

**IN THE INCOME TAX APPELLATE TRIBUNAL "H" BENCH, MUMBAI
BEFORE SHRI SHAMIM YAHYA, AM AND SHRI RAVISH SOOD, JM**

ITA No.4436/Mum/2016

(निर्धारण वर्ष / Assessment Years:2011-12)

Anshul Specialty Molecules Limited (Now known as Anshul Specialty Molecules Private Limited) 13, Aradhana Industrial Development Corporation, Near Virwani Industrial Estate, Goregaon (East),Mumbai-400063	बनाम/ Vs.	The Deputy Commissioner of Income-tax, Central Circle-6(3), (Erstwhile Asst. Commissioner of Income-tax Central Circle- 38), Air India, Nariman Point, Mumbai-400021
स्थायी लेखा सं./जीआइआर सं./PAN No.		AABCA4003H
(अपीलार्थी /Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से / Appellant by	:	Ms. Sai Sudha Multani, A.R
प्रत्यर्थी की ओर से / Respondent by	:	Shri M.C. Omi Ningshen, D.R

सुनवाई की तारीख / Date of Hearing	:	04.04.2018
घोषणा की तारीख / Date of Pronouncement	:	13.06.2018

आदेश / O R D E R

PER RAVISH SOOD, JUDICIAL MEMBER:

The present appeal filed by the assessee is directed against the order passed by the CIT(A)-52, Mumbai, dated 31.03.2016 which it itself arises from the order passed by the A.O under Sec.143(3) of the Income Tax, 1961 (for short 'Act') dated 28.03.2014. The assessee assailing the order of the CIT(A) had raised before us the following grounds of appeal:

- “1.1 On the facts and in the circumstances of the case and in law, the commissioner of Income-tax (Appeals) erred in confirming the disallowance made by the Assessing Officer under section 14A of the Income-tax Act, 1961 (‘the Act’) as per rule 8D of the Income-tax Rules amounting to Rs.48,29,265/-.
- 1.2 In doing so, the Commissioner of Income-tax (Appeals) erred in the following respects:
- (a) In not accepting the reasonable basis working made by the appellant for the purpose of making disallowance under section 14A of the Act;
 - (b) in not appreciating the fact that provisions of sub-section (2) of section 14A of the Act could be invoked only if the Assessing Officer, having regard to the accounts of the assessee, was not satisfied with the correctness of the claim of the assessee in respect of such expenditure in relation to income which does not form part of the total income under the Act;
 - (c) In not appreciating the fact that investment in group companies were made for strategic purpose and are not with a view to earn exempt income.
- 1.3 Without prejudice to the above grounds of appeal, the Commissioner of Income-tax (Appeals) erred in upholding the action of the Assessing Officer by considering gross amount of interest at Rs.89,54,573/- instead of net amount of interest at Rs 87,34,254/- while computing the amount of interest for the purposes of Rule 8D(2)(ii).
- 1.4 Without prejudice to the above grounds of appeal, the Commissioner of Income-tax (Appeals) erred in upholding the action of the Assessing Officer by considering the value of current assets and not net current assets (i.e. current assets less current liabilities) while computing average value of assets for the purpose of Rule 8D.
- 1.5 Without prejudice to the above grounds of appeal, the Commissioner of Income-tax (Appeals) erred in upholding the action of the Assessing Officer in including investments companies which are liable to pay DDT under section 115-O without appreciating the fact that dividend received by the appellant though exempt under section 10(34) of the Act has already suffered tax under section 115-O of the Act.
- 1.6 Without prejudice to the above grounds of appeal, the Commissioner of Income-tax (Appeals) erred in not appreciating that the provision of sub section (2) and (3) of section 14A are not applicable while computing the book profit under section 115JB.

The Appellant hereby reserves the right to add to alter or amplify the above grounds of appeal.”

2. Briefly stated, the facts of the case are that the assessee company which is engaged in the business of manufacturing of chemicals had e-filed its return of income for A.Y 2011-12 on 16.09.2011, declaring total income of Rs.66,20,105/- and ‘book profit’ under Sec. 115JB of Rs.1,49,17,240/-. Subsequently, the case of the assessee was taken up for scrutiny assessment under Sec. 143(2) of the Act.

3. During the course of the assessment proceedings, it was observed by the A.O that the assessee company though had received exempt dividend income of Rs.76,90,018/-, however it had disallowed an amount of Rs.441/- only under Sec.14A of the Act. The A.O further observed that while for the assessee in A.Y 2005-06 to A.Y 2007-08 had disallowed proportionate interest expenses attributable to exempt income yielding investments appearing in the balance sheet, in the ratio which such investments did bear to the total assets, however a similar disallowance of the interest expenses was not made during the year under consideration. It was further noticed by the AO that in A.Y 2008-09 the assessee had further supplemented the disallowance of the interest expenses under Sec.14A, by a further sum of disallowance of other indirect expenses attributable to earning of the exempt dividend income. Similar disallowance was also found to have been made by the assessee under Sec.14A r.w.Rule 8D in A.Y 2009-10. It was in the backdrop of the aforesaid facts observed by the A.O that the assessee taking a departure from the disallowances which were consistently made by him under Sec.14A in the preceding years, had during the year under consideration attributed only a sum of Rs.441/- as expenses incurred for earning of the exempt dividend income. The A.O not persuaded to subscribe to the aforesaid claim of the assessee, worked out the disallowance under Sec.14A r.w. Rule 8D at Rs.48,29,706/-. On the basis of his aforesaid deliberations the A.O assessed the income of the assessee at Rs.1,15,70,540/-. Still further, the A.O raising the ‘book profit’ under Sec.

115JB by the amount of disallowance made by him under Sec.14A, revised the same at Rs.1,97,46,505/-.

4. Aggrieved, the assessee carried the matter in appeal before the CIT(A). The CIT(A) after deliberating on the contentions advanced by the assessee in context of the disallowance made by the AO under Sec.14A r.w. Rule 8D at Rs.48,29,706/-, was however not persuaded to accept the same and dismissed the appeal.

5. The assessee being aggrieved with the order of the CIT(A) had carried the matter in appeal before us. The ld. Authorized Representative (for short 'A.R') for the assessee took us through the facts of the case in context of the disallowance which was sustained by the CIT(A) under Sec.14A of the Act. The ld. A.R at the very outset submitted that the Ground of appeal No. 1.4 was not pressed by him. As per the concession made by the ld. A.R the **Ground of appeal No. 1.4** is dismissed as not pressed. It was further fairly conceded by the ld. A.R that ground of appeal no. 1.2(c) wherein the validity of the disallowance made under Sec.14A was assailed on the ground that the investment in the group companies were made for strategic purposes, and not with the view to earn exempt income, was as on date squarely covered against the assessee by the judgment of the Hon'ble Supreme Court in the case of Maxopp Investment Ltd. Vs. CIT, New Delhi (Civil Appeal No. 104-109 of 2015; dated. 12.02.2018). Still further, it was submitted by the ld. A.R. that the ground of appeal no. 1.5 assailing the orders of the lower authorities on the ground that they had wrongly included the investment in companies which were liable to pay DDT under Sec.115-O, did not hold the ground any more as the said issue had been decided against the assessee by the Hon'ble Supreme Court in the case of Godrej & Boyce Manufacturing Co. Ltd. Vs. DCIT & Anr. (2017) 394 ITR 449 (SC). We thus, keeping in view the fact that the **Ground of appeal No. 1.5** raised by the assessee concededly does not hold the ground any more in the backdrop of the judgment of Hon'ble Apex Court in the case of Godrej & Boyce Manufacturing Co. Ltd. (supra), thus dismiss the same.

6. The ld. A.R assailing the validity of the disallowance made by the AO under Sec. 14A(2) of the Act, submitted that as the disallowance under the aforesaid statutory provision was made by the A.O without being satisfied with the correctness of the claim of the assessee in respect of such expenditure incurred in relation to income which does not form part of its total income under the Act, having regard to the accounts of the assessee, thus could not be sustained on the said count itself and was liable to be vacated. The ld. A.R in support of his aforesaid contention placed reliance on the judgment of the Hon'ble Supreme Court in the case of Godrej & Boyce Manufacturing Co. Ltd. Vs. DCIT & Anr. (2017) 394 ITR449 (SC).. On the basis of his aforesaid deliberations, it was submitted by the ld. A.R that the disallowance of Rs.48,28,265/- made by the A.O under Sec. 14A r.w. Rule 8D, not being in accord with the aforesaid judgment of the Hon'ble Apex Court in the case of Godrej & Boyce Manufacturing Company (supra) was liable to be deleted.

7. Alternatively, it was submitted by the ld. A.R. that without prejudice to his contention that no disallowance under Sec. 14A r.w. Rule 8D was liable to be made, even otherwise the 'book profit' under Sec. 115JB could not be raised by the amount by the disallowance made under Sec.14A of the Act. The ld. A.R in support of his aforesaid contention relied on the order of the 'Special bench' of the ITAT in the case of ACIT Vs. Vireet Investment Pvt. Ltd. (ITA 502/Del/2012; dated. 16.06.2017), wherein it has been held that the 'book profit' under Sec.115JB is not to be enhanced by the disallowance made by the A.O under Sec.14A. Per contra, the ld. Departmental Representative (for short 'D.R') relied on the orders of the lower authorities.

