

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

**BEFORE SHRI M.BALAGANESH, AM
&
SHRI RAVISH SOOD, JM**

**ITA No.6460/Mum/2017
(Assessment Year :2012-13)**

ACIT – 3(1)(2) Room No.607, 6 th Floor Aayakar Bhavan Mumbai – 400 020	Vs.	M/s. Century Appliances Pvt. Ltd 171-C, Mittal Court, Nariman Point Mumbai – 400 021
PAN/GIR No. AAACR8636G		
(Appellant)	..	(Respondent)

Revenue by	Shri Kumar Padmapani Bora
Assessee by	None
Date of Hearing	28/01/2020
Date of Pronouncement	29/01/2020

आदेश / O R D E R

PER M. BALAGANESH (A.M.):

This appeal in ITA No.6460/Mum/2017 for A.Y.2012-13 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-8, Mumbai in appeal No.CIT(A)-8/IT-42/15-16 dated 19/07/2017 (Id. CIT(A) in short) against the order of assessment passed u/s.143(3) of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 19/07/2017 by the Id. Asst. Commissioner of Income Tax (OSD)-3, Mumbai (hereinafter referred to as Id. AO).

2. The ground No.1 raised by the revenue is with regard to disallowance made u/s.14A of the Act r.w.r. 8D(2)(ii) & 8D(2)(iii) of the rules under normal provisions of the Act.

3. When the case was called up for hearing, none appeared on behalf of the assessee and an adjournment letter from the side of the assessee was also not produced before us. Hence we proceeded to dispose off the appeal on hearing the Id. DR and after perusing the materials on record. We find that assessee is a domestic company and nature of business as mentioned in the tax audit report is "Manufacturing, Trading and Investment". We find that the assessee had earned dividend income of Rs.13,00,061/- and claimed the same as exempt u/s.10 in the return of income. We find that the assessee had made voluntary disallowance of Rs.6,25,650/- u/s.14A of the Act as expenses incurred for the purpose of earning such exempt income. We find that the Id. AO resorted to computation mechanism provided in rule 8D(2) of the rules and arrived at the disallowance of Rs.2,60,91,439/- under second and third limb of the said rule thereof. After reducing the amount already disallowed by the assessee in the sum of Rs. 6,25,650/-, the Id. AO made disallowance of 2,54,65,789/- u/s.14A of the Act while computing income under normal provisions of the Act. The Id. CIT(A) deleted the said disallowance by merely placing reliance on the order of his predecessor in assessee's own case for the A.Y.2011-12. At the time of hearing, the Id. DR was not able to point out the status of further appeal preferred by the revenue, if any, before this Tribunal against the order passed by the Id. CIT(A) for the A.Y.2011-12. We find that there is no finding available in the orders of the lower authorities with regard to the availability of own funds / interest free funds with the assessee company though a submission was made in this regard by the assessee before the Id . CIT(A). Hence, in the interest

of justice and fair play, we deem it fit and appropriate to remand this issue to the file of the Id. AO to decide the issue based on the availability of own funds / interest free funds, if any, with the assessee company for making the various investments. We specifically direct the Id. AO to give a clear finding in this regard and in case if it is found that sufficient interest free funds are available with the assessee company, then no disallowance of interest should be made under second limb of rule 8D(2) of the rules. With regard to disallowance of administrative expenses under rule 8D(2) (iii) of the rules, we direct the Id. AO to consider only those investments which had actually yielded exempt income to the assessee while working out the disallowance thereof. Accordingly, the ground No.1 raised by the revenue is allowed for statistical purposes subject to directions given hereinabove.

4. The ground No.2 raised by the revenue is with regard to disallowance u/s.14A r.w.r. 8D of the rules while computing book profits u/s.115JB of the Act.

4.1. We have heard the Id. DR and perused the materials available on record. We find that the assessee had made suo moto disallowance of Rs.6,25,650/- u/s.14A and had disallowed the same while computing the book profits u/s.115JB of the Act in the return of income. The Id. AO had substituted this disallowance figure by adopting the computation mechanism under rule 8D(2) of the rules. We find that the Special Bench of Delhi Tribunal in the case of Vireet Investments reported in 165 ITD 27 had held that the computation mechanism provided under rule 8D of the rules cannot be imputed in clause (f) of Explanation to 115JB(2) of the Act. However, the actual expenses debited the profit and loss account for the purpose of earning exempt income should be disallowed and in the

instant case we find that the assessee had made suo moto disallowance of Rs.6,25,650/- which would be justifying the provisions of Clause (f) of Explanation to Section 115JB(2) of the Act. Accordingly, no further disallowance of expenses is required to be made thereof. Accordingly, the ground No.2 raised by the revenue is dismissed.

5. In the result, appeal of the revenue is partly allowed for statistical purposes.

Order pronounced in the open court on this 29/01/2020

Sd/-
(RAVISH SOOD)
JUDICIAL MEMBER

Mumbai; Dated
KARUNA, *sr.ps*

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

29/01/2020

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai