

IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH : KOLKATA

[Before Hon’ble Shri M.Balaganesh, AM & Hon’ble Shri S.S.Viswanethra Ravi, JM]

I.T.A No. 1643/Kol/2016

Assessment Year : 2008-09

Pacific Plantations Ltd.
[PAN: AABCP 5418 P]
(Appellant)

-vs-

DCIT, Circle-5, Kolkata
(Respondent)

For the Appellant : Shri R.K. Patodi, FCA

For the Respondent : Shri A. Bhattacharjee, Addl. CIT

Date of Hearing : 28.03.2018

Date of Pronouncement : 06.04.2018

ORDER

Per M.Balaganesh, AM

1. This appeal by the assessee arises out of the order of the Learned Commissioner of Income Tax(Appeals)-2, Kolkata [in short the Id CIT(A)] in Appeal No.992/CIT(A)-2/14-15 dated 05.07.2016 against the order passed by the DCIT, Circle-5, Kolkata [in short the Id AO] under section 143(3) & 115WE(3) of the Income Tax Act, 1961 (in short “the Act”) dated 24.11.2010 for the Assessment Year 2008-09.

2. The first issue to be decided in this appeal is as to whether the Ld. CIT(A) was justified in upholding the addition of Rs. 29,34,789/- of security transaction tax while computing the book profit u/s 115JB of the Act, in the facts and circumstances of the case.

3. The brief facts of this issue is that the assessee is engaged in the business of trading and derivatives of shares and commodity speculation. The assessee company filed its return of income for the assessment year 2008-09 on 28.09.2008 declaring total income of Rs. 94,63,680/-. The assessee had paid a sum of Rs. 29,34,789/- towards securities transaction tax (STT) in the profit and loss account and claimed the same as deduction. The Id. AO without adducing any reason in the assessment order proceeded to add the same while computing the book profit u/s 115JB of the Act. This action of the Id. AO was upheld by the Ld. CIT(A) without any reasoning. Aggrieved, the assessee is in appeal before us on the following grounds:

1. For that the Ld. CIT(A) erred in law in confirming the addition of Securities Transaction Tax amounting to Rs. 29,34,789/- made by the assessing officer while computing the book profit of the appellant for the purposes of payment of Tax u/s 115JB of the Income Tax Act, when Securities Transaction Tax was incurred by the appellant on its transactions of trading in derivatives and purchase & sale of investments and the income from both these activities were included in the book profit chargeable to tax under the said section.

4. We have heard the rival submissions. We find that the addition towards securities transaction tax does not fall under the various items of disallowance contemplated in explanation 1 to section 115JB(2) of the Act. It has already been settled by the decision of Hon'ble Supreme Court in the case of Apollo Tyres Ltd. reported in 255 ITR 273 (SC) that the Id. AO is not empowered to make addition or deletion to book profits other than those contemplated in the explanation to 115JB(2) of the Act, if the accounts are prepared in accordance with Part-II and Part-III of Schedule VI of the Companies Act, 1956 and if the same were approved in the annual general body meeting by the share holders. We have gone through the various items of disallowances in the explanation 1 to 115JB(2) of the Act. From the same, we find that there is no item for disallowing securities transaction tax while computing the book profits u/s 115JB of the Act. The Ld. DR on the contrary placed reliance on the

proviso to section 48 of the Act wherein it has been stated that the securities transaction tax is not allowable as deduction for the purpose of computation of capital gains. He argued that the same analogy would have to be applied while computing the book profits u/s 115JB of the Act. In this regard, we find that the proviso to section 48 is for the purpose of computation of capital gains under the normal provisions of the Act and not for the purpose of 115JB of the Act. Even capital gains is liable to be taxed u/s 115JB of the Act. The provisions of 115JB of the Act are self-contained code in itself. Accordingly, we are not inclined to uphold the action of the revenue in adding back the STT of Rs. 29,34,789/- while computing the book profit u/s 115JB of the Act. Accordingly, ground no. 1 raised by the assessee is allowed.

5. The next ground to be decided in this appeal is as to whether the Ld. CIT(A) was justified in upholding the disallowance made by the Id. AO u/s 14A of the Act in the sum of Rs. 9,97,405/- while computing the book profit u/s 115JB of the Act, in the facts and circumstances of the case.

6. The brief facts of this issue is that the assessee made investments in shares and mutual investments. The assessee had derived dividend income of Rs. 3,04,259/- being long term capital gain of Rs. 2,79,28,426/- against the total investment of Rs. 15,38,32,864/- as on 31.03.2008. The Id. AO observed that the assessee had incurred interest expenses of Rs. 3,29,377/-. The assessee has claimed exempt income in the form of dividend and long term capital gain. The assessee has offered a sum of Rs. 3,04,259/- being 10% of dividend income as amount to be disallowed u/s 14A of the Act for the purpose of computation of book profits u/s 115JB of the Act in the return of income. The Id AO invoked the provisions of section 14A read with Rule 8D of the Rules and made disallowance of Rs. 9,97,405/- under second and third limb of Rule 8D(2) of the Rules and added the entire sum of Rs. 9,97,405/- in the computation of

book profit u/s 115JB of the Act. The action of the ld. AO was upheld by the Ld. CIT(A). Aggrieved the assessee is in appeal before us on the following grounds:

2.(a) For that the Ld. CIT(A) was not justified in confirming the addition of Rs. 9,97,405/- made by the assessing officer while computing the book profit chargeable to tax u/ 115JB, as against Rs. 3,04,259/- voluntarily added back by the appellant, though he was explained that the said amount of Rs. 9,97,405/- represented the disallowance made u/s 14A, while computing the total income of the appellant, towards expenses relatable to the exempted income on account of long term capital gains and dividends, when, the provisions contained in section 14A had no application for the purposes of computing book profit u/s 115JB and, further, when the income from long term capital gains was included in the book profit chargeable to tax under that section.

b) For that the Ld. CIT(A) was not justified in confirming the aforesaid addition of Rs. 9,97,405/- made by the assessing officer while computing the amount of book profit chargeable to tax u/s 115JB, as against Rs. 3,04,259/- voluntarily disallowed by the appellant while computing its returned book profit, when, such voluntarily disallowance made by the appellant represented a reasonable estimate of expenditure relatable to the dividend income, which was not included in the book profit chargeable to tax u/s 115JB.

7. We have heard the rival submissions. We find that the short point that arises for our consideration in this issue is as to whether the disallowance u/s 14A of the Act vis-à-vis the computation of book profits u/s 115JB of the Act could be made by applying the computation mechanism provided in Rule 8D(2) of the Rules. This issue has been duly settled by the recent decision of Special Bench of Delhi Tribunal in the case of ACIT vs. Vireet Investment Pvt. Ltd. reported in 165 ITD 27 (Delhi Special Bench) dated 16.06.2017 wherein it was held that the provisions of Rule 8D of the Rules cannot be applied while computing the disallowance u/s 14A of the Act vis-a-vis computation of book profits u/s 115JB of the Act. It was held that the disallowance u/s 14A need to be made only based on the books of accounts of the assessee by identifying on rational basis the expenses as incurred for the purpose of earning exempt income. In the instant case, the assessee had followed a rational basis of disallowing the sum of Rs. 3,04,259/- which is computed 10% of dividend income for

the purpose of computing book profits u/s 115JB of the Act. We also find from the audited accounts of the assessee that the assessee had debited total administrative expenses of Rs. 13,75,667/- out of which the disallowance made by it in the sum of Rs. 3,04,259/- is very reasonable. Hence, no inference need to be made thereon. Accordingly, we direct the Id. AO to make the disallowance only in the sum of Rs. 3,04,259/- u/s 14A while computing the book profit u/s 115JB of the Act. Accordingly, ground nos. 2(a) and 2(b) raised by the assessee are allowed.

8. In the result, the appeal of the assessee is allowed.

Order pronounced in the Court on 06.04.2018

Sd/-

[S.S. Viswanethra Ravi]
Judicial Member

Sd/-

[M.Balaganesh]
Accountant Member

Dated : 06.04.2018

SB, Sr. PS

Copy of the order forwarded to:

1. Pacific Plantations Ltd., 23A, Netaji Subhas Road, 3rd Floor, Room No. 19, Kolkata-700001, West Bengal.
2. DCIT, Circle-5, Kolkata, P-7, Chowringhee Square, Aayakar Bhawan, 8th Floor, Kolkata-700069.
- 3..C.I.T.-
4. C.I.T.- Kolkata.
5. CIT(DR), Kolkata Benches, Kolkata.

True copy

By Order

Senior Private Secretary
Head of Office/D.D.O., ITAT, Kolkata Benches

