

**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH (D), KOLKATA**

[Before Shri P.M. Jagtap, AM & Shri S.S. Viswanethra Ravi, JM]

I.T.A. No. 676/Kol/2017

Assessment Year: 2014-15

ACIT CIR 6(2) Kolkata.....Appellant
Aayakar Bhawan, 6th Floor,
Room No. 6/15, P-7, Chowringhee Square,
Kolkata - 700 069

M/s. Suraj Viniyog Pvt. Ltd.....Respondent
687, Emami Tower, Anandapur,
E.M. Bypass,
Kolkata - 700 107
[PAN: AABCD 0860 B]

Appearances by:

Shri A. Bhattacharjee, Addl. CIT appearing on behalf of the Revenue.

Shri S.K. Agarwal, Advocate appearing on behalf of the Assessee

Date of concluding the hearing : April 12, 2018

Date of pronouncing the order : April 12, 2018

ORDER

PER P.M. JAGTAP, AM

This appeal is preferred by the revenue against the order of Ld. CIT(A) - 2, Kolkata dated 02.01.2017 whereby he deleted the addition of Rs. 79,70,242/- made by the A.O. by way of disallowance under section 14A read with rule 8D while computing the book profit of the assessee company under section 115JB of the Act.

2. The assessee in the present case is an investment company. The return of income for the year under consideration was filed by it on 22.09.2014 declaring its total income at nil. In the computation of total income filed along with the said return, a disallowance of Rs. 79,85,173/- was made by the assessee company suo moto under section 14A read with rule 8D. While computing its total income under

the normal provisions of the Act when computing the book profit under section 115JB, the assessee company however had made an addition of Rs. 14,931/- only on account of expenses incurred earning of the exempt income. In the assessment completed under section 143(3) vide an order dated 31.03.2016, the Assessing Officer made an addition of Rs. 79,85,173/- while computing the book profit of the assessee company on account of disallowance of such expenses as worked out under section 14A read with rule 8D instead of Rs. 14,931/- made by the assessee.

3. The action of the A.O. in making the addition on account of disallowance of expenses as worked out under section 14A read with rule 8D while computing its book profit under section 115JB was challenged by the assessee in the appeal filed before the Ld. CIT(A) and following the various decisions of the Tribunal, the Ld. CIT(A) deleted the said addition made by the A.O. by observing that artificial disallowance made under section 14A read with rule 8D could not be imported into Clause (f) of Explanation 1 to Section 115JB. Aggrieved by the order of the Ld. CIT(A), the revenue has preferred this appeal before the Tribunal.

4. We have heard the arguments of both the sides and also perused the relevant material available on record. As agreed by the learned representatives of both the sides, the solitary common issue involved in this appeal of the revenue is squarely covered by the latest decision of the Tribunal rendered in the case of ACIT vs TMT Viniyogan Ltd. vide its order dated 15.12.2017 passed in ITA No.

561/Kol/2015 wherein a similar issue has been decided by the Tribunal in paragraph no 14 of its order as under:

“14. We have heard the rival submissions and perused the materials available on record. The issue in the instant case relates to the disallowances made by Assessing Officer u/s 14A r.w.r 8D of the Income Tax Rules while determining the income under normal computation of income. The disallowance of the same was also made while determining the profit u/s 115JB of the Act. However, we note that in recent judgment of Special Bench of Hon’ble Delhi Tribunal in the case of ACIT vs. Vireet Investment Pvt. Ltd. reported in 82 Taxmann.com 415 that the disallowances made u/s 14A r.w.r. 8D cannot be the subject matter of disallowances while determining the net profit u/s 115JB of the Act. Relevant portion of the said order is reproduced below:

‘In view of above discussion, the computation under clause (f) of Explanation 1 to section 115JB(2), is to be made without resorting to the computation as contemplated under section 14A, read with rule 8D of the Income-tax Rules, 1962.’

The ratio laid down by the Hon’ble Tribunal is squarely applicable to the facts of the case. Thus it can be concluded that the disallowance made under section 14A r.w.r. 8D cannot be resorted while determining the expenses as mentioned under clause (f) to explanation 1 of section 115JB of the Act.

However it is also clear that the disallowance needs to be made in terms of the provisions of clause (f) to section 115JB of the Act while determining the book profit. In holding so we draw our support from the judgment of Hon’ble Calcutta High Court in the case of CIT Vs. Jayshree Tea Industries Ltd. in GO No.1501 of 2014 (ITAT No.47 of 2014) dated 19.11.14 wherein it was held that the disallowance in relation to exempted income needs to be made as per the clause (f) to Explanation-1 of Sec. 115JB of the Act independently. The relevant extract of the judgment is reproduced below:-

‘we find computation of the amount of expenditure relatable to exempted income of the assessee must be made since the assessee has not claimed such expenditure to be Nil. Such computation must be made by applying clause (f) of Explanation 1 under section 115JB of the Act. We remand the matter for such computation to be made by the learned Tribunal.

We accept the submission of Mr. Khaitan, learned Senior Advocate that the provision of section 115JB in the matter of computation is a

complete code in itself and resort need not and cannot be made to section 14A of the Act.”

In view of above we hold that the disallowances made under the provisions of Sec. 14A r.w.s 8D of the IT Rules, cannot be applied to the provision of Sec. 115JB of the Act as per the direction of the Hon'ble jurisdictional High Court in the case of CIT Vs. Jayshree Tea Industries Ltd. (Supra). Therefore, the AO shall work out the disallowances in terms of the clause (f) to Explanation-1 of Sec. 115JB of the Act independently after considering the expenses debited in the profit & loss account as mandated under the provisions of law. Therefore we are inclined to restore this issue to the file of AO for fresh adjudication in accordance to law and in the light of above discussion. Thus this ground of appeal of the assessee is allowed for statistical purposes.”

6. As the issue involved in the present case as well all the material facts relevant thereto are similar to the case of TMT Viniyogan Ltd. (supra), we respectfully follow the order of this Tribunal passed in the said case and restore the issue relating to the addition to be made while computing the book profit as per Clause (f) of Explanation 1 to Section 115JB to the file of the A.O. for deciding the same afresh as per the same directions as given by the Tribunal for in the case of TMT Viniyogan Ltd.

7. In the result, the appeal of the revenue is treated as allowed for statistical purpose.

Order Pronounced in the Open Court on 12th April, 2018.

Sd/-
(S.S. Viswanethra Ravi)
JUDICIAL MEMBER

Sd/-
(P.M. Jagtap)
ACCOUNTANT MEMBER

Dated: 12/04/2018
Biswajit, Sr. PS

Copy of order forwarded to:

1. M/s. Suraj Viniyog Pvt. Ltd., 687, Emami Tower, Anandpur, E.M. Bypass, Kolkata – 700 107.
2. ACIT CIR 6(2), Aayakar Bhawan, 8th Floor, Room No. 6/15, P-7, Chowringhee Square, Kolkata – 700 069.
3. The CIT(A)
4. The CIT
5. DR

True Copy,

By order,

Sr. P.S. / H.O.O.
ITAT, Kolkata