

आयकर अपीलिय अधिकरण, 'ए' न्यायपीठ, चेन्नई।
IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH: CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं
श्री रमित कोचर, लेखा सदस्य के समक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER

ITA No.577/Chny/2019

निर्धारण वर्ष / **Assessment Year: 2014-15**

M/s. Sri Vishnu Shankar Mill Ltd.,
Sri Vishnu Shankar Mill Premises,
P.A.C.Ramasamy Raja Salai,
Post Box No.109,
Rajapalayam-626 117, Tamil Nadu

v. The Income Tax Officer,
Corporate Ward-1,
CR Building, 2 V P
Rathinasamy Nadar Road,
Bibikulam, Madurai-625 002,
Tamil Nadu

[PAN: AACCS 0536 Q]

(अपीलार्थी/ Appellant)

(प्रत्यर्थी/ Respondent)

अपीलार्थी की ओर से/ Appellant by

: Mr. J.Prabhakar, FCA

प्रत्यर्थी की ओर से /Respondent by

: Mr. A.R.V.Sreenivasan, JCIT

सुनवाई की तारीख/Date of Hearing

: 30.01.2020

घोषणा की तारीख /Date of Pronouncement

: 27.02.2020

आदेश / ORDER

PER RAMIT KOCHAR, ACCOUNTANT MEMBER:

This appeal filed by assessee is directed against appellate Order dated 28.01.2019 passed by learned Commissioner of Income Tax (Appeals)-1, Madurai (hereinafter called "the CIT(A)"), in ITA No.0200A/2016-17 for assessment year (ay) 2014-15, the appellate proceedings before learned CIT(A) had arisen from assessment order dated 29.12.2016 passed by learned Assessing Officer (hereinafter called

“the AO”) u/s.143(3) of the Income-tax Act, 1961 (hereinafter called “the Act”).

2. The grounds of appeal raised by assessee in memo of appeal filed with the Income-Tax Appellate Tribunal, Chennai (hereinafter called “the Tribunal”) read as under:-

“The under mentioned grounds of appeal are independent of and without prejudice to one another.

1. The order of the Hon'ble Commissioner of Income Tax (Appeals) is contrary to law and facts.

2. The Hon'ble Commissioner of Income Tax (Appeals) erred in sustaining the addition of Rs. 36,38,000/- under section 14A (in relation to the dividend amount of Rs. 40,62,190/-) since all the investments held by the appellant were funded entirely by company's own funds and no borrowed funds were used for making the investments, as is evident from the facts already submitted to the Assessing Officer and the Commissioner of Income Tax (Appeals) with respect to source and deployment of funds.

3. The Learned Commissioner of Income Tax (Appeals) erred in not appreciating that once no borrowals were used to make the investments, the question of disallowance under Section 14A will not arise and hence any such disallowance will be contrary to facts and will be based purely on erroneous presumption.

4. The Hon'ble Commissioner of Income Tax (Appeals) is not justified in sustaining the disallowance despite the fact that the financial statements and the details of the source of funding the investments furnished by the Appellant prove that no borrowing was used therefor.

5. The Hon'ble Commissioner of Income Tax (Appeals) omitted to notice that factually no expenditure was incurred for earning the exempt dividend income and the receipt of the dividend income was made by crediting it directly by the investee companies to the bank account of the appellant and as such the disallowance is not warranted and averments to the contrary is speculative and not mandated by section 14A.

6. The Hon'ble Commissioner of Income Tax (Appeals) erred in sustaining the said addition of Rs. 36,38,000/- made to the Book Profits computed under the provisions of Section 115JB since the same is contrary to the specific provisions contained in Section 115JB in this regard and linking it to Section 14A is an unauthorized adjustment for computing the book profits under Section 115JB which is a self-contained complete code for computing book profits. The Appellant submits that the same is contrary to the decision of the Special Bench of the Tribunal in Vireeth Investment (P) Limited (2017) 82 taxmann.com 415 (Del-Tri.)(SB)

7. The Hon'ble Commissioner of Income Tax (Appeals) is not justified in relying upon the decision of the Hon'ble ITAT in Lally Motors India (P) Ltd. (2018) 93 taxmann.com 39(Amritsar-Trib.), which is not in pari materia with facts on record in as much as in that case the assessee had a negative net worth of Rs. 7.70 crores, whereas the Appellant had own funds due to a huge positive net worth Rs. 19.75 crores (much in excess of its investments of Rs. 8.35 crores) and thus no part of the sources of investments made by the Appellant is relatable to any borrowed funds.

8. The Hon'ble Commissioner of Income Tax (Appeals) erred in sustaining the disallowance based on a presumption that expenses have been incurred and on an erroneous interpretation that the disallowance under Section 14A is to be made automatically regardless of whether or not any expenses were incurred. The decision of the learned Commissioner of Income Tax Appeals is contrary to the judicial precedents that apply in this regard, including the decisions of the Apex court and various high courts.

9. Without prejudice to the above, it is submitted that the investments which generated exempt income alone should have been considered for the purposes of section 14A.

10. For these and other grounds that may be urged at the time of hearing, it is Respectfully prayed that the addition of Rs.36,38,000/- made by the Assessing Officer under section 14A in the regular computation as well as for Book Profits purposes be deleted.

11. The appellant craves leave to add, alter, delete or withdraw any of the grounds of appeal."

3. Briefly stated facts of the case are that the assessee is engaged in business of manufacture and sale of cotton yarn. The only issue agitated in this appeal is with respect to disallowance of expenses incurred in relation to earning of an exempt income, u/s.14A of the Act read with Rule 8D(2) of the Income-tax Rules, 1962 under the normal provisions and also corresponding additions made to 'Book Profit' by invoking provisions of Sec.115JB of the Act for computing book profit for levying minimum alternate tax. The AO had invoked provisions of Sec.14A r.w.r. 8D(2)(ii) & (iii) of the Income-tax Rules, 1962 to make disallowance of expenses to the tune of Rs. 36.38 lakhs both under normal provisions as well while computing book profits for computing MAT payable u/s 115JB of the 1961 Act, vide assessment order dated 29.12.2016 passed by AO u/s 143(3) of the 1961 Act, which is reproduced hereunder:

"3.6 Accordingly, the rule 8D is applied to work out expenditure in relation to income not includible in total income, as under:

Rule 8D(2):

- | | |
|---|-------|
| i) expenditure directly relating to income which does not form part of total income | = Nil |
| ii) in respect of interest incurred during the previous | |

year which is not directly attributable to any particular income or receipt

$$\begin{aligned} & \text{average value of investments} \\ \text{Interest x } & \frac{\text{-----}}{\text{Average value of assets}} & = \text{Rs.34.21 lakhs} \\ \\ & = \text{Rs.1933.251 lakhs x 434.57 lakhs} \\ & \frac{\text{-----}}{24556.96 \text{ lakhs}} \end{aligned}$$

$$\begin{aligned} \text{iii) an amount equal to one-half per cent of} \\ \text{the average of the value of investment} \\ \frac{1}{2}\% \times 434.57 \text{ lakhs (average value of investment)} & = \text{Rs.2.17 lakhs} \\ \\ \text{Total} & = \text{Rs.36.38 lakhs} \\ & \text{-----} \end{aligned}$$

The above sum of Rs.36,38,000/- is disallowed u/s.14A of the said Act read with rule 8D of the said Rules as relatable to investment in shares incomes from which is exempt from taxation and added back to the income returned, in view of the detailed discussions made in the earlier part of this order. [Disallowance: Rs.36,38,000/-]

$$\begin{aligned} \text{Book Profit u/s 115JB admitted -Rs. 13,07,55,958/-} \\ \text{Add: Disallowance u/s 14A -Rs. 36,38,000/-} \\ \text{-----} \\ \text{Book Profit assessed - Rs.13,43,93,958/-} \\ \text{-----} \end{aligned}$$

4. The assessee being aggrieved by an assessment framed by AO filed first appeal with Ld.CIT(A) which stood dismissed by Ld.CIT(A) , vide appellate order dated 28.01.2019 passed by learned CIT(A) .

