

IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH : BANGALORE

BEFORE SHRI B.R BASKARAN, ACCOUNTANT MEMBER AND
SMT. BEENA PILLAI, JUDICIAL MEMBER

ITA No.851/Bang/2019
Assessment year : 2013-14

Davalagiri Property Developers Pvt. Ltd., Prerana Chambers, 2 nd Floor, Nehru Nagar, Main Road, Kumar Park West, Bengaluru-560 020.	Vs.	The Asst. Commissioner of Income- tax, Circle – 2(1)(2), Bengaluru.
PAN – AACCD 3575 A		
APPELLANT		RESPONDENT

Appellant by	:	Shri Ravish Rao, C.A
Respondent by	:	Shri R.N Siddappaji, Addl. CIT (DR)

Date of hearing	:	10.07.2019
Date of Pronouncement	:	12.07.2019

ORDER

Per B.R Baskaran, Accountant Member

The appeal filed by the assessee is directed against the order dated 22-02-2019 passed by Ld CIT(A)-2, Bengaluru and it relates to the assessment year 2013-14. The assessee is aggrieved by the decision of Ld CIT(A) in partially confirming the addition to Book profit of expenses relating to exempt income.

2. We heard the parties and perused the record. The assessment in the hands of the assessee was originally completed on 28.03.2016 u/s 143(3) of the Act. Subsequently the AO noticed that the addition made u/s 14A of the Act, being expenses related

to exempt income amounting to Rs.9,47,670/- t the total income was not added while computing book profit u/s 115JB of the Act. Accordingly the AO passed a rectification order dated 11.09.2017, wherein he added Rs.9,47,060/- to the book profit.

3. The assessee challenged the addition so made to the book profits by filing appeal before Ld CIT(A). Before the first appellate authority, the assessee submitted that it did not receive any exempt income and hence no disallowance u/s 14A is called for. In the alternative, the assessee submitted that if at all any addition is called for, then the same should be restricted to Rs.4,39,299/-. Taking cue from the alternative submission, the Ld CIT(A) gave partial relief to the assessee and confirmed addition to the extent of Rs.4,39,299/-.

4. The case of the assessee before us is that the Ld CIT(A) has not adjudicated the main contention, but chose to confirm the alternative contention. He submitted that the assessee did not earn any exempt income and hence no disallowance u/s 14A for the purposes of sec.115JB is also called for. On the contrary, the Ld D.R submitted that the assessee should not have any grievance, since the Ld CIT(A) has accepted the alternative contentions of the assessee.

5. However, we notice that the issue about addition of expenses relating to exempt income to be made in terms of provisions of sec.115JB was decided by the Special bench of Delhi ITAT in the case of Vireet Investments (82 taxmann.com 415), wherein it has

been held that the computation made u/s 14A of the Act cannot be adopted for the purposes of computing book profit u/s 115JB of the Act, meaning thereby, the AO is required to compute the addition, if any, by considering the facts prevailing in each case. In the instant case, we notice that the AO has adopted the disallowance computed by him u/s 14A of the Act for the purposes of sec.115JB and the same is contrary to the decision rendered by the Special bench in the above said case.

6. The Ld A.R submitted that the provisions of clause (f) of Explanation 1 to sec.115JB of the Act provides for addition of the amount or amounts of expenditure relatable to any exempt income to the net profit. He submitted that the assessee did not earn any exempt income and hence the question of apportioning any expenses does not arise. Accordingly, he submitted that no addition is called for while computing book profit u/s 115JB of the Act.

7. Since the computation made by the AO is contrary to the decision rendered by Special bench of Delhi ITAT and since the AO did not examine the contentions of the assessee discussed in the preceding paragraph, we set aside the order passed by Ld CIT(A) and restore this issue to the file of the AO with the direction to examine the contentions of the assessee by following the decision rendered by Special bench of ITAT, referred supra.

8. In the result, the appeal of the assessee is treated as allowed for statistical purposes.

Order pronounced in the Open Court on **12th July, 2019.**

Sd/-
(Beena Pillai)
Judicial Member
Bangalore,
Dated, 12th July, 2019.

Sd/-
(B.R Baskaran)
Accountant Member

/ vms /

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore.

1. Date of Dictation
2. Date on which the typed draft is placed before the dictating Member
3. Date on which the approved draft comes to Sr.P.S
4. Date on which the fair order is placed before the dictating Member
5. Date on which the fair order comes back to the Sr. P.S.
6. Date of uploading the order on website.....
7. If not uploaded, furnish the reason for doing so
8. Date on which the file goes to the Bench Clerk
9. Date on which order goes for Xerox & endorsement.....
10. Date on which the file goes to the Head Clerk
11. The date on which the file goes to the Assistant Registrar for signature on the order
12. The date on which the file goes to dispatch section for dispatch of the Tribunal Order
13. Date of Despatch of Order.