

**IN THE INCOME TAX APPELLATE TRIBUNAL “G” BENCH, MUMBAI**

**BEFORE SHRI RAJESH KUMAR, AM AND SHRI AMARJIT SINGH, JM**

आयकर अपील सं/ I.T.A. No.6759/Mum/2017

(निर्धारण वर्ष / Assessment Year: 2013-14)

M/s. Welspun Steel Limited B-Wing, Trade World, 9 <sup>th</sup> Floor, Kamala Mill Compound, S. B. Marg, Lower Parel, Mumbai- 400013.	<b><u>बनाम/</u></b> Vs.	DCIT, Central Circle-3(3) Air India Building, 19 <sup>th</sup> Floor, Nariman Point, Mumbai-400021.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACW5308G		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	Shri Farrokh Irani
Revenue by:	Shri Awungshi Gimson (DR)

सुनवाई की तारीख / Date of Hearing: 02/12/2019

घोषणा की तारीख /Date of Pronouncement: 17/01/2020

**आदेश / O R D E R**

**PER AMARJIT SINGH, JM:**

The assessee has filed the present appeal against the order dated 24.10.2017 passed by the Commissioner of Income Tax (Appeals) -39, Mumbai [hereinafter referred to as the “CIT(A)”] relevant to the A.Y.2013-14.

2. The assessee has raised the following grounds: -

“The ground or grounds of appeal are without prejudice to one another.

1.a) On the facts and in the circumstances of the case and in law, the Id. CIT(A) erred in confirming the addition of Rs.6,00,40,820/- made by the AO to the income of the Appellant by invoking the provisions of section 14A r.w.r.8D and further erred in enhancing the addition by Rs.24,08,94,387/- (correct amount Rs.27,53,67,637/-) working out such disallowance to Rs.33,64,08,457/- u/s.14A r.w.r.8D by way of disallowing proportionate interest and administrative expenses at flat



rate claimed to have been incurred relating to dividend or exempt income invoking the provisions of section 14A r.w.r.8D.

b) The Id. CIT(A) failed to appreciate that having regard to the accounts there is no reason and basis in reaching to dis-satisfaction with the correctness of the claim of the Appellant that no expenditure was incurred in relation to dividend or exempt income which does not form part of the total income.

c) In reaching to the conclusion and confirming and enhancing such addition, the Id. CIT(A) omitted to consider relevant factors, considerations, principles and evidences while he was overwhelmed, influenced and prejudiced by irrelevant considerations and factors.

d) In any case the disallowance u/s. 14A r.w.r. 8D as worked out by the Id. AO and the Id. CIT(A) is excessive and unreasonable.

2.a) On the facts and in the circumstances of the case and in law, the Id. CIT(A) erred in confirming the addition of Z 6,00,40,820/- made by the AO to the book profit of the Appellant and further erred in enhancing the addition by Rs.24,08,94,387/- (correct amount Rs.27,63,67,637/-) working out such disallowance to t 33,64,08,457/- by way of adding back disallowance made u/s. 14A r.w.r.SD and thereby erred in enhancing the book profit artificially.

b) The Id. CIT(A) failed to appreciate that the book profit means net profit as shown in the profit & loss account laid before the annual general meeting of a company in accordance with the provisions of section 210 of the Companies Act, 1956 as adjusted by certain adjustment specified in the

Explanation 1 to section 115JB(2) and there is no scope for the Id. AO and the Id. CIT(A) to make any further adjustment.

The Id. CIT(A) erred in holding that levy of interest u/s.234B and 234C of the Income Tax Act, 1961 is mandatory. The Appellant denies its liability for such interest.

The Id. CIT(A) erred in holding that the ground raised disputing initiation of penalty proceedings u/s.271(1)(c) is premature. The Appellant denies its liability for such penalty.

The Appellant craves leave to add, alter, amend or delete any or all of the above grounds of appeal.”

