

**In the Income-Tax Appellate Tribunal,  
Delhi Bench 'C', New Delhi**

**Before : Shri H.S. Sidhu, Judicial Member And  
Shri L.P. Sahu, Accountant Member**

**ITA No. 1420/Del/2015  
Assessment Year: 2011-12**

ACIT, Circle 12(2), New Delhi.  <b>(Appellant)</b>	<b>vs.</b>	Indian Sugar Exim Corporation Ltd., C-Block, 2 <sup>nd</sup> Floor, Ansal Plaza, August Kranti Marg, New Delhi. PAN- AAACI 1163M <b>(Respondent)</b>
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**ITA No. 1449/Del/2015  
Assessment Year: 2011-12**

Indian Sugar Exim Corporation Ltd., C-Block, 2 <sup>nd</sup> Floor, Ansal Plaza, August Kranti Marg, New Delhi. <b>(Appellant)</b>	<b>vs.</b>	ACIT, Circle 12(2), New Delhi.  <b>(Respondent)</b>
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<b>Revenue by</b>	Smt. Ranu Mukharjee, Sr. DR
<b>Respondent by</b>	Dr. Rakesh Gupta, Advocate Sh. Somil Aggarwal, Advocate Sh. Sumit Jain, CA

<b>Date of Hearing</b>	25.10.2018
<b>Date of Pronouncement</b>	31.12.2018

**ORDER**

**Per L.P. Sahu, A.M.:**

These two appeals have been filed by the Revenue and the assessee against the order of CIT(A)-IV dated 30.12.2014 for the assessment year 2011-12 on the following grounds :

Grounds raised by Revenue :

1. *On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition of Rs. 27,69,778/- made by the A.O on account of disallowance of Provident Fund.*
2. *On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition of Rs. 82,56,417/- made by A.O on account of disallowance u/s 14A r.w.r. 8D of the IT Rules.*
3. *On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting addition of Rs. 50,42,504/- made by A.O on account of prior period expenses.*
4. *On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in allowing Rs. 43,96,504/- while calculating Book Profit u/s 115JB of the Act.*

Grounds raised by assessee:

*“1(a) That the learned CIT(A) erred , both on facts and in law in sustaining a disallowance of Rs. 1,52,702/- towards interest u/s 14A of Income Tax Act.*

*1(b) The Id CIT(A) failed to appreciate that the assessee had made brought forward investments of Rs 10.75 Crores (appearing as at 31.3.2010) and Rs 9.75 Crores (appearing as at 31.3.2011) in earlier years from the redemption proceeds of earlier investments / Realisation from Debtors and /or interest free funds available with the assessee and as such disallowance u/s 14A with respect to interest of Rs 55202/- deserves to be deleted.*

*1(c) That the Id CIT(A) further erred in considering that the investments of Rs 10.75 Crores (as at 31.3.2010 ) and Rs 9.75 Crores (as at 31.3.2011) were capable of earning exempt income and had been made out of borrowed funds in total disregard of the facts and evidences on record.*

*2(a) That the Id CIT(A) grossly erred in not deleting the addition of Rs 50,42,504/- made by the Assessing Officer on account of Prior Period Expenditure.”*

2. The brief facts of the case are that the assessee company is engaged in the business of export/import of sugar and its bye-product. The assessee filed its return of income on 29.07.2011 declaring loss of Rs.11,25,10,024/- and book profit under the normal provisions u/s. 115JB shown at Rs.1,85,46,483/-. The case was selected for scrutiny and statutory notices were issued. During the course of assessment proceedings, the Assessing Officer observed that the assessee has made employer's contribution to provident fund trust to the extent of Rs.27,69,778/-. The name of the provident fund trust of the assessee company is Indian Sugar General Industry Export Import Corporation, Delhi Provident Fund, which has not invested the funds as per prescribed Rules during A.Y. 2003-04. Since the Provident Fund Trust has not invested the funds as per Rule 67 of the Income-tax Rules, therefore, it was not considered as a Recognized Provident Fund Trust. The Assessing Officer, thus, disallowed entire contribution of Rs.27,69,778/- and added back to the total income of the assessee u/s. 43B of the IT Act.

