIT(A) has given a finding that own funds are exceeded investments by simply looking at balance sheet which is not correct. Ld. DR vehemently supported the orders of the Assessing Officer in disallowing expenses attributable for earning dividend income u/s u/s 14A r.w. Rule 8D of the I.T. Rules.

5. Learned Counsel for the assessee before us submitted a chart containing details of own funds and investments made. Referring to this chart the Learned Counsel for the assessee submits that own funds of the assessee for the Assessment Years 2008-09, 2009-10 and 2010-11 in the form of share capital and reserves stood at ₹.262.02 crores, ₹.219.76 crores and ₹.237.29 crores and whereas the investments in domestic companies capable of generating tax free income stood at ₹31.08 crores, ₹.31.88 crores and ₹.32.49 crores and the percentage of investments out of own funds stood at 12%, 15% and 14% respectively. Therefore,

Learned Counsel for the assessee submits that since own funds are much more than the investments made there should not be any disallowance u/s 14A r.w. Rule 8D(2)(ii) in view of the decision of the Hon'ble Jurisdictional High Court in the case of CIT v. Reliance Utilities and Power Ltd (supra).

6. Heard both sides perused the orders of the authorities below. It is the finding of the Ld.CIT(A) that the own funds of the assessee are much more than the investments and in which case no disallowance is required to be made u/s 14A r.w. Rule 8D(2)(ii) in view of the decision of the Hon'ble Jurisdictional High Court in the case of CIT v. Reliance Utilities and Power Ltd. (supra). This finding of the Ld.CIT(A) could not be rebutted with evidences by the Revenue to show that there were no surplus funds for making investments. In the circumstance we uphold the order of the Ld.CIT(A) in deleting disallowance u/s 14A r.w. Rule 8D(2)(ii).

7. Coming to the disallowance under Rule 8D(2)(iii), we find that the Ld.CIT(A) in so far as Assessment Year 2008-09 is considered entire disallowance as made by the Assessing Officer is sustained and in respect of the Assessment Years 2009-10 and 2010-11 he restricted the disallowance to ₹.9,50,000/- and ₹.8,75,000/- respectively. He also noticed that the assessee earned dividend income of ₹.9,62,500/-,

₹.8,75,200/- and ₹.5,50,000/- during these Assessment Years. In the circumstances the restriction of disallowance under Rule 8D(2)(iii) made by the Ld.CIT(A) cannot be disturbed since it is more than the dividend income earned by the assessee. Thus we sustain the order of the Ld.CIT(A) on this issue.

8. The second common issue in all these appeals is that Ld.CIT(A) is not justified in deleting the adjustment made to book profit u/s 115JB of the Act on account of expenses relatable to exempt income u/s 14A r.w. Rule 8D of the I.T. Rules.

9. This issue now stands squarely covered by the decision of the Special Bench Delhi in the case of ACIT v. Vireet Investments Private Limited [165 ITD 27] wherein the Special Bench held 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 8D of I.T. Rules. Thus, respectfully following the said decision we restore this issue to the file of the Assessing Officer who shall compute the book profit u/s 115JB following the decision of the Special Bench. This Ground is partly allowed for statistical purposes.

10. The last issue in the appeal of the Revenue for the Assessment Year 2010-11 is relating to the deletion of adjustment made to the book profits u/s 115JB on account of provision for warranty expenses.

11. Briefly stated the facts are that the Assessing Officer while completing the assessment noticed that assessee made a provision on account of warranty expenses of ₹.84,13,800/- and while computing the income under normal provisions the assessee in the computation added back this provision. The Assessing Officer was of the view that since this was not added back to the book profits u/s 115JB, assessee was required to explain why this provision for warranty expenses should not be added back to the book profit. Assessee contended that provision made for warranty is not a mere provision for meeting unascertained liability but it is an ascertained liability provided based on the customer's claims and past records. Not convinced with the submissions of the assessee Assessing Officer added back the provision for warranty expenses to the book profits treating them contingent liability as per clause (c) of Explanation-1 of section 115JB of the Act.

