

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'F' NEW DELHI

BEFORE SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA No. 5567/Del/2014
AY: 2010-11

P.N. Paper Mills Private Limited, vs ITO,
B-64, 1ST FLOOR, Ward-14(1),
Vivek Vihar, New Delhi. New Delhi.
(PAN: AADCP5179K)
(Appellant) (Respondent)

Appellant by: None
Respondent by: Shri Atiq Ahmad, Sr. DR

ORDER

PER SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER

This appeal has been preferred by the assessee against the order passed by the Ld. Commissioner of Income Tax (Appeals) – XVII, New Delhi for assessment year 2010–11 wherein vide order dated 18/07/2014, the Ld. Commissioner of Income Tax (Appeals) has upheld the disallowance of Rs. 10,39,543/- made by the AO under section 14A of the Income Tax Act, 1961 (hereinafter called “the Act”).

2. The brief facts of the case are that the return of income in this case was filed declaring income of Rs. 10,63,090/-. The assessee paid tax of Rs. 9,97,537/- under section 115JB on the book profit of Rs. 64,56,547/-. Subsequently, the assessment was completed under section 143 (3) of the Act at a total income of

Rs. 11,41,780/- and tax was charged on the book profit of Rs. 64,56,547/-. Thereafter, the AO issued a notice under section 154 of the Act and thereafter passed an ex parte order making an addition in the book profit by making disallowance under section 14A of the Act amounting to Rs. 10,39,543/- re-computing the book profit at Rs. 74,96,090/-.

2.1 Aggrieved, the assessee preferred an appeal before the first appellate authority challenging the disallowance on the ground that the notice proposing to rectify the order under section 154 of the Act was not served on the assessee. The assessee also challenged the disallowance on the ground that that the AO did not have the power to make the disallowance under section 154 of the Act and re-compute the book profit under section 115JB. However, the Ld. CIT (Appeals) dismissed the assessee's appeal and now the assessee is before the ITAT challenging the disallowance by challenging the assumption of jurisdiction by the AO u/s 154 of the Act.

3. None was present for the assessee. Entry in the order sheet shows that the case was earlier fixed for hearing on 05/06/2017 and the assessee was not represented on that date. The case was adjourned for 27th of July 2017 and notice of hearing was sent to the assessee through speed post which has been received un-served. Therefore, we are proceeding to hear the appeal *ex- parte qua* the assessee.

4. The Ld. Senior DR submitted that the AO was within his power to make a disallowance under section 14A by passing a rectification order under section 154 of the Act as the disallowance under section 14A was mandated by the Income Tax Act itself. The Ld. Sr. DR also supported the order of the Ld. CIT (Appeals) and submitted that the same should be upheld.

5. We have heard the senior DR and have also perused the material on record. It is undisputed that the AO has assumed jurisdiction under section 154 of the Act for making the disallowance under section 14A of the Act to the book profits computed under section 115 JB of the Act. The question as to whether 14A disallowance can be made to the book profits or not is a debatable issue and it our considered opinion that the AO has got no jurisdiction to make such an addition while resorting to the provision of [section 154](#) of the Act as the scope of said section is very limited. ITAT Mumbai Bench has held in the case of Ferani Hotels Pvt. Ltd in ITA No.857/M/2013, vide order dated 17.11.2014, that the disallowance computed under [section 14A](#) read with Rule 8D is to be added while computing book profits under [section 115JB](#). On the other hand, ITAT Delhi Bench in the case of Quippo Telecom Infrastructure vs. ACIT in ITA No.4931/Del/2010, vide order dated 29.07.11 and ITAT Bangalore Bench in the case of JSW Energy Ltd. vs. ACIT in ITA No.244/Bang./2010, vide order dated 22.02.13, have held that the disallowance made under [section 14A](#) read with Rule 8D is not to be added while computing the book profits under [section 115JB](#). It has been held that the only actual expenditure debited to the

Profit & Loss account is to be taken into consideration while computing the book profit under [section 115JB](#). This shows that the issue is quite debatable and under such circumstances, in our view, it was beyond the powers of the AO, exercisable under [section 154](#) to make an addition on a debatable issue as the original assessment in this case had been completed under [section 143\(3\)](#) of the Act. Merely because another view is possible cannot be a ground to rectify the order under [section 154](#) of the Act as the same cannot be said to be a mistake apparent on record. ITAT Mumbai Bench has also taken a similar view in the case of Beekaylon Synthetics Pvt. Ltd v. ACIT in ITA No. 7558/Mum/2013 which we respectfully follow and hold that the AO had no power to make a disallowance u/s 14A of the Act to the book profits computed u/s 115JB by resorting to section 154 proceedings. We, accordingly, quash the order passed by the AO u/s 154 of the Act.

In the final result, the appeal of the assessee stands allowed.

Order pronounced in the Open Court on 25th October , 2017.

Sd/-

(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Sd/-

(SUDHANSHU SRIVASTAVA)
JUDICIAL MEMBER

DT. 25/10/ 2017
'GS'

Copy forwarded to:-

1. Appellant
2. Respondent
3. CIT(A)
4. CIT
5. DR

By Order

Asstt. Registrar