3. The Assessing Officer further noted that the assessee has shown income of Rs.328.39 lacs by way of interest income and Rs.1,09,000/- as dividend on mutual funds which was claimed as exempt u/s. 10 of the IT Act. The assessee has made suo moto disallowance of Rs.97,500/- u/s. 14A. The assessee has further paid interest on borrowings of Rs.10,81,000/-. The Assessing Officer required the assessee to explain why disallowance u/s. 14A read with Rule 8D

may not be made. Against this, the assessee replied that the assessee had huge surplus funds and interest free funds available at its disposal, which are more than the investments made by the assessee and the interest expenditure has been incurred in relation to business of the assessee and not for investment activities. The Assessing Officer did not accept the submissions of the assessee and after relying on some case laws, calculated the disallowance u/s. 14A read with Rule 8D at Rs.83,53,917/- and after giving credit of Rs.97,500/- disallowed by assessee itself, made an addition of balance amount of Rs.82,56,417/- to the income of the assessee.

4. The Assessing Officer further noted that the assessee has claimed Rs.43,96,504/- and Rs.6,86,000/- on account of outflow of contingent liabilities and disallowed at the time of provision. The Assessing Officer required the assessee to explain why it should not be treated as prior period expenditure and added to the income of the assessee. In reply, the assessee submitted that an eviction & Mesne Profits case was going on with old land lord, Subhash Kohli and others from several years, which was settled during the year with the receipt of order from the appellate court. This amount was pertaining to the period 10.08.1990 to 30.09.2001. Therefore, the ld. Assessing Officer treated it as a prior period expenditure and also treated it as penal in nature, which is not allowable in the Income-tax Act. Accordingly, he added the entire amount of Rs.50,42,504/- in the total income of the assessee.

5. Aggrieved from the order of the Assessing Officer, the assessee preferred appeal before the Id. CIT(A), who after considering the submissions of the assessee deleted the addition made u/s. 43B of Rs.27,69,778/-. The Id. CIT(A) also deleted the addition made u/s. 14A and further made calculation of disallowance u/s. 14A at Rs.55,202/-. The prior period expenditure disallowed by the Assessing Officer, was also deleted by the Id. CIT(A). Aggrieved from the order of Id. CIT(A), the Revenue as well as the assessee is in appeal before the ITAT.

6. The Id. DR relied on the order of Assessing Officer and submitted that the Provident Fund Trust was not applying the procedures for making investments as per the prescribed Rules. Therefore, it cannot be said that the assessee has deposited any provident fund within the prescribed period as per section 43B. Therefore, the Assessing Officer has rightly disallowed the employer's contribution of Rs.27,69,678/-. In respect of disallowance u/s. 14A read with Rule 8D, the Id. CIT(A) is not justified in deleting the addition made by the AO. In the present facts of the case, the Assessing Officer has rightly applied the case laws and accordingly calculated the disallowance u/s. 14A. He has recorded proper satisfaction as per the provisions of section 14A. Therefore, the Assessing Officer's order should be restored. He further submitted that the Id. CIT(A) has wrongly allowed prior period expenses as current year's expenditure. For computing the income, only current year's expenditure should have been considered. The Id. CIT(A) has wrongly accepted the contention of the assessee regarding prior period expenditure for calculation

of book profit to the tune of Rs.43,96,504/-. He accordingly urged for restoration of the assessment order.

7. On the other hand, the ld.AR submitted that the ld. CIT(A) has rightly allowed the appeal of the assessee and relied on the submissions made before the ld. CIT(A). It was submitted that the Provident Fund Trust was recognized Trust as per section 2(38) of the Act till the date. Therefore, there cannot be any disallowance by considering the Provident Fund Trust as not recognized. As evidence from the order of CIT-3, Delhi vide letter dated 25.08.1976, letter reference F. No. CIT/HQ-III/PF-36/75-76/2370. He also referred to the decision in the case of Gestentner Duplicators Pvt. Ltd. vs. CIT (1979) 117 ITR-1. It was also submitted that Hon'ble ITAT in assessee's case for the assessment year 2003-04 had deleted the addition on account of Provident Fund by holding that the assessee's Provident Fund Trust is a Trust recognized u/s. 2(38) of the IT Act and the Hon'ble Jurisdictional High Court has confirmed the order of ITAT. In respect of disallowance u/s. 14A r.w.r. 8D, the ld. AR submitted that the ld. CIT(A) has rightly deleted the addition made by the Assessing Officer. The assessee had sufficient surplus funds for making investments. The borrowed funds have been utilized for business purpose. No any investment has been made out of the borrowed funds. The assessee has already made disallowance of Rs.97,500/- which has been accepted by the ld. CIT(A) towards disallowance for administrative expenses. There was total investments of Rs.1.95 crores standing at the opening and closing of the year. No any investment was made during the year to earn any exempt income. The ld.AR, however, submitted that the ld. CIT(A) has committed an error while

calculating the disallowance u/s. 14A to the extent of Rs.1,52,702/- as against Rs.97,500/- already disallowed by the assessee. The ld. CIT(A) has wrongly presumed that the borrowed funds have been utilized for the purpose of investments on which the income is exempt income. The ld. AR relied on several decisions which are placed at paper book. He also relied on the judgment of co-ordinate Bench of Tribunal in assessee's own case for the assessment year 2010-11.

8. Further, in respect of prior period expense of Rs.50,42,504/-, the ld. AR relied upon the order of the first appellate authority and submitted that the liability has been discharged as per order of appellate court which has been rightly deleted by the ld. CIT(A). In respect of Rs.43,96,504/-, the ld. CIT(A) has rightly allowed this amount for calculation of book profit u/s. 115JB of the IT Act. It was therefore, contended that the order of the ld. CIT(A) should be confirmed on this account.

9. After hearing both the parties and perusing the entire materials available on record, we observe that the ld. CIT(A) has done good reasoned order after considering the materials available before him. The findings reached by him are as under :

*5. I have carefully considered the facts of the case in the light of the submission made by the applicant and the applicable law in this regard. Accordingly, my decision on various grounds of appeal is as under:*

*5.2 Regarding Ground No.2 of the Appeal, I find that the decision of the hon'ble Supreme Court in the case of M/s. Mysore Minerals (Supra) is squarely*

*applicable on the facts of the case. The Hon'ble ITAT has already decided this issue in favour of the Appellant in earlier years, i.e. 2004-05 to 2007-08. Therefore, keeping in view the same, the addition made on this ground is deleted.*

*5.3 Regarding the Ground No.3 of the Appeal relating to disallowance of Foreign Travelling expenses, I hold that the action of the AO was unjustified in the absence of any adverse evidence stating that the purpose of the foreign travel by the company chairman was not for the business purposes and without suggesting that any amount was spent for personal purposes. It is evident that the above journey of the Co- Chairman of the company was for the business purposes requiring representation from India in international conference and therefore, participation in the conference was squarely of business purposes of the Appellant. Therefore, keeping in view, my decision in earlier years, the addition made on this ground is also deleted.*

*5.4 Regarding the Ground No. 4 relating the disallowance out of employees' contribution to Provident Fund, the AO was of the view that since registered PF Trust of the Appellant has not invested the funds as per Rule 67 of the IT Rules. it was not entitled to be considered as recognized Provident Fund Trust. In my considered view, since the PF Trust of the Appellant has been approved as the registered Trust by the competent authority, i.e. CIT, who has not revoked the decision, the AO could not have usurped the jurisdiction of the CIT and have held that the Trust was not registered. The matter had been decided in favour of the Appellant by the ITAT for AY 2003-04 to AY 2007-08, and the Appeal of the revenue against the same was dismissed by the Hon'ble Delhi High Court for AY 2003-04. Keeping in view the above, as there is no change in the facts, the disallowance cannot be sustained. Accordingly, the Appellant gets full relief on this ground.*

*5.5 Regarding Ground No.5 of the Appeal, I find that the Ld. Assessing Officer has invoked the provisions of Rule 8D having not been satisfied with the claim of the Appellant. The Appellant has not raised any objection on invoking of Rule 8 D but has submitted that the computation under that Rule may be revised based on due consideration of its submission.*

*5.5.2 I have gone through the submissions of the appellant and have considered the facts and evidences available on record. I find that the appellant had already disallowed an amount of Rs. 97,500/- in the return of income in respect of expenses attributable to making investments which generated tax-exempt*

*income. This computation was made under Rule 8D(2)(iii) in respect of mutual funds which earned exempt dividend income as per details given below :*

*(i) Investments earning exempt income as at 1.4.2010 : Rs 1,95,00,000 out of total investments of Rs 153,24,55,000*

*(ii) Investments earning exempt income as at 31.03.2011: Rs. 1,95,00,000 out of - total investments of Rs 145,67,62,000 :*

*(iii) Average Investments considered as earning exempt income: 1,95,00,000 whereas AO has considered the same at Rs. 183,41,72,500.*

*The appellant has not made any disallowance under Rule 8D (2) (ii) by stating that no borrowed funds were utilised towards investment activity and the entire interest was being incurred towards sugar business of the assessee . On the other hand, the AO has considered the entire amount of interest expenditure of Rs 10,81,000 for making disallowance under Rule 8D (2) (ii). Thus, the following issues require examination:*

*Issue No. i). Whether the contention of the appellant that the investments in growth schemes earning taxable capital gains should be excluded for calculation of disallowance.*

*Issue No. ii). Whether and to what extent, the interest bearing funds were used for investment activity?*

*5.5.3 Regarding Issue No. (i), the appellant has filed details of investments as at 1/4/2010 and as at 31/3/2011 under Dividend scheme and investments in tax free bonds and has contended that the balance investments are in growth scheme, in which no dividend income is to be earned by the investor and the only income received by the investor is in the nature of capital gains on redemption, which is taxable.*

*I have gone through the statement of investments furnished by the Assessee and find the contention of the assessee as correct. The AO has considered the entire investments as for earning exempt income and failed to appreciate that the investments in growth schemes do not yield exempt Divided Income and such income received is taxable as capital gains on redemption. Accordingly, for the purpose of computing the 'average investments', Investments capable of earning exempt income as at 1.4.2010 are taken at Rs 1,95,00,000 , while Investments earning exempt income as at 31.3.2011 are also taken at Rs 195,00,000. In view*

of this, the 'average Investments' considered as capable of earning exempt income are taken at Rs. 1,95,00,000.

5.5.4 Regarding the Issue No. (ii), the appellant has claimed that no borrowed funds were used for making investments earning exempt income. On the other hand, the Id. AO has considered the entire amount of interest expenditure of Rs. 10.81 lacs for computing disallowance under Rule 8D(2)(ii).

Based on the details furnished -by the appellant, it was ascertained that during the year, the appellant had made new investments of Rs. 51.74 Crores, whereas it has redeemed investments of book value 59.32 crores. The appellant had furnished statement of investments, which shows that the entire new investments were sourced out of the redemption proceeds of the investments made in earlier years. Thus, so far as new investments are concerned, it is evident that no amount of borrowed funds was used for making investment earning exempt income during the financial year. I also find that the appellant had brought forward Investments of Rs 251,24,16,625/- as on 1.4.2008. My Ld. Predecessor, while deciding the appeal for AY 2008-09, had held that, the following investments worth Rs. 35 crores were made in FY 2007-08 through mixed funds:

Date of Investment as per Bank Statement '':	Amount of Investment (In Rs.)	Investment Name
21.6.2007	14,00,00,000	Birla Mutual Fund
12.07.2007	14,00,00,000	J M Mutual Fund
20.07.2007	1,00,00,000	Optimix Mutual Fund
31.7.2007	3,00,00,000 (out of 6.25 Crores invested )	Optimix Mutual Fund
30.10.2007	2,00,00,000	SBI Mutual Fund
19.12.2007	1,00,00,000 (out of 2 Crores invested)	Prudential ICICI Mutual Fund
	35,00,00,000	

I find that out of the above investments of Rs 35 Crores, the assessee has brought forward investments of Rs 10.75 Crores left as at 1.4.2010, and Rs 1 Crore out of the same was redeemed during FY 2010-11. Thus Rs 9.75 Crores of investments out of Rs 35 Crores (of FY 2007-08) remained outstanding as at 31.3.2011 in respect of which mixed funds may have been used in earlier years. In view of the same, for-working out disallowance under Rule 8D (2)(ii), average investments of Rs 10.25 Crores (Rs 10.75 Crores as at 31.3.2010 and Rs 9.75

*Crores as at 31.3.2011) alone are being taken, since use of mixed funds could be held only to that extent. As held above, the remaining investments made during the year, taxable or tax exempt, were made out of redemption proceeds of investments made in earlier years / interest free source and thus held to be not from interest bearing funds. Keeping in view the above, the disallowance under Rule 8D is computed as under:-*

*Rule 8D(2)(ii)*

- (a) *Interest expenditure = Rs. 10.81 lacs*
- (b) *Average investment where Mixed funds were used = Rs 1025 lacs*
- (c) *Average Total Assets = Rs 19093.505 lacs*

*Disallowance = Rs 55,202*

*Rule 8D(2)(iii)*

*(a) Average investment capable of earning exempt income= Rs 1,95,00,000*

*Disallowance = 0.5% of Rs 195,00,000 = 97,500*

*Total disallowance u/s 14A read with Rule 8D = 55202 + 97500 = Rs 1,52,702*

*Hence, in view of the above, out of total disallowance of Rs 83,53,917 made, an amount of Rs 1,52,702/- is confirmed as disallowance under section 14A. The appellant accordingly gets a relief of Rs 82,01,215/-.*