**3.** The brief facts of the case are that the assessee filed its return of income on 29.11.2013 declaring total loss to the tune of Rs.690,02,799/- for



the A.Y. 2013-14 under the normal provisions and offered MAT income u/s 115JB of the Act at Rs.403,27,327/-. A notice u/s 143(2) & 142(1) of the Act were issued and served upon the assessee. The assessee is in the business of Manufacturing of Sponge Iron, Steel Ingots and Non Alloys Rolled Products and Power. The assessee earned the dividend income in sum of Rs.94,00,147/-. The AO applied the provisions u/s 14A of the Act r.w. Rule 8D of the Rule and assessed the expenditure to earn the exempt income to the tune of Rs.6,00,40,820/-. Thereafter, the total income of the assessee was assessed at Rs. Nil and book profits u/s 115JB of the Act to the tune of Rs.10,03,68,147/-. Feeling aggrieved, the assessee an appeal before the CIT(A) who dismissed the appeal of the assessee and also enhanced the expenditure to earn the exempt income u/s 14A r.w. Rule 8D of the Rules to the tune of Rs.33,64,08,457/-. Feeling aggrieved, the assessee filed the present appeal before us.

### **ISSUE NO.1**

4. Under this issue the assessee has challenged the confirmation of addition of Rs.6,00,40,820/- made by AO by invoking the provisions u/s 14A r.w. Rule 8D of the Rules and further challenged raising the addition in sum of Rs.27,63,67,637/- u/s 14A r.w. Rule 8D of the Rules. The Ld. Representative of the assessee has argued that the assessee's own funds is more than investment, therefore, in the said circumstances, no disallowance is required in view of the decision of Hon'ble Bombay High Court in the case of **CIT Vs. HDFC Bank Ltd. (2014) 366 ITR 505 (Bom)**. It is also argued that the no disallowance is required in view of the provisions u/s 36(1)(iii) in respect of investment in view of the decision of Hon'ble Bombay High Court in the case of **CIT-III Pune Vs. Sharda Erectors P. Ltd. (2016) 76 taxmann.com 107 (Bom)** and in view of the decision of



**Hon'ble ITAT in ITA. No.837/Chd/2018 titled as M/s. Vardhman Polytex Ltd. Vs. DCIT dated 21.06.2019.** However, on the other hand, the Ld. Representative of the revenue has refuted the said contentions and strongly relied upon the decision of the CIT(A) in question. In the instant case, it is observed that the assessee has earned the dividend income in sum of Rs.94,00,147/-. The assessee invested surplus fund in the share of group company and the closing balance in respect of such investment as on 31.03.2013 was of Rs.80,518.90 lacs. Undoubtedly, the investment generating the exempt income was to the tune of Rs.801,92,49,583/- The contention of the assessee is that the advance received by him on account of sale of share of Rs.721.9 crores is also liable to be considered as its surplus interest free funds available at disposal. No doubt, at the time of assessment, surplus funds is liable to be treated as available funds with the assessee. In this regard, the share capital profit, reserves and surplus as well as balance amount is also required to be considered which is more than the investment to earn the exempt income. In the said circumstances and by relying upon the decision in the case of **CIT Vs. HDFC Bank Ltd. (2014) 366 ITR 505 (Bom)** no disallowance is required u/s 14A r.w. Rule 8D(ii) of the Rules. Now it is to be seen whether the disallowance u/s 14A r.w. Rule 8D(iii) of the Rules is required to be seen in view of the provisions u/s 36(1)(iii) of the Act. The assessee invested in the share of group companies in sum of Rs.7,71,05,69,515/- which was 96.15% of the total investment generating exempt income. The appellant paid the interest in sum of Rs.60,47,62,354/- to banks, financial institutions and others on term loans and working capital required for the purposes of its business. The appellant also received the interest in sum of Rs.9,43,68,056/- on its surplus funds. The interest was paid by appellant in sum of Rs.51,03,94,298/-. Where the interest free funds available with the assessee was sufficient to



make the advance to its sister concern then such investment should be presumed to be made from interest free funds available and not out of borrowed funds and in the said circumstances disallowance of interest paid on loan taken would be justified. In this regard, we also find support of the decision of the Hon'ble ITAT Chandigarh in the case of **M/s. Vardhman Polytex Ltd. Vs. DCIT dated 21.06.2019** in which the relevant finding has been given in para no. 27 to 28 which is hereby reproduced as under.:-

*“27 We have heard the rival contentions. Admittedly disallowance of interest u/s 36(1)(iii) of the Act. has been made on investments in respect of which the interest expenditure incurred was disallowed u/s 14A of the Act also, though for different reasons. The disallowance of interest has been made u/s 14A of the Act attributing the same as having been incurred for earning exempt income in the form of dividend earned from the said investments. Under section 36(1)(iii) interest has been disallowed for the reason that the expenses were not found to have been incurred for the purpose of business of the assessee. In both the cases, however, interest expenditure incurred for making the investment has been disallowed.*