8. We have heard the authorized representatives for both the parties, perused the orders of the lower authorities and the material available on record. We find that the A.O while dislodging the claim of the assessee who had attributed an amount of Rs.441/- only as having been incurred for earning of the exempt dividend income and offered for disallowance under Sec. 14A, had failed to record his satisfaction as regards the correctness of

such claim of the assessee, having regard to the accounts of the assessee. Rather, we find that the A.O had dislodged the claim of disallowance made by the assessee under Sec. 14A on the ground that unlike as in the year under consideration, the assessee had offered disallowances of interest expenditure/other expenses in the preceding years. We are of the considered view that in the backdrop of the judgment of the Hon'ble Supreme Court in the case of Godrej & Boyce Manufacturing Co. Ltd. Vs. DCIT & Anr. (2017) 394 ITR 449 (SC), it is obligatory on the part of the AO to record his satisfaction as to why the claim of the assessee in respect of the expenditure attributed by him, if any, to earning of the exempt income was not to be accepted, having regard to the accounts of the assessee. The Hon'ble Supreme Court while deliberating on the said issue had observed as under:

“37. We do not see how in the aforesaid fact situation a different view could have been taken for the Assessment Year 2002-2003. Sub-sections (2) and (3) of Section 14A of the Act read with Rule 8D of the Rules merely prescribe a formula for determination of expenditure incurred in relation to income which does not form part of the total income under the Act in a situation where the Assessing Officer is not satisfied with the claim of the assessee. Whether such determination is to be made on application of the formula prescribed under Rule 8D or in the best judgment of the Assessing Officer, what the law postulates is the requirement of a satisfaction in the Assessing Officer that having regard to the accounts of the assessee, as placed before him, it is not possible to generate the requisite satisfaction with regard to the correctness of the claim of the assessee. It is only thereafter that the provisions of Section 14A(2) and (3) read with Rule 8D of the Rules or a best judgment determination, as earlier prevailing, would become applicable.”

We find that in the case of the assessee before us, as observed hereinabove, the claim of disallowance under Sec.14A of the assessee was dislodged by the A.O, not on the ground that having regard to the accounts of the assessee for the year under consideration, he was not satisfied with the correctness of the claim of expenses which the assessee had attributed to earning of the exempt income. Rather, a careful perusal of the order of the A.O reveals that he was persuaded to dislodge the claim of disallowance made by the assessee, on the ground that the assessee who in the earlier years was on his own offering the disallowance under Sec. 14A in respect of the interest expenditure in A.Ys 2005-06 to A.Y 2007-08, as well as had

further supplemented such disallowance by certain indirect expenses in A.Y 2008-09, had during the year under consideration taken a departure from the said consistent practise which was earlier being followed by him. We further find that the AO had also observed that in A.Y 2009-10, the assessee had made the disallowance under Sec. 14A r.w. Rule 8D. We have deliberated on the aforesaid observations of the A.O and are unable to persuade ourselves to subscribe to the same. We are of the considered view that as the A.O had failed to comply with the statutory requirement of recording his satisfaction as to why the claim of disallowance offered by the assessee under Sec. 14A in its return of income for the year under consideration was not to be accepted, having regard to its accounts, it can safely be concluded that the mandate of the judgment of the Hon'ble Supreme Court in the case of Godrej & Boyce Manufacturing Co. Ltd. Vs. DCIT & Anr. (2017) 394 ITR449 (SC) had not been satisfied by him. We thus, holding a conviction that as the order passed by the A.O in the case before us, is not in conformity with the judgment of the Hon'ble Apex Court in the case of Godrej & Boyce Manufacturing Company (supra), hence the disallowance of Rs.48,29,256/- made by the A.O cannot be sustained and is liable to be vacated. We thus, set aside the order of the CIT(A) and delete the further disallowance of Rs.48,29,265/- made by the A.O under Sec.14A r.w. Rule 8D.

10. The appeal of the assessee is allowed in terms of our aforesaid observations.

Order pronounced in the open court on 13.06.2018

Sd/-

(Shamim Yahya)

ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक 13.06.2018

Ps. Rohit

Sd/-

(Ravish Sood)

JUDICIAL MEMBER

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)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /
DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)

**आयकर अपीलीय अधिकरण, मुंबई / ITAT,
Mumbai**