*5.6 Regarding Ground No 6 of the Appeal, the contention of the appellant that payment of mesne profits on the basis of decision of Hon'ble High Court dated 13.7.2010 cannot be held as prior period expenditure is acceptable, as the liability for the same had crystallized during the year only upon determination of the legal liability payable by the appellant by the Hon'ble High Court, which has put to rest the dispute in the matter. I also agree with the contention of appellant that payment on account of mesne profits is arising out of contract of rent and is as such not in the nature of penalty for infraction of any law and is thus an allowable expenditure u/s 37 of the Income Tax Act.*

*5.6.2 The AR's plea that such a liability is allowable while computing book profit u/s 115JB is also supported by the decision of jurisdictional High Court's Order in *Khaltan Chemicals & Fertilizers* reported at (2008) 175 Taxman 195, on the same issue.*

*The Hon'ble High Court in the said decision has held that the net profit (as referred to in section 115JA) is to be computed only after deducting the expenses on prior period/extraordinary items, which are in the nature of business expenditure, but shown separately in the profit and loss account due to the E*

*requirement of the AS-5 -prescribed by-the Institute of Chartered Accountants of India. Keeping in view the above and following the aforesaid decision of Hon'ble Delhi High Court, I hold that withdrawal of Rs 43,96,504/- from provision is to be reduced while calculating Book Profits u/s 115JB.*

*5.7. Regarding Ground No 6(d), 7 and & 8 of the Appeal, with respect to disallowance under Section 14A, the amount of disallowance under normal provisions shall be disallowance for calculation u/s 115JB. With respect to reduction of Rs 43,96,504 from calculation of Book profit during the year, I agree with the contention of the appellant that the same is to be made in view of the provision under the law. The appellant has demonstrated that the said amount was considered as part of Taxable Income as well as taxable for the purpose of calculation of book profits in earlier years in AY 2004-05. Accordingly, the AO is directed to allow Rs 43,96,504/-while calculating Book Profit u/s 115JB of the Income Tax Act.”*

10. From the above order of the Id. CIT(A), it is clear that in respect of the issue of Provident fund, the Co-ordinate Bench of ITAT has decided it in favour of the assessee in the assessment year 2003-04. No contrary material is brought on record on behalf of the Revenue to take a different view. The PF Trust registration is continuing till date. Therefore, it cannot be said that it is an un-recognized Provident Fund Trust as per Act.

11. With respect to disallowance u/s. 14A, we, however, further add that the exempt income shown by the assessee is of Rs.1,09,000/- during the year under consideration and as per decision of ITAT in the case of assessee itself for the assessment year 2010-11, the disallowance u/s. 14A cannot exceed to the exempt income received by the assessee. In view of this, the disallowance made by the Id. CIT(A) of Rs.1,52,702/- cannot be said to be justified and the same is restricted to Rs.1,09,000/-. Accordingly, ground No. 1 of the assessee's appeal deserves to be partly allowed.

12. Ground No. 2(a) raised by the assessee appears to be misconceived, as the issue agitated in this ground has been decided by the Id. CIT(A) in favour of the assessee, as can be seen from the findings of Id. CIT(A) reproduced above.

13. Regarding prior period expense, the liability has been crystallized during the year as per order of the appellate court. Therefore, the expenditure has rightly been allowed by the Id. CIT(A) u/s. 37 of the IT Act and we do not find any justification to interfere with the findings reached by the Id. CIT(A) on this score. As regards the computation of book profit u/s. 115JB, the assessee has submitted form No. 29B (paper book page 4 & 5) read with Rule 40B before both the authorities below. The Assessing Officer has not disregarded this certificate of the Chartered Accountant whereby it has been certified that the amount of Rs.43,96,504/- has been considered for computing the book profit. This statutory form has to be relied upon. Accordingly, the Id. CIT(A) has rightly allowed the amount of Rs.43,96,504/- for calculation of book profit u/s. 115JB of the IT Act.

14. In the result, the appeal of the Revenue is dismissed and that of the assessee is partly allowed.

Order pronounced in the open court on 31.12.2018.

Sd/-

**(H.S. Sidhu)**  
**Judicial member**

Sd/-

**(L.P. Sahu)**  
**Accountant Member**

Dated: 31.12.2018

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