5. As could be seen that there are broadly two heads which are referred to by Revenue for making disallowance of expenses to the tune of Rs. 36.38 lakhs purported to be incurred in relation to earning of an exempt income, namely there is a disallowance u/s 14A of the 1961 Act read with Rule 8D(2)(ii) of the 1962 Rules of Rs. 34.21 lakhs towards proportionate interest incurred during the previous year on the grounds of mixed fund use and which is not directly attributable to any particular purposes of

borrowings and secondly there was an disallowance of expenses u/s 14A of the 1961 Act read with Rule 8D(2)(iii) of the 1962 Rules by disallowance of 0.50% of the average value of investments, which led to disallowance to the tune of Rs. 2.17 lacs. The main bone of the contention of the Revenue while making disallowance u/s 14A of the 1961 Act read with Rule 8D(2)(ii) of the 1962 Rules is that mixed used interest bearing funds/borrowings were deployed by the assessee and no separate accounts were being maintained by the assessee. Before us, Ld.Counsel for assessee has strenuously argued that assessee has used its own funds which are more than investments made by assessee and interest bearing funds being mixed used funds , presumption will apply that investments were made out of assessee's own interest free funds available with it. Our attention was drawn to the audited accounts of the assessee for the fy: 2013-14 (ay: 2014-15) , which are placed in Paper Book at Page No.188 onwards and it was submitted that assessee's owned funds were to the tune of Rs. 19.75 Crs. , out of which share capital was to the tune of Rs. 1.75 Crs. and Reserve and Surplus were to the tune of Rs.18.25 Crs. as on 31.03.2014, while the own funds were to the tune of Rs. 11.71 Crs. as on 31.03.2013. The investments were to the tune of Rs.834.19 lacs as on 31.03.2014 which were to the tune of Rs. 34.19 Lacs as on 31.03.2013. it was submitted that the presumptions will apply that assessee had invested its own interest free funds. It was further submitted that

assessee had sold land for Rs. 9.35 Crs. during the year on 07.11.2013, copy of sale deed along with bank statements is placed on record at page 32-68 of paper book and it is claimed that the aforesaid funds were used for making investments during the year to the tune of approx.. Rs. 8 Crs.

The assessee has filed written submissions before the Bench and the reliance is placed on the aforesaid contentions, which is extracted hereunder:

Table D- Details of proceeds from sale of land during the year

Particulars	Amount
Sale Value of Land as per Sale Deed dated 07-11-2013	9,35,19,500
Less:-TDS@ 1%	(9,35,195)
Net sale consideration from sale of land credited to bank account on 09-11-2013- sale proceeds	9,25,84,305
Date of Credit of the above sale proceeds in Bank Account	09-11-2013

Table E-Dates on which fresh investments made during the year out of proceeds from sale of land

Name of company in which investment is made	Amount (in Rs.)	Sub-total (in Rs.)	Date on which fresh investment made during the year
Ramco Windfarms Ltd.	5,75,000	5,75,000	30/12/2013
JRK Enterprises Limited-equity shares	100	100	28/01/2014
JRK Enterprises Limited-Preference shares	1,20,00,000	7,95,00,000	11/01/2014
	25,00,000		05/02/2014
	25,00,000		18/02/2014
	30,00,000		22/03/2014
	5,95,00,000		27/03/2014
Total of fresh investment made during the year	8,00,75,100	8,00,75,100	

The assessee has also relied upon following decisions , as under:

- a) CIT Vs Reliance Industries Ltd (2019) 102 taxmann.com 52(SC)
- b) CIT vs. Reliance Utilities and Power Ltd (2009) 313 ITR 340 (Bom)
- c) ACIT v. Apollo Hospitals Enterprises Limited (2012) 139 ITD 594 (Chennai)
- d) CIT Vs. Bharti Televenture Ltd (2011) 331 ITR 502 (Del.)

It was submitted that the assessee has received dividend income of Rs. 40.62 lakhs which was claimed as an exempt income , during the year under consideration. The prayers were made by learned counsel for the assessee to delete disallowance of interest expenses which was disallowed by Revenue by invoking provisions of Section 14A of the 1961 Act read with Rule 8D(2)(ii) of the 1962 Rules and also to delete disallowance of expenses u/s.14A r.w.r.8D(2)(iii) of the 1961 Act which were to the tune of 0.5% of the average investment. Reliance is also placed by the assessee on the decision of Special Bench of ITAT Delhi in the case of ACIT v. Vireet Investment (P) Limited (2017) 82 taxmann.com 415 (Del-Tri.)(SB) to contend that disallowance of expenses incurred in relation to earning of an exempt income, u/s 115JB be made in accordance with ratio of aforesaid decision of Special Bench. The Ld.DR, on the other hand, relied upon the orders of the authorities below and prayed for setting aside and restoring the matter back to the file of AO for fresh adjudication.

