

IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES “B” BENCH: BANGALORE

BEFORE SHRI A.K. GARODIA, ACCOUNTANT MEMBER
AND
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA. No.1518/Bang/2018
Assessment Year: 2013-14

M/s. J J Glastronics Pvt Ltd., 26-B, Electronics City, Hosur Road, Bengaluru – 560100. PAN: AAACJ 4330 P	vs.	Income Tax Officer, Ward -4(1)(1), BMTC Building, Koramangala, Bengaluru-560095.
(Appellant)		(Respondent)

For Assessee:	Sri Shree Hari Kutsa
For Revenue :	Sri I T Prakash, Addl. CIT

Date of Hearing :	04.04.2019
Date of Pronouncement :	10.04.2019

ORDER

PER PAVAN KUMAR GADALE, JM.

The assessee has filed an appeal against the order of the CIT (A)-4, Bangalore, dated 27/03/2018 passed u/s 154 and u/s 250 of the IT Act, 1961 for the assessment year 2013-14. The assessee has raised the following grounds of appeal:-

- “(1) *The order of the Ld Commissioner passed u/s 250 of the Act is opposed to law, equity, weight of evidence, probabilities and the facts and circumstances in the appellant’s case.*
- “(2) *The Ld CIT (A) is not justified in holding that the jurisdiction assumed by the Ld AO under the provisions*

of section 154 of the Act is proper on the facts and circumstances of the case.

- (3) The Ld CIT (A) is not justified in holding that the Ld AO was justified in adding back disallowance u/s 114A while computing Book Profitss u/s 115JB on the facts and circumstances of the case.*
- (4) The Ld CIT (A) failed to appreciate that interest u/s 234B and 234C are not sustainable in law and on the facts and circumstances of the case.”*

2. The assessment of the assessee was completed u/s 143(3) of the Act on 07/03/2016 with total income NIL. The Assessing Officer found that there is a disallowance u/s 14A but, while making the computation, for determining the Book Profitss, the said disallowance was not added for the provisions of section 115JB of the Act. Therefore, notice u/s 154 of the Act was issued. Hence there was no response and it is a mistake apparent from record, the assessment was modified with computation of MAT with disallowance u/s 14A and AO passed the order u/s 154 on 25/09/2017 determining the total income of Rs. 43,57,781/-. Aggrieved by the order, the assessee filed an appeal before the CIT (A).

3. The Ld CIT (A) considered the grounds raised by the assessee and findings of the Assessing Officer u/s 154 proceedings for disallowance of 14A in computation of Book Profitss and assessee's submissions dealt with various provisions of the law and finally dismissed the appeal of the assessee. Aggrieved by the order, the assessee has preferred an appeal before the Tribunal.

4. Before us, Ld AR submitted that the CIT (A) erred in confirming the addition made by the Assessing Officer in determining the Book Profitss u/s 115JB. *Prima facie* the disallowance u/s 14A should not be considered for determining the Book Profitss as it is a restrictive provision and the Ld AR supported his stand by filing the written submissions and judicial decisions.

5. Contra, Ld DR relied on the orders of the lower authorities.

6. We have heard the rival submissions and perused the material available on record. The sole disputed issue is in respect of disallowance u/s 14A for determining the Book Profits u/s 115JB. The Assessing Officer has completed assessment u/s 143(3) and subsequently was of the opinion that in determining the Book Profits disallowance u/s 14A was excluded. Therefore, issued notice and passed the order. We found that the Ld AR has substantiated his claim with the judicial decisions and the Coordinate Bench decision in calculating the disallowance u/s 14A and relied upon [2017] 58 ITR (Trib) 313 (ITAT [Del]) in the case of ACIT vs. Vireet Investment Pvt Ltd in respect of the disallowance at para 6 which is as under:

“6. We have considered the submissions of both the parties and have perused the record of the case. There cannot be any quarrel with the submissions of ld. Sr. counsel for the assessee that section 115JB is a complete code in itself. Chapter XII-B provides alternate scheme for computing tax liability of certain companies, whose total income under

normal provisions is below the threshold Book Profits as prescribed under Chapter XII-B. Under section 115JB this threshold limit is 18.5%. Thus, total income as computed under the normal provisions of the Act in respect of any previous year relevant to the assessment year commencing on or after the 1st day of April 2012, is less than 18.5% of its Book Profits, such Book Profits shall be deemed to be the total income of the assessee and tax shall be payable on such total income @18.5%. Thus, the scheme of the Act is that the computation is first made under the normal provisions of Income-tax Act and, thereafter, under an alternate scheme provided u/s 115JB for computing total income as per the prescribed method. If the tax liability on the basis of total income as per MAT provisions is more than the tax computed under the normal provisions of the Act, then the former becomes the final tax liability of the assessee. The mode of computation of Book Profits has been prescribed under MAT provisions. The issue posed for our consideration is whether computation provisions prescribed for computation of total income under normal provisions with reference to section 14A can or cannot be taken into consideration while computing Book Profitss under MAT provisions.

7. Further, the Ld AR submitted that as per the financial statements referred at page 30 of the Paper Book, there is no dividend income received by the assessee and hence no disallowance is warranted. Ld AR relied on the decision of the Delhi ITAT Bench in the case of P.N. Paper Mills Private Limited vs. ITO (ITA No.5567/Del/2014) at para 5 which is as under:

“5. We have heard the senior DR and have also perused the material on record. It is undisputed that the AO has assumed jurisdiction under section 154 of the Act for making the disallowance under section 14A of the Act to the Book Profitss computed under section 115 JB of the Act. The question as to whether 14A disallowance can be made to the Book Profitss or not is a debatable issue and it our considered opinion that the AO has got no jurisdiction to make such an addition while resorting to the provision of section 154 of the Act as the scope of said section is very limited. ITAT Mumbai Bench has held in the case of Ferani Hotels Pvt. Ltd in ITA No.857/M/2013, vide order dated 17.11.2014, that the disallowance computed under section 14A read with Rule 8D is to be added while computing Book Profitss under section 115JB. On the other hand, ITAT Delhi Bench in the case of Quippo Telecom Infrastructure vs.

ACIT in ITA No.4931/Del/2010, vide order dated 29.07.11 and ITAT Bangalore Bench in the case of JSW Energy Ltd. vs. ACIT in ITA No.244/Bang./2010, vide order dated 22.02.13, have held that the disallowance made under section 14A read with Rule 8D is not to be added while computing the Book Profits under section 115JB. It has been held that the only actual expenditure debited to the Profit & Loss account is to be taken into consideration while computing the Book Profits under section 115JB. This shows that the issue is quite debatable and under such circumstances, in our view, it was beyond the powers of the AO, exercisable under section 154 to make an addition on a debatable issue as the original assessment in this case had been completed under section 143(3) of the Act. Merely because another view is possible cannot be a ground to rectify the order under section 154 of the Act as the same cannot be said to be a mistake apparent on record. ITAT Mumbai Bench has also taken a similar view in the case of Beekaylon Synthetics Pvt. Ltd v. ACIT in ITA No. 7558/Mum/2013 which we respectfully follow and hold that the AO had no power to make a disallowance u/s 14A of the Act to the Book Profits computed u/s 115JB by resorting to section 154 proceedings. We, accordingly, quash the order passed by the AO u/s 154 of the Act.”

8. Therefore, we considering the ratio of above decision and facts of the case which are similar and are of the opinion that the disallowance u/s 14A shall not be considered for computation of Book Profits u/s 115JB of the Act. Accordingly, we set-aside the order of the CIT (A) and direct the Assessing Officer to delete the addition and allowed grounds of appeal of the assessee.

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

Order pronounced in the open court on 10th day of April, 2019.

Sd/-
(A.K. GARODIA)
ACCOUNTANT MEMBER

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Dated: 10th April, 2019.

OKK, Sr.PS

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1.	The appellant
2.	The Respondent
3.	CIT (A)
4.	Pr. CIT
5.	DR, ITAT, Bangalore.
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