

**IN THE INCOME TAX APPELLATE TRIBUNAL "G", BENCH MUMBAI
BEFORE SHRI G. MANJUNATHA, ACCOUNTANT MEMBER
&
SHRI RAVISH SOOD, JUDICIAL MEMBER**

**ITA No.2193/Mum/2016
(Assessment Year: 2008-09)**

Sunshine Communication Pvt.Ltd. Thar & Co., 203 Capri Building Opposite HDIL Towers Anant Kanekar Marg Bandra(E) Mumbai-400 051	Vs.	ACIT, Central Circle-5(4) Mumbai
PAN/GIR No.AADCS4276S		
Appellant)	..	Respondent)

Assessee by	Shri Nimesh Thar, AR
Revenue by	Shri V.Vinod Kumar, DR
Date of Hearing	26/02/2020
Date of Pronouncement	04 /03/2020

आदेश / O R D E R

PER G.MANJUNATHA (A.M):

This appeal filed by the assessee is directed against, the order of the Ld. Commissioner of Income Tax (Appeals)-53, Mumbai, dated 29/12/2015 and it pertains to Assessment Year 2008-09.

2. The assessee has raised the following grounds of appeal:

The Learned CIT (A) has erred in law & on facts in upholding the following actions of the assessing officer, which is invalid and bad in Law.
1) *The Learned CIT (A) has erred in law & on facts in upholding adding back the disallowance made u/s 14A of the Income Tax Act, 1961 in the Original Assessment Order dated 31-12-2010 of Income Tax u/s 143 (3) of the Income Tax Act, 1961 in re computing book profits u/s 115JB of the IT Act, 1961, vide rectification Order u/s 154 of the IT Act 1961 dated 08-08-2012 which is invalid and bad in Law.*

2) The Appellant craves leave to add to and/ or amend and/ or delete and/ or modify and/ or alter the aforesaid grounds of appeal as and when the occasion demands.

3) All the aforesaid grounds of appeal are independent, in the alternative and without prejudice to one another.

3. The brief facts of the case are that the assessee company is engaged in the business of advertising agency, filed its return of income for AY 2008-09 on 30/09/2008, declaring total loss of Rs.2,17,74,086/-. The assessment has been completed u/s 143(3) of the I.T.Act, 1961 on 31/12/2010, determining the total loss at Rs.1,13,89,410/-, after making additions towards disallowances of expenditure incurred in relation to exempt income u/s 14A r.w.Rule 8D of I.T.Rules,1962, amounting to Rs.1,04,06,558/-. Subsequently, the Ld. AO has rectified assessment u/s 154 of the I.T.Act, 1961, vide his order dated 08/08/2012 and determined total loss at Rs.1,13,89,410/- under normal provisions of the I.T.Act, 1961 and book profit of Rs.1,80,61,368/- u/s 115JB of the I.T.Act,1961, by making adjustments to book profit computed u/s 115JB of the I.T.Act,1961 towards disallowances made u/s 14A of the I.T.Act, 1961.

4. Aggrieved by the assessment order, the assessee preferred an appeal before the Ld.CIT(A). Before the Ld.CIT(A), the assessee submitted that disallowances contemplated u/s 14A of the I.T.Act,1961 cannot be adjusted to book profit computed u/s 115JB of the I.T.Act, 1961. The Ld.CIT(A) after considering relevant submissions of the assessee and also taken note of various judicial precedents held that there is no merit in arguments of the assessee that disallowances made towards expenditure incurred in relation to

exempt income u/s 14A of the I.T.Act,1961, cannot be added to book profit computed u/s 115JB of the I.T.Act,1961. Aggrieved by the Ld.CIT(A) order, the assessee is in appeal before us.

5. The Id. AR for the assessee, at the time of hearing submitted that this issue is squarely covered in favour of the assessee by the decision of ITAT, Mumbai, in the case of M/s Awas Developers and Construction Pvt.Ltd. vs DCIT in ITA No. 2682/Mum/2016, where the Tribunal by following the Special Bench decision of ITAT, Delhi in the case of ACIT vs Vireet Investments Pvt.Ltd. (2017) 82 taxmann 415, deleted additions of disallowances u/s 14A r.w.Rule 8D of I.T.Rules, 1962 to book profit computed u/s 115JB of the I.T.Act,1961.

6. The Ld. DR, on the other hand fairly accepted that the issue is squarely covered in favour of the assessee by the decision of ITAT Special Bench, however he submitted that on a plain reading of section 115JB of the I.T.Act,1961, any expenditure incurred in relation to exempt income needs to be added back to book profit computed u/s 115JB of the I.T.Act,1961.

7. We have heard both the parties, perused the material available on record and gone through orders of the authorities below. The issue involved in present appeal, i.e, whether disallowances of expenditure incurred in relation to exempt income u/s 14A r.w.Rule 8D of the I.T.Rules,1962, needs to be adjusted, while computing book profit u/s 115JB of the I.T.Act,1961,or is not a *res integra*. The ITAT Special Bench in the case of ACIT vs. Vireet Investments Pvt.Ltd. (supra) has considered an identical issue and held that

computation under clause(f) of Explanation 1 to section 115JB of Act, is to be made without resorting to computation as contemplated u/s 14A r.w.Rule 8D of I.T.Rules, 1962. A similar view has been upheld by the Hon'ble Bombay High Court, in the case of CIT vs Bengal Finance and Investments Ltd. in ITA No.337 of 2013, dated 10/02/2015. Therefore, we are of the considered view that the Ld. AO, as well as the Ld.CIT(A) were erred in re-computation of book profit by adding disallowances of expenses in relation to exempt income u/s 14A r.w.Rule 8D of I.T.Rules, 1962. Hence, we direct the Ld. AO to delete additions made towards disallowances u/s 14A of the I.T.Act,1961, to book profit computed u/s 115JB of the I.T.Act, 1961.

8. In the result, appeal filed by the assessee is allowed.

Order pronounced in the open court on this 04/03/2020

Sd/-
(RAVISH SOOD)
JUDICIAL MEMBER

Sd/-
(G. MANJUNATHA)
ACCOUNTANT MEMBER

Mumbai; Dated 04/03/2020
Thirumalesh Sr.PS

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.

BY ORDER,

सत्यापित प्रति //True Copy//

(Asstt. Registrar)
ITAT, Mumbai