

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "B", MUMBAI

BEFORE SHRI MAHAVIR SINGH, JUDICIAL MEMBER
AND
SHRI RAJESH KUMAR, ACCOUNTANT MEMBER

ITA No.2675/Mum/2018
Assessment Year : 2013-14

Dy. Commissioner of Income Tax, Central Circle -8(4), MUMBAI	Vs.	M/s. Bermaco Energy Systems Pvt. Ltd., D-73/1, TTC Industrial area, MIDC Road, Turbhe, NAVI MUMBAI [PAN : AAACB2727N]
(Appellant)		(Respondent)

Appellant By : Shri S. Abi Rama Karthikeyan, DR
Respondent By : Shri J.P. Bairagra, AR

Date of Hearing : 08-07-2019 | Date of Pronouncement : 19-07-2019

ORDER

PER MAHAVIR SINGH, J.M:

This appeal filed by the Revenue is directed against the order of the Commissioner of Income Tax (Appeals)-50, Mumbai, dated 27-02-2018 in Appeal No. CIT(A)-50/10106&10385/16-17. The assessment was framed by the Asst. Commissioner of Income Tax, Central Circle-8(4), Mumbai, u/s.143(3) of the Income Tax Act, 1961 [herein after referred to as 'the Act'] for the AY 2013-14, vide his order dated 22-03-2016.

2. The two inter-connected issues in this appeal of Revenue are against the order of CIT(A), deleting the addition made by the AO by disallowing the expenses relatable to exempt income, by invoking the provisions of Section 14A r.w.r. 8D of Income Tax Rules, 1962 (Rules). The CIT(A) also deleted the addition made by the AO in regard to the disallowance of expenses by invoking the provisions of Section 14A r.w.r.8D while computing book profit u/s.115JB of the Act. For these inter-connected issues, the Revenue has raised the following grounds:

1. *"On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition of Rs.87,17,124/- made under section 14A r.w. Rule 8D of the Act by relying the decision of Hon. ITAT in the case of M/s. Future Corporate Resources Ltd. vs. Dy. CIT(OSD)-8(1), Mumbai reported in 167 ITD 33 without appreciating the fact that the decision of the Hon. ITAT has not been accepted by the Department and appeal under section.260A is filed before the Hon'ble Bombay High Court which is pending for adjudication,"*

2 *"On the facts and circumstances of the case and in law, the Ld. CIT(A)has erred in deleting the addition of Rs.87,17,124/- made under section 14A r.w 115JB by relying the decision of the Hon. Bombay High Court in the case of CIT vs. JSW Energy Ltd [2015] 60*

taxmann.com 303 (Bombay) without appreciating the fact that the provisions of section 115JB(2) r.w. Explanation-1 r.w. clause f of which requires any expenditure in relation to the exempt income to be taken into consideration while computing the book profit under section 115JB."

3. *"On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition of Rs.87,17,124/- made under section 14A r.w. 115JB without appreciating the fact that the provisions of section 115JB(2) r.w. Explanation-1 r.w. clause (f) of which requires any expenditure in relation to the exempt income also to be taken into consideration while computing the book profit under section 115JB and where the Department has filed SLP in the case of CIT vs. JSW Energy Ltd [2015] 60 taxmann.com 303 (Bombay) and ignoring the decision of Hon. ITAT in the case of Viraj Profiles Limited for AY-2008-09, vide ITA No. ITA NO 4439/Mum/2013 dated 21.10.2015"*

4. *The appellant prays that the order of the CIT(A) on the above grounds be set aside and that of the Assessing Officer be restored.*

5. *The appellant craves leave to amend or alter any ground and/or add new grounds which may be necessary”.*

3. At the outset, it is stated that assessee has earned exempt income i.e., dividend income to the extent of ₹1,85,613/-. The CIT(A) has restricted the disallowance to the extent of dividend income. We find that this issue is squarely covered by the decision of the Hon'ble Bombay High Court in the case of Pr.CIT Vs. Ballarpur Industries Limited in Income Tax Appeal No.51 of 2016, wherein this issue has been considered following the judgment of Hon'ble Delhi High Court in the case of Chem invest Limited vs. CIT (2015) 378 ITR 33 (Delhi) held as under: -

“On hearing the learned Counsel for the Department and on a perusal of the impugned orders, it appears that both the Authorities have recorded a clear finding of fact that there was no exempt income earned by the assessee. While holding so, the Authorities relied on the judgment of the Delhi High Court in Income Tax Appeal No. 749/2014, which holds that the expression “does not form part of the total income” in Section 14A of the Income Tax Act, 1961 envisages that there should be an actual receipt of the income, which is not includible in the total income, during the relevant previous year for the purpose of disallowing any expenditure

incurred in relation to the said income. The Income Tax Appellate Tribunal held that the provisions of Section 14A of the Income Tax Act, 1961 would not apply to the facts of this case as no exempt income was received or receivable during the relevant previous year. It is not the case of the Assessing Officer that any actual income was received by the assessee and the same was includible in the total income. In the facts of the case, the Authorities held that since the investments made by the assessee in the sister concerns were not the actual income received by the assessee, they could not have been included in the total income.”

3.1. As this issue is squarely covered, disallowance can be restricted to the claim of exempt income, which is in this year amounting to ₹1,85,613/-. We uphold the order of CIT(A). Hence, this issue of Revenue is dismissed.

4. As regards the computation of book profit u/s.115JB of the Act and making disallowance u/s.14A r.w.r.8D, we noted that this issue is squarely covered in favour of assessee and against Revenue by the decision of the Special Bench of this Tribunal in the case of ACIT Vs. Vireet Investment Pvt. Ltd., in ITA No.502/Del/2012, dt.16-06-2017, wherein it was held that - *the provisions of Section 14A r.w.r.8D(2) of the Rules will not apply*

wherever book profit is computed u/s.115JB of the Act. Hence, this issue of Revenue is dismissed.

5. In the result, the appeal of Revenue is dismissed.

Order pronounced in the open court on 19th July, 2019

Sd/- (RAJESH KUMAR)	Sd/- (MAHAVIR SINGH)
लेखा सदस्य/ACCOUNTANT MEMBER	न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई/Mumbai; दिनांक/Dated : 19th July, 2019

TNMM

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

आदेशानुसार/BY ORDER,

सत्यापित प्रति//True Copy//

उप/सहायक पंजीकार(Dy./Asst.Registrar)
आयकर अपीलीय अधिकरण,मुंबई/ ITAT, Mumbai