12. On appeal by the assessee the Ld.CIT(A) allowed the claim of the assessee holding that the provision for warranty is not a contingent liability

but is an ascertained liability which was provided based on past experience.

13. The Ld. DR vehemently argues that the provision made by the assessee is only a contingent liability, it is an unascertained liability. He further submits that assessee himself treated this provision as not allowable while computing the normal provisions of the Act. Therefore, this shows that it is only an unascertained liability and the Ld.CIT(A) is not justified in deleting the adjustment made by the Assessing Officer to the book profit.

14. The Learned Counsel for the assessee before us vehemently supported the orders of the Ld.CIT(A) and further placed reliance on the following decisions: -

(1) *M/S. Rotork Controla India (P) Ltd v. CIT [314 ITR 62 (SC)]*

(2) *CIT v. Becton Dickinson India (Purchase) Ltd. [(2013) 29 taxmann.com 80 (Delhi)]*

(3) *Anchor Electricals (P.) Ltd v. DCIT [(2017) 81 taxmann.com 250 (Mumbai – Trib.)]*

(4) *DCIT v. M/s. Century Appliances Private Limited [ITA.No.5132/Mum/2015] dated 16.06.2017.*

15. Heard both the parties, perused the orders of the authorities below and the decision relied upon. Assessee made elaborate submissions before the Ld.CIT(A) and contended that the provision made is based on

past experience and it is not an unascertained liability. The assessee also contends that since the provision for warranty liability being made on basis of calculation as per the past experience it cannot be added back while computing book profits and placed reliance on the decision of the Supreme Court in the case of Bharat Earth Movers v. Commissioner Of Income Tax [245 ITR 428] wherein it was held that if the business liability has arisen in the accounting year the deduction should be allowed although the liability may have to be quantified and discharged at a future date. What should be certain is the incurring of the liability and it should also be capable of being estimated with reasonable certainty though the actual quantification may not be possible. If these requirements are satisfied the liability is not a contingent one. The liability is in present though it will be discharged at a future date. Assessee also placed reliance on the decision of the Delhi Bench in the case of M/s. Sony India (P) Ltd. v. DCIT [118 TTJ 865] wherein it was held that no addition can be made to the book profits u/s 115JB of the Act in the case of provision for warranty expenses as the same constitute an ascertain liability. Reliance was also placed on the decision of the Bangalore Bench of the Tribunal in the case of IBM India Ltd. v. CIT(A) [105 ITD 1] wherein it was held that the liability towards warranty is inbuilt in the sale prices itself and so the liability is not contingent but an ascertained one and to be allowed in the

year of sales. In the case of CIT v. Jay Bee Industries [71 Taxmann 386] the Hon'ble Punjab and Haryana High Court held that provision of warranty for repairs/replacement is an existing liability at time of sale and is allowable as deduction. Mumbai Bench of the Tribunal in the case of Indian Oil Tanking Ltd. v. ITO [120 ITD 237] held that Assessing Officer cannot make addition of provision of performance warranties to net profit of assessee for arriving at its book profit u/s 115JB. Considering all these decisions and the facts of this case the Ld.CIT(A) allowed the claim of the assessee which in our view is right. Therefore, respectfully following the said decision of the Supreme Court in the case of M/S. Rotork Controla India (P) Ltd v. CIT (supra), we affirm the order of the Ld.CIT(A) in holding that the provision made for warranty is an ascertained liability and no adjustment is warranted while computing book profit. This ground is dismissed.

16. In the result, appeals of the Revenue are partly allowed for statistical purposes.

Order pronounced in the open court on the 13th September, 2017.

Sd/-
(G. MANJUNATHAN)
ACCOUNTANT MEMBER
Mumbai / Dated 13/09/2017
VSSGB, SPS

Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER

Copy of the Order forwarded to:

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

//True Copy//

By ORDER

(Asstt. Registrar)
ITAT, Mum