

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "B", MUMBAI**

**BEFORE SHRI G.S. PANNU, VICE PRESIDENT AND  
SHRI AMARJIT SINGH, JUDICIAL MEMBER**

**ITA NO. 4636/MUM/2015** : **A.Y : 2011-12**

DCIT - 10(2)(2),  
Mumbai. (Appellant)

Vs. M/s. M. Suresh Jewellery Pvt. Ltd.,  
Plot No. 18, SEEPZ SEZ,  
Andheri (E), Mumbai 400 096.  
**PAN : AADCM6895R** (Respondent)

**CO NO. 104/MUM/2016** : **A.Y : 2011-12**  
**(in ITA NO. 4636/MUM/2015)**

M/s. M. Suresh Jewellery Pvt. Ltd.,  
Plot No. 18, SEEPZ SEZ,  
Andheri (E), Mumbai 400 096.  
**PAN : AADCM6895R** (Cross Objector)

Vs. DCIT - 10(2)(2),  
Mumbai. (Appellant in appeal)

**Assessee by** : **Shri B.V. Jhaveri**  
**Revenue by** : **Shri Manish Singh**

**Date of Hearing** : **21/06/2019**  
**Date of Pronouncement** : **30/08/2019**

**ORDER**

**PER G.S. PANNU, VICE PRESIDENT**

The captioned are an appeal and a cross objection filed by the Revenue and assessee respectively pertaining to Assessment Years 2011-12, and since the

issues involved are common, they have been clubbed and heard together and a consolidated order is being passed for the sake of convenience and brevity.

2. We may first take-up the appeal filed by the Revenue which is directed against the order of CIT(A)-17, Mumbai dated 22.05.2015, which in turn has arisen from the order passed by the Assessing Officer, Mumbai dated 28.03.2014 under Section 143(3) of the Income Tax Act, 1961 (hereinafter 'the Act').

3. In this appeal, the Revenue has raised the following Grounds of appeal :-

*"1. On the facts and in the circumstances of the case and in law the CIT(A) erred in deleting the disallowances made for inclusive of profit exempt u/s 10A while commuting the Book Profit u/s. 115JB, of the Act, ignoring the fact that the amendment made in the provision of section 115JB from Finance Act, 2007 w.e.f. 01/04/2008 whereby the word "Section 10A and 10B" have been omitted. Further the omission of sec. 10A & 10B from the purview of sec. 115JB w.e.f. 01/04/2008 has been made with an intention that the companies not paying normal tax should contribute through MAT.*

*2. On the facts and in the circumstances of the case and in law the CIT(A) erred in ignoring the speech of Finance Minister introducing Finance Bill, 2007, stating to extend MAT to income in respect of which deduction is claimed u/s. 10A & 10B of the I.T. Act.*

*3. The appellant prays that the order of the CIT(A) on the above ground be set aside and that of the A.O be restored."*

4. At the time of hearing, it was a common point between the parties that the issues raised in the present appeal are covered by the decision of the Tribunal in the assessee's own case for the preceding two assessment years of 2008-09 and 2009-10 vide ITA No. 4424-25/mum/2013 dated 01.04.2015.

5. Briefly put, the relevant facts are that the respondent-assessee is a company incorporated under the provisions of Companies Act, 1956. In the return of income filed, the assessee computed the '*Book Profit*' under Section 115JB of the Act after excluding the profits derived by the unit which was eligible for deduction under Section 10A of the Act. The Assessing Officer differed with the assessee, as according to him the income and expenditure relating to the unit entitled for deduction under Section 10A of the Act are to be taken into consideration while determining the book profits under Section 115JB of the Act. An identical controversy was considered by the Tribunal in assessee's own case vide order dated 1.4.2015 (supra). The Tribunal referred to its earlier decisions in the case of *Dinjure Jewellery (P) Ltd vs. ITO*, 51 *taxmann.com* 41 and *Genesys International Corporation Ltd.*, 151 *TTJ* 206 and concluded that the income tax authorities were not justified in including the profits in respect of the unit entitled for deduction under Section 10A of the Act while computing the book profit under Section 115JB of the Act. Following the aforesaid precedents in the assessee's own case, which continue to hold the field, as no contrary decision has been brought to our notice, we hereby affirm the impugned order of CIT(A).

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

7. In so far as the cross objection is concerned, the assessee has sought to resist the disallowance on the ground that having regard to the provisions of Section 14A, as it stood for the assessment year under consideration, the disallowance should be restricted to the extent of exempt income, which is

Rs.14,42,612/-. In this context, the learned Representative for the assessee submitted that the disallowance under Section 14A of the Act cannot exceed the exempt income earned during the relevant previous year. In support of such proposition, learned Representative relied upon a number of judicial precedents as submitted in the legal Paper Book. The learned DR relied upon the observations of the Assessing Officer in this regard.

8. We have carefully considered the rival submissions and perused the material on record. The Assessing Officer has observed in the assessment order that in the relevant year, the assessee has earned exempt income by way of dividend under Section 10(34) of Rs. 5,20,635/- and Long Term Capital Gains (STT Paid) under Section 10(38) of Rs. 9,21,959/- aggregating to Rs. 14,41,612/-. While completing the assessment, the Assessing Officer applying Rule 8D of the Income Tax Rules, 1962 (in short 'the Rules') computed disallowance under Rule 8D(2)(iii) of the Rules at Rs 26,07,163/-. The singular plea of the assessee is that disallowance, if any, under Section 14A of the Act r/w Rule 8D of the Rules has to be restricted to the exempt income earned during the year. We find substantial force in the aforesaid submissions of the assessee. The Hon'ble Delhi High Court in *Joint Investment (P.) Ltd. v. CIT*, [2015] 372 ITR 694/233 Taxman 117/59 taxmann.com 295 has held that disallowance under Section 14A of the Act cannot exceed the exempt income earned during the year. The same view has been expressed by the Hon'ble Punjab & Haryana High Court in *Pr. CIT v. State Bank of India*, [2017] 393 ITR 476/88 taxmann.com 667 (Punj. & Har.). In view of the legal principle laid down in the aforesaid decisions, we direct the Assessing Officer to restrict the disallowance under Section 14A r/w Rule 8D to the exempt income

earned by the assessee during the year. Further, while computing book profit under Section 115JB of the Act, no adjustment can be made by way of disallowance under Section 14A read with Rule 8D. However, Explanation-1(f) of Section 115JB of the Act empowers the Assessing Officer to increase the book profit by disallowing expenditure incurred for earning exempt income. Therefore, the Assessing Officer may look into this aspect, and decide afresh, as per law; but, of course, after allowing the assessee an opportunity of being heard. Accordingly, the Cross Objection filed by the assessee is partly allowed.

9. In the result, whereas the appeal of the Revenue is dismissed, the cross objection filed by the assessee is partly allowed.

Order pronounced in the open court on 30<sup>th</sup> August, 2019.

Sd/-

**(AMARJIT SINGH)**  
**JUDICIAL MEMBER**

Sd/-

**(G.S. PANNU)**  
**VICE PRESIDENT**

Mumbai, Date : 30<sup>th</sup> August, 2019

\*SSL\*

Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT(A) concerned
- 4) The CIT concerned
- 5) The D.R, "B" Bench, Mumbai
- 6) Guard file

By Order

Dy./Asstt. Registrar  
I.T.A.T, Mumbai