*28. Since we have held that no interest is to be disallowed u/s 14A of the Act, in the light of the fact that sufficient own funds were available with the assessee which raise the presumption that these interest free funds were used for making the investments, there remains no basis for making disallowance of interest expenses incurred for making the very same investments in any other section, which in the present case is section 36(1)(iii) of the Act.*

*The order of the Ld. CIT(A) deleting the disallowance of interest u/s 36(1)(iii) amounting to Rs.9.74 crores is therefore upheld. Ground of appeal no.2 raised by the revenue is therefore, dismissed.”*

5. Therefore, taking into account all the facts and circumstances above and also relying upon the law mentioned above, we are of the view that the no disallowance is required in view of the provisions u/s 14A r.w. Rule 8D(2) of the Act. So far as the disallowance in view of the provisions u/s 8D(2)(3) is concerned, the AO took into consideration of 0.5% of the total value of the investment to the tune of Rs.4,70,58,853/- which comes to the tune of Rs.3,66,23,909/-. The assessee nowhere disallowed the expenditure



to earn the exempt income. We nowhere found any illegality and infirmity while deciding the issue in pursuance of Section 14A r.w. Rule 8D(3) of the Rules. But it is also quite correct that the disallowance is not required to exceed more than the exempt income in view of the decision of **Cheminvest Ltd. Vs. CIT 378 ITR 33 (Delhi) and CIT Vs. Holcin India Pvt. Ltd. 486 of 2014 dated 05.09.2014**. Accordingly, we restrict the disallowance to the extent of exempt income i.e. to the tune of Rs. 94,00,147/-. Accordingly, this issue is decided in favour of the assessee against the revenue.

## **ISSUE NO.2**

5. Issue no.2 is in connection with the raising the addition in sum of Rs.33,64,08,457/- u/s 14A r.w. Rule 8D of the Rules on account of Explanaton-1 to Section 115JB of the Act. It is also argued that the disallowance u/s 14A r.w. Rule 8D of the Rules is not liable to be added in view of the Explanation-1 of Section 115JB of the Act and in this regard. The Ld. Representative of the assessee has relied upon the decision of the Hon'ble ITAT in the case of **ACIT Vs. Vireet Investment P. Ltd. (2017) 82 taxmann.com 415 (Del)**. However, on the other hand, the Ld. Representative of the Department has refuted the said contention. The relevant finding has been given in para no. 4.8 to 4.18 which is hereby reproduced as under.:-

*“4.8. Ld. counsel submitted that Section 14A contemplates disallowance of both direct and indirect expenditure having proximate connection with the exempt income. He submitted that in terms of sub-section (1) of Section 14A of the act, any expenditure incurred in relation to exempt income is not an allowable deduction Thus, the pre-requisite condition for applying the provisions of section 14A of the Act is that some expenditure must be incurred “in relation to” the earning of exempt income. The said expression “in relation to” has been judiciously explained to mean some real and dominant relationship.*



4.9. In this regard *Id. counsel* has relied on the decision of Hon'ble Supreme Court in the case of *CIT Vs. Walford Share & Stock Brokers 326 ITR 1*, wherein it has been held by the Apex Court that there must be proximate relationship of expenditure with the exempt income for the purpose of making disallowance u/s 14A of the Act. This decision was followed by the Hon'ble Bombay High Court in the case of *Godrej & Boyce Mfg. Co. Ltd. Vs. CIT 328 ITR 81*

. 4.10. He further referred to the decision of Hon'ble Delhi High Court in the case of *Maxopp Investment Ltd. 347 ITR 272*, wherein it has been held that no disallowance could be made under the said section where no expenditure had 'actually' been incurred by the assessee in relation to earning of the exempt income. The Hon'ble Delhi High Court approved the contention raised by the assessee that the term 'expenditure incurred' appearing in Sec. 14A(1) of the Act would mean actual expenditure incurred. Thus, the provisions of sec. 14A of the Act would be applicable only when the assessee had actually incurred certain expenditure which had proximate nexus with earning of exempt income.

4.11. *Ld. counsel* pointed out that the contention of Revenue that disallowance calculated u/s 14A read with Rule 8D of the I.T. Rules should be ipso facto incorporated in clause (f) of Explanation 1 of section 115JB of the Act on the ground that the scope of both the provisions are similar is not correct inasmuch as while u/s 14A the expression used is 'in relation', u/s 115JB of the Act, the term used is 'relatable to'

. 4.12. *Ld. counsel* submitted that this reasoning is legally untenable because sec. 14A contained in Chapter IV of the Act begins with the phrase "for the purposes of computing the total income under this Chapter". It was pointed out that income under the normal provisions of the Act is computed under the five heads specified in section 14. Provisions relating to computation of income under different heads are contained in sections 14 to 59, forming part of Chapter IV of the Act. In other words, the said Chapter provides for computation of income of an assessee under the normal provisions of the Act. As a necessary corollary, provisions of section 14A cannot be extended to any Chapter, other than Chapter IV of the Act. 4.13. Section 115JB finds place under Chapter XII-B of the Act. Being so, provisions of sec. 14A contained in Chapter IV cannot be imported and incorporated u/s 115JB more so when clause (f) to Explanation 1 to the said section contains no reference to section 14A of the Act.

4.14. *Ld. counsel* submitted that if provisions of Sec. 14A are to be imported into section 115JB of the Act, the same would tantamount to reading additional words into the statute which is not permissible and would be against the cardinal rule of 'literal interpretation'. In this regard *Id. counsel* has relied on following decisions: - *Jugal Kishore Saraf*



*v. Raw Cotton Co. Ltd. AIR 1955 SC 376, wherein it has been observed as under:*

*" The cardinal rule of construction of statutes is to read the statutes literally, that is, by giving to the words their ordinary, natural and grammatical meaning. If, however, such a reading leads to absurdity and the words are susceptible of another meaning, the Court may adopt the same. But if no such alternative construction is possible, the Court must adopt the ordinary rule of literal interpretation. In the present case, the literal construction leads to no apparent absurdity and therefore, there can be no compelling reason for departing from that golden rule of construction. "*

*4.15. He also relied on various other Supreme Court decisions as mentioned in the Broad Proposition advanced by the Id. counsel. Ld. counsel also referred to the Jurisdictional High Court in the case of Great Eastern Exports v. CIT 332 ITR 14, wherein also it has been held that if the language of the statute is plain and capable of one and only one meaning, that obvious meaning is to be given to the said provision. 4.17. Accordingly, Id. counsel submitted that applicability of provisions of sec. 14A is confined to computation of tax liability under the five heads of income enumerated in sec. 14 under normal provisions contained in Chapter IV of the act. The said section 14A cannot be extended and read into section 115JB, falling under Chapter XII-B of the Act.*

*4.18. Ld. counsel further submitted that scope of section 14A and section 115JB of the act are entirely different. He submitted that u/s 14A of the Act disallowance is made of expenditure in relation to the earning of income not forming part of the total income. Thus, section 14A takes within its sweep both direct and indirect expenditure having proximate connection with earning of exempt income. However, under clause (f) of Explanation 1 to section 115JB of the Act, only those expenditure debited to the profit and loss amount, which are relatable to earning of income exempt u/s 10 (excluding section 10(38) or section 11 or section 12 are added back while computing adjusted book profit. Thus, only direct expenditure associated with the earning of said income would be added back."*

**6.** On appraisal of the above mentioned finding, it is quite clear that the provisions of Section 14A of the Act is confines to the nowhere provisions of Chapter IV of the Act and the said Section 14A cannot be extended and read into section 115JB falling under Chapter XII-B of the Act. Accordingly, no addition is required u/s 14A and Section 115JB of the Act, hence, we delete the addition and allowed the claim of the assessee.



ITA No. 6759/M/2017  
A.Y.2013-14

7. In the result, the appeal filed by the assessee is hereby ordered to be partly allowed.

Order pronounced in the open court on 17/01/2020

Sd/-

(RAJESH KUMAR)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 17/01/2020

Vijay Pal Singh/Sr. P.S.

Sd/-

(AMARJIT SINGH)

न्यायिक सदस्य/JUDICIAL MEMBER

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

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सत्यापित प्रति //True Copy//

(Assistant Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai