

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES : "B", BANGALORE**

**BEFORE SHRI A.K.GARODIA, ACCOUNTANT MEMBER
AND
SMT.BEENA PILLAI, JUDICIAL MEMBER**

**IT(TP)A No.1192(Bang)/2017
(Assessment year : 2010-11)**

M/s Robert Bosch Engineering &
Business Solutions Pvt.Ltd.,
No.123, Industrial Layout,
Koramangala, Hosur Road,
Bangalore
Pan No.AAACR7108R

Appellant

Vs

The Deputy Commissioner of Income Tax,
LTU, Bangalore

Respondent

**Appellant by : Shri S. Anantha, CA
Revenue by : Ms. Neera Malhotra, CIT-DR**

Date of hearing : 11-12-2019

Date of pronouncement : 13-12-2019

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER :

Present appeal has been filed by assessee against order dated 30/03/17 passed by Ld.CIT under section 263 of the Act, on following grounds of appeal:

- 1. That the Order of the Learned CIT, LTU, Bangalore is bad in law to the extent challenged herein.*

2. *Having regard to the fact that the Learned CIT during the proceedings under section 263 of the Income-tax Act, 1961 [the Act] has not been able to quantify the alleged excess deduction and has only set aside the Order of Assessing Officer (hereinafter referred to as "the AO") directing the AO to reconsider the disallowance in respect of expenses relatable to exempt income under section 10 of the Act, the Learned CIT has erred in concluding that the Order of AO is erroneous and prejudicial to the interests of revenue and consequently further erred in invoking the revision proceedings under section 263 of the Act.*

3. *Having regard to the fact that the Appellant dealt with only few investments during the year, the Learned CIT ought to have accepted the Appellant's contention that it has practically incurred Nil expenses for earning tax free income.*

4. *Without prejudice, the Learned CIT ought to have accepted the Appellant's contention that the rigors of Rule 8D of the Income-tax Rules, 1962, apply only to provisions of Sec 14A of the Act and does not have any application to Clause (f) of Explanation 1 to Sec 115JB of the Act.*

5. *The Learned CIT has erred in invoking the proceedings under section 263 of the Act, having regard to the fact that the Order passed by the Learned AO was made after making due inquiries and verification of investment activity of the Appellant (yielding tax free income) and expenses incurred thereof.*

6. *The Appellant craves leave to add to, amend or alter the ground herein.*

7. *For these and other grounds that may be urged at the time of hearing, the appellant prays for appropriate relief.*

2. Brief facts of the case are as under:

Assessee filed its return of income declaring total income of Rs.8,10,08,759/- on 08/10/2010. Thereafter, return was revised on 23/11/11 and the same was processed under section 143(1) on 25/08/11. Subsequently, notice under section 143(2) was issued to assessee along with notice under section 142(1) and questionnaire. In response to statutory notices, representative of assessee appeared before Ld.AO and filed requisite details. The assessment was completed under section 143(3) read with 144C of the Act, on 30/05/14 by making additions as under:

TP adjustment -Rs.6,92,25,245/-

14 A addition - Rs. 42,17,912/-

2.1 Subsequently, Ld.CIT on perusal of records, observed that the addition made under section 14A was not considered for the purposes of computing book profit under section 115JB of the Act. Ld.CIT accordingly, issued notice to assessee dated 17/03/17 holding assessment order erroneous and prejudicial to the interest of revenue. Assessee filed detailed response to the notice on 28/03/17 which is being reproduced in the order passed by Ld.CIT.

3. Ld.CIT however, was of the opinion, that assessment order dated 30/05/14 was erroneous, as well as prejudicial to the interest of the revenue to the extent that 14A disallowance was not considered for purposes of computing book profit under section 115 JB of the Act. He accordingly, set aside and remitted the issue back to Ld.AO for considering it afresh after giving due opportunity of being heard to assessee.

3.1 Upon receipt of the order under section 263 passed by Ld.CIT, Ld.AO while passing order giving effect modified addition by adding 14 A disallowance to book profit under section 115 JB of the Act.

Ld.AR at the outset, submitted that issue now stands fully settled by decision of *Delhi Special Bench* in case of *ACIT vs Vireet Investments Pvt. Ltd.*, reported in (2017) 82 *Taxmann.com* 415.

He submitted that at the time of order passed by Ld.CIT under section 263, assessee did not have benefit of this decision, wherein *Hon'ble Special Bench*, held that, “*computation under clause (f) of Explanation 1 to section 115 JB (2) is to be made without resorting to the computation as contemplated under section 14A read with Rule 8D of income tax rules 1962.*”

3.2 He submitted that by virtue of this decision of *Hon'ble Delhi Special Bench*, the view adopted by Ld.CIT cannot be upheld. Ld.AR submitted that original assessment order passed by Ld.AO dated 30/05/14, is neither erroneous nor prejudicial to the interest of revenue.

4. Ld.CIT DR, on the contrary, submitted that at the time when order under section 263 was passed decision of *Hon'ble Delhi Special Bench* was not available and therefore, view adopted by Ld.CIT cannot be considered to be bad in law.

5. We have perused submissions advanced by both sides in the light of records placed before us.

It is observed that the decision of *Delhi Special Bench* in case of *ACIT vs Vireet Investments Pvt. Ltd. (supra)* was passed on 16/06/17, whereas impugned order under 263 by Ld.CIT has been passed on 30/03/2017. On date, when order under 263 was passed by Ld. CIT, *Delhi Special Bench* in case of *ACIT vs Vireet Investments Pvt.*

Ltd. (supra) was not available to the benefit of assessee. However, in the present scenario as decision is available, we cannot uphold order impugned as considering 14A disallowance while computing book profit is contrary to view adopted by *Delhi Special Bench* in case of *ACIT vs Vireet Investments Pvt. Ltd. (supra)*.

5.1 We place reliance upon decision of *Hon'ble Supreme Court* in case of *CIT vs. Vegetable Products Ltd.*, reported in (1973) 88 ITR 192, wherein, it has been held that decision favourable to assessee should be followed. We therefore, hold order passed by Ld.CIT to be bad in law and the same is quashed and set aside.

Accordingly grounds raised by assessee stands allowed.

In the result appeal filed by assessee stands allowed

Order pronounced in the open court on 13-12-2019

Sd/-

(A.K.GARODIA)

ACCOUNTANT MEMBER

Dated: 13-12-2019

***am**

Copy of the Order forwarded to:

- 1.Appellant;
- 2.Respondent;
- 3.CIT;
- 4.CIT(A);
5. DR
6. ITO (TDS)
- 7.Guard File

Sd/-

(BEENA PILLAI)

JUDICIAL MEMBER

By Order

Asstt.Registrar

