

आयकर अपीलिय अधीकरण, न्यायपीठ – “B” कोलकाता,
IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH: KOLKATA
 (समक्ष) Before श्री जे. सुधाकर रेड्डी, लेखा सदस्य एवं/and श्री ऐ. टी. वर्की, न्यायीक सदस्य)
 [Before Shri J. Sudhakar Reddy, AM & Shri A. T. Varkey, JM]

I.T.A. No. 2227/Kol/2017
Assessment Year: 2013-14

Income-tax Officer, Ward-15(1), Kol.	Vs.	M/s. Manish Company Pvt. Ltd. (PAN: AABCM8092J)
Appellant		Respondent

Date of Hearing	12.11.2018
Date of Pronouncement	16.11.2018
For the Appellant	Shri Robin Choudhury, Addl. CIT, Sr. DR
For the Respondent	Shri Akkal Dudhwewala, FCA

ORDER

Per Shri A.T.Varkey, JM

This appeal preferred by the revenue is against the order of the Ld. CIT(A)-5, Kolkata dated 29.08.2017 for AY 2013-14.

2. The sole ground of appeal of revenue is against the action of the Ld. CIT(A) in deleting the addition made by the AO applying sec. 14A of the Income-tax Act, 1961 (hereinafter referred to as the “Act”) read with Rule 8D of the Income-tax Rules, 1962 (hereinafter referred to as the “Rules”)

3. At the outset itself, the Ld. AR drew our attention to the fact that the assessee company did not earn any exempt income which fact has been acknowledged by the AO in para 3 of the assessment order wherein the AO in his own words has stated that there was no exempt income earned during the financial year relevant to AY 2013-14. According to the Ld. Counsel, the fact that the assessee has not earned any exempt income has been taken

note by the Ld. CIT(A) at para 4.10 wherein the Ld. CIT(A) in his own words has held as under:

“As discussed earlier, the jurisdictional High Courts and ITAT had held that in the absence of any dividend income, section 14A read with Rule 8D will not come to play. The appellant in the year under appeal, as per his balance sheet, did not earn any dividend income.”

4. We note that the aforesaid finding of fact of the Ld. CIT(A) that the assessee was not in receipt of any exempt income has not been neither challenged by the Department nor the Ld. DR was able to point out from the records that the assessee had in fact earned any exempt income in the year under consideration. Since the assessee has not earned any exempt income applying the law as laid by the Hon'ble Delhi High Court in CIT Vs. Cheminvest Ltd. (2015) 378 ITR 33 (Del.) wherein it was held that when there being no exempt income earned by the assessee, no disallowance u/s.14A read with Rule 8D can be applied mechanically to disallow expenditure incurred to earn exempt income. The Hon'ble jurisdictional High Court in CIT Vs. M/s. Ashika Global Securities Ltd. in ITAT 100 of 2014, GA 2122 of 2014 dated 11.06.2018 has approved the aforesaid proposition of law. In such a scenario, we are not inclined to interfere with the action of the Ld. CIT(A).

5. Coming to the action of the Ld. CIT(A) in deleting the disallowance made by the AO applying clause (f) to sec. 115JB of the Act. Brief facts of the case are that the AO while computing the income of the assessee computed the book profit u/s. 115JB of the Act as per return at Rs.25,85,049/- and disallowed u/s. 14A Rs.1,15,35,418/- and book profit was assessed at Rs.1,41,20,467/-. Aggrieved, assessee preferred an appeal before the Ld. CIT(A) who was pleased to delete the same by holding as under:

“4.12 In view of the decisions as foregoing, the submission of the appellant as regards additions of the disallowance under Section 14A Rule with Rule 8D becomes infructuous and is of academic interest. However since the issue have been raised, the matters requires adjudication.

The A.O in the assessment order had made adjustment of the amount disallowed under section 14A read with Rule 8D as per clause (f) of section 115JB. The Learned A/R in his submission had submitted that this addition was arbitrary and against the spirit of the section. As per his submission-

" there is no enabling provision in Explanation 1 to Section 115JB for making any adjustment in respect of expenditure disallowed as per Rule 8D. It is submitted that

Section 115JB is a deeming provision and clause (f) of the said Section requires adjustment of 'expenditure relatable to exempt income'. The aforesaid expression is similar to the expression used in Section 14A(1) of the I.T. Act. Being a deeming provision, Section 115JB has to be strictly construed. Accordingly, only the provisions of Section 14A(1) can be imported into clause (f) of Section 115JB. The scope of clause (f) cannot be enlarged in order to bring within its ambit the provisions of Sub-Section 2 & 3 of Section 14A of the I. T. Act."

4.13 I have considered the Learned A/R submission and relevant judicial pronouncements on the issue. The jurisdictional Kolkata Bench of Income-tax Appellate Tribunal, in the case of Pretoria Enclave Ltd. Vs. DCIT (ITA No. 108/ol/2012), held that disallowance of expenditure made u/s. 14A read with Rule 8D while computing income under normal provisions, could not be added back while computing book profit u/s. 115JB. In the foregoing decision the ITAT, Kolkata held that provisions of Sub-sec. (2) & (3) of Sec. 14A cannot be imported into clause (f) of the Explanation to Sec. 115JA of the Act and therefore the disallowance as per Rule 8D cannot be made in computing book profit u/s. 115JA of the Act. Respectfully following the decision of the jurisdictional ITAT, the point of view of the appellant is conceded."

6. Aggrieved, revenue is in appeal before us.

7. We have heard rival submissions and gone through the facts and circumstances of the case. We note that while computing the income under the normal provision of Act, sec. 14A disallowance is not attracted as held by us (supra), since the assessee did not earn any exempt income. According to us, clause (f) of explanation – 1 to sec. 115JB of the Act is not applicable because clause (f) of explanation 1 to sec. 115JB of the Act relates to addition of expenditure relatable to any income to which sec. 10 (other than sec. 10(38) apply). Here in this case, there is no income exempt u/s. 10 [admittedly in this case income is not as per sec. 10(38)], therefore, the question of adding back expenditure in relation to such non-existing exempt income does not arise and, therefore, we do not find any infirmity in the action of the Ld. CIT(A) which is so confirmed.

8. In the result, the appeal of the revenue is dismissed.

Order is pronounced in the open court on 16/11/2018

Sd/-
(J. Sudhakar Reddy)
Accountant Member

Sd/-
(A. T. Varkey)
Judicial Member

Dated: 16th November, 2018

Jd.(Sr.P.S.)

Copy of the order forwarded to:

- 1 Appellant – ITO, Ward-15(1), Kolkata.
- 2 Respondent – M/s. Manish Company Pvt. Ltd., 130, Cotton Street, Kolkata-700 007.
- 3 CIT(A)-5, Kolkata. (sent through e-mail)
- 4 CIT , Kolkata
- 5 DR, Kolkata Benches, Kolkata (sent through e-mail)

/True Copy,

By order,

Sr. Pvt. Secretary