6. We have considered rival contentions and perused the material on record including cited case laws. We have observed that assessee is engaged in the business of manufacture and sale of cotton yarn. We have observed that assessee has received dividend income to the tune of Rs. 40.62 lakhs which was claimed as an exempt income. The assessee has paid interest on borrowings during the year under consideration and disallowance of interest expenses was made to the tune of Rs.34.21 lakhs

by invoking provisions of Sec.14A r.w.r. 8D(2)(ii) of the 1962 Rules. We have observed that assessee has brought on record cogent material to evidence that assessee has own interest free funds available to the tune of Rs. 19.75 as on 31.03.2014 consisting of share capital along with Reserves and Surpluses (preceding year 11.71 crores) and the assessee had investments of Rs. 8.34 Crs. as on 31.03.2014 while investments were to the tune of Rs.34.19 lakhs as on 31.03.2013. Further, we have observed that assessee has sold an property for Rs.9.35 crores during the year under consideration. The assessee has filed bank statements and sale deed to evidence sale of property and investments made during the year under consideration. We have observed that allegations made by Revenue are that the assessee has used mixed funds for the purpose of making investments in the securities which are capable of yielding exempt income. The Revenue could not demonstrate co-relation between the utilization of interest bearing borrowed funds with the investments made. We have observed that the major investments were made during the year under consideration and assessee had also sold its property for consideration of Rs. 9.35 crores during the year under consideration. We are of the considered view that assessee has demonstrated with cogent evidences that the assessee has its own interest free funds which are higher than investments and presumption will apply that assessee has invested its own interest free funds for making investments in the

securities capable of yielding exempt income. The Revenue is not able to demolish/rebut the aforesaid presumption. The Reliance is placed on decision of Hon'ble Bombay High Court in the case of Reliance Utilities and Power Limited(supra). Thus, we have no hesitation in ordering deletion of additions as were made by Revenue u/s 14A read with Rule 8D(2)(ii) of the 1962 Rules. So far as additions as were made by Revenue u/s 14A of the 1961 Act read with Rule 8D(2)(iii) of the 1962 Rules which are vehemently challenged by assessee , we are of the considered view that the assessee has to bring on record cogent evidences and explanations to substantiate the complete modus operandi adopted by the assessee for making investments such as involvement of Board of Directors, committee of investments /Personnel appointed to look after decision making process for investments, time spent by Board of Directors/ committee members or other personnel and cost attributable thereof , other cost incurred such as administrative costs and other costs in relation to these investments, etc., to explain and demonstrate entire cycle of investment making process to discharge primary onus, then the AO has to look into books of accounts to compute the disallowance of expenditure incurred in relation to earning of an exempt income and to record satisfaction. In the absence thereof of the discharge of primary onus by the assessee as aforesaid, the AO will have right to invoke Rule 8D(2)(iii) of the 1962 Rules after recording satisfaction as mandated u/s 14A of the 1961 Act. Thus, the matter is remitted back to the file of the AO for fresh adjudication and the assessee is directed to produce relevant details

/explanation and modus operandi of managing its investment portfolio as detailed above by us in this order. We agree with the contentions of the assessee that Section 14A read with Rule 8D(2) of the 1962 Rules cannot be invoked for making disallowance u/s 115JB of the 1961 Act but disallowance of expenses incurred relatable to earning of an exempt income is to be computed in accordance with Explanation 1(f) to Section 115JB of the 1961 Act, in accordance with ratio of decision of Special Bench in the case of Vireet Investment(supra). We also remit this matter back to the file of the AO for making additions to the Book Profit u/s.115JB in accordance with decision of the Hon'ble Special Bench of the tribunal in the case of Vireet Investment (P) Limited (supra) read with explanation 1(f) to Section 115JB of the 1961 Act. We order accordingly.

7.In the result, the appeal filed by assessee in ITA No.577/Chny/2019 for ay: 2014-15 is partly allowed for statistical purposes as indicated above.

Order pronounced on the 27th day of February, 2020 in Chennai.

Sd/-

(एन.आर.एस. गणेशन)

(N.R.S. GANESAN)

न्यायिक सदस्य/**JUDICIAL MEMBER**

Sd/-

(रमित कोचर)

(RAMIT KOCHAR)

लेखा सदस्य/**ACCOUNTANT MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 27th February, 2020.

TLN

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF