

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

**[Coram: Pramod Kumar VP, and Ravish Sood JM]**

ITA Nos. 299 and 278//Mum/18  
Assessment years: 2013-14 and 2014-15

**Tata Industries Ltd** .....Appellant  
*Bombay House, 24, Homi Mody Street,  
Fort, Mumbai 400 001 [PAN: AAAC4058L]*

*Vs*

**Deputy Commissioner of Income Tax**  
**Circle (3)(1), Mumbai** .....Respondent

ITA Nos. 67 and 68/Mum/2018  
Assessment years: 2013-14 and 2014-15

**Deputy Commissioner of Income Tax**  
**Circle (3)(1), Mumbai** .....Appellant

*Vs*

**Tata Industries Limited** .....Respondent  
*Bombay House, 24, Homi Mody Street,  
Fort, Mumbai 400 001 [PAN: AAAC4058L]*

**Appearances by**

**R Manjunath Swamy, Amit Pratap Singh,**  
**and Inder Solanki** *for the revenue*  
**Aarti Vissanji** *for the assessee*

Dates of hearing of the appeal : February 24<sup>th</sup>, 2020  
Date of pronouncing this order : May 27<sup>th</sup>, 2020

**O R D E R**

**Per Pramod Kumar VP:**

1. These two sets of cross appeals pertain to the same assessee, involve some common issues and were heard together. As a matter of convenience, therefore, both the set of cross appeals are being disposed of by this common order.

2. We will first take up the cross appeals for the assessment year 2013-14.

3. These cross appeals challenge correctness of the learned CIT(A)'s order dated 23<sup>rd</sup> October 2017, in the matter of assessment under section 143(3) of the Income Tax Act, 1961, for the assessment year 2013-14.

4. Grievances raised by the parties are as follows:

**Grievances of the assessee:**

*1. In the facts and circumstances of the case and in law, the Ld. CIT(A) ought to have held that:*

*1.1 (a) no disallowance can be made under Rule 8D(2)(i), as the Ld. AO has not establishment that Rs. 2,86,45,152/- incurred by Project and Investment Department represents direct expenditure.*

**Without prejudice to the above and in the alternate**

*(b) In view of the disallowance made of Rs. 2,86,45,152/- being the expenditure incurred by Project and Investment Department under Rule 8D(2)(i) of the Rules, no further disallowance can be made under Rule 8D(2)(iii) of the Rules.*

*(c) The aggregate amount of disallowance made of expenditure U/s. 14A of the Act read with Rule 8D cannot exceed the expenditure incurred by the Project and Investment Department of Rs. 2,86,45,152/-.*

*1.2 The expenditure incurred by the Project and Investment Department of Rs. 2,86,45,152/- cannot be considered in computing Book Profit u/s. 115JB of the Act, as the AO has not established that such expenditure represents direct expendit*

**Assessing Officer's grievances:**

*1. " On the facts and the circumstances of the case and in law, the Ld. CIT(A) has erred in directing the A.O to exclude strategic investments from the total investment for computing disallowance u/s. 14A r.w.r 8D(2)(iii), without appreciating the fact that the assessee has earned exempt dividend income by incurring establishment and administrative expenditure on strategic investment."*

*2. " On the facts and the circumstances of the case and in law, the ld. CIT(A) has erred in not appreciating the fact that as per clauses (f) of explanation 1 of section 115JB(2) "the book profit means the net profits as shown in the profit and loss account for the relevant previous year prepared under sub-section (2), as increased by the amount or amounts of expenditure relatable to any income to*

***which (section 10 (other than the provisions contained in clause (38) thereof ) or section 11 or section 12 apply and all the relevant expenditure has to be added back to income for MAT computation.”***

5. To adjudicate on these appeals, only a few material facts need to be taken note of. The assessee before us is a resident company. The return of income, filed by the assessee, was selected for scrutiny assessment under the CASS. During the course of scrutiny assessment proceedings, the Assessing Officer noticed that while the assessee company had a tax-exempt dividend income of Rs 62,07,41,055, the assessee had offered disallowance under section 14A for only Rs 6,18,69,000. When Assessing Officer sought justification for this quantum of disallowance, it was, inter alia, explained by the assessee that there is no interest cost during the year, that the related expenditure of disallowance under section 14A was only out of ‘project and investment department’ forming part of the head office, that entire expenditure incurred under that head is Rs 2,86,45,152, and that out of this expense of Rs 2,86,45,152, certain expenses, details of which were set out, are such that these cannot be said to be relatable to earning of tax exempt income. It was explained that the balance amount, disallowable under section 14A, worked out to Rs 6,18,69,000. The Assessing Officer rejected the said explanation and observed that **“I have considered the submissions of the assessee company. I do not agree with the same, as, in my opinion, the expenditure incurred for project and investment department constitutes direct expenditure incurred in relation to investments held in shares, hence it is to be disallowed under rule 8D(2)(i) being in addition to disallowance made under rule 8D(2)(iii)”** He then proceeded to compute the disallowance under section 14A read with rule 8D, which was 0.5% of the average investments held by the assessee [i.e. under rule 8D(2)(iii)] amounting to Rs 11,06,68,000 plus Rs 2,86,45,152 being on account of direct expenses incurred to earn the dividend income [under rule 8D(2)(i)]. Out of the total amount of Rs 13,93,13,152, the Assessing Officer reduced the *suo motu* disallowance offered of Rs 6,18,69,000, and added, *inter alia*, the remaining Rs 7,74,44,152 to the income returned by the assessee. Aggrieved, assessee carried the matter in appeal before the CIT(A). Learned CIT(A) upheld, in principle, the rejection of *suo motu* disallowance offered by the assessee but gave some partial relief on the computation part, but, for the reasons we will set out in a short while, it is not really necessary to deal with justification for the partial relief granted by the CIT(A). Suffice to note that the learned CIT(A) upheld, in principle, the rejection of *suo motu* disallowance offered by the assessee. The assessee is aggrieved of the action of the CIT(A) being upheld in principle while the Assessing Officer is aggrieved of the relief granted by the CIT(A). Both the parties are in appeal before us.

6. We have heard the rival contentions, perused the material on record and duly considered the facts of the case in the light of the applicable legal position.

7. We find that the assessee has given a reasonable explanation about the quantification of his *suo motu* disallowance, and the Assessing Officer has not pointed out any specific

defects in the same. What was pointed out by the assessee that 'at best' entire expenses of project and investment department could be treated as 'expenditure incurred by the assessee in relation to income which does not form part of the total income'. It is so for the reason that the project and investment department is only department which deals with identifying the opportunities and growth in diverse business opportunities, and thus identifying investment opportunities is one of its functions, and that no other department of this company deals with the matters relating to investments in shares. The Assessing Officer has rejected this explanation on the ground that **"as, in my opinion, the expenditure incurred for project and investment department constitutes direct expenditure incurred in relation to investments held in shares, hence it is to be disallowed under rule 8D(2)(i) being in addition to disallowance made under rule 8D(2)(iii)"**. That's where he fell in error. An Assessing Officer cannot reject the *suo motu* disallowance offered by the assessee on the ground that such a disallowance under rule 8D will be more; that's putting cart before the horse. Quite to the contrary, an Assessing Officer can resort to rule 8D only when, as per the prescription of Section 14A(2) **"the Assessing Officer, having regard to the accounts of the assessee, is not satisfied with the correctness of the claim of the assessee in respect of such expenditure in relation to income which does not form part of the total income under this Act"**. That satisfaction, as required, under section 14A(2), for invoking rule 8D, cannot be on the basis of mechanism of rule 8D itself; it has to be independent of rule 8D. Rule 8D(1) also provides that **"Where the Assessing Officer, having regard to the accounts of the assessee of a previous year, is not satisfied" *inter alia*, "with—(a) the correctness of the claim of expenditure made by the assessee", "in relation to income which does not form part of the total income under the Act for such previous year, he shall determine the amount of expenditure in relation to such income in accordance with the provisions of sub-rule (2)"**. That exercise is clearly not carried out. The Assessing Officer has noted the explanation of the assessee and proceeded to disregard the same on the basis of working of rule 8D(2)(i) and 8D(2)(iii). There is no other, and in fact no, reason for rejection of the computation of disallowance by the assessee. As a matter of fact, on the fact of this case, there is not even a whisper of the reason, barring reference to rule 8D(2)(i), for rejecting the *suo motu* disallowance offered by the assessee. On these facts, and for the detailed reasons set out above, the Assessing Officer was in error in invoking rule 8D(2). We, therefore, deem it fit and proper to direct the Assessing Officer to delete the impugned additional disallowance under section 14A read with rule 8D, and to thereby accept the *suo motu* disallowance of Rs 6,18,69,000 offered by the assessee. Once we hold so, all other issues raised in these appeals become wholly academic and infructuous, and there is no need to adjudicate on the same.

8. In the result, the appeal of the assessee for the assessment year 2013-14 is allowed in the terms indicated above, and the appeal of the Assessing Officer for the assessment year 2013-14 is dismissed as infructuous.

9. Coming to the cross appeals for the assessment year 2014-15, which are directed against the CIT(A)'s order dated 23<sup>rd</sup> October 2017, in the matter of assessment under section 143(3) of the Income Tax Act, 1961 for the assessment year 2014-15, the grievances raised by the parties are as follows:

**Grievances of the assessee:**

1. *In the facts and circumstances of the case and in law, the Ld. CIT(A) ought to have held that:*

1.1 (a) *no disallowance can be made under Rule 8D(2)(i), as the Ld. AO has not establishment that Rs5,61,47,265/- incurred by Project and Investment Department represents direct expenditure.*

**Without prejudice to the above and in the alternate**

(b) *In view of the disallowance made of Rs5,61,47,265/- being the expenditure incurred by Project and Investment Department under Rule 8D(2)(i) of the Rules, no further disallowance can be made under Rule 8D(2)(iii) of the Rules.*

(c) *The aggregate amount of disallowance made of expenditure U/s. 14A of the Act read with Rule 8D cannot exceed the expenditure incurred by the Project and Investment Department of Rs5,61,47,265/-.*

1.2 *The expenditure incurred by the Project and Investment Department of Rs5,61,47,265/- cannot be considered in computing Book Profit u/s. 115JB of the Act, as the AO has not established that such expenditure represents direct expenditure.*

**Grievances of the Assessing Officer:**

1. *On the facts and the circumstances of the case and in law, the Ld. CIT(A) has erred in directing the A.O to exclude strategic investments from the total investment for computing disallowance u/s. 14A r.w.r 8D(2)(iii), without appreciating the fact that the assessee has earned exempt dividend income by incurring establishment and administrative expenditure on strategic investment.*

2. *On the facts and the circumstances of the case and in law, the Ld. CIT(A) has erred in not appreciating the fact that as per clauses (f) of explanation 1 of section 115JB(2) "the book profit means the net profits as shown in the profit and*

***loss account for the relevant previous year prepared under sub-section (2), as increased by the amount or amounts of expenditure relatable to any income to which (section 10 (other than the provisions contained in clause (38) thereof ) or section 11 or section 12 apply and all the relevant expenditure has to be added back to income for MAT computation.***

10. Learned representatives fairly agree that whatever we decide for the assessment year 2013-14 will also apply *mutatis mutandis* to this assessment year as well, as all the material facts, including the reasons of resorting to disallowance under rule 8D(2) are the same as in the assessment year. The rejection of *suo motu* disallowance offered by the assessee, for this year also, was based on section 14A read with rule 8D, rather than with the facts of this case or on analysis of the disallowance offered by the assessee. In view of this position, and for the detailed reasons set out earlier in this order which are equally applicable here, the Assessing Officer was in error in invoking rule 8D(2). We, therefore, deem it fit and proper to direct the Assessing Officer to delete the impugned additional disallowance under section 14A read with rule 8D, and to thereby accept the *suo motu* disallowance of Rs 5,61,47,265 offered by the assessee. Once we hold so, all other issues raised in these appeals become wholly academic and infructuous, and there is no need to adjudicate on the same.

11. However, before we part with the matter, we must deal with one procedural issue as well. While hearing of these appeals was concluded on 24<sup>th</sup> February 2020, this order thereon is being pronounced today on th day of May, 2020, much after the expiry of 90 days from the date of conclusion of hearing. We are also alive to the fact that rule 34(5) of the Income Tax Appellate Tribunal Rules 1963, which deals with pronouncement of orders, provides as follows:

**(5) The pronouncement may be in any of the following manners:—**

**(a) The Bench may pronounce the order immediately upon the conclusion of the hearing.**

**(b) In case where the order is not pronounced immediately on the conclusion of the hearing, the Bench shall give a date for pronouncement.**

**(c) In a case where no date of pronouncement is given by the Bench, every endeavour shall be made by the Bench to pronounce the order within 60 days from the date on which the hearing of the case was concluded but, where it is not practicable so to do on the ground of exceptional and extraordinary circumstances of the case, the Bench shall fix a future day for pronouncement of the order, and such date shall not ordinarily (emphasis supplied by us now) be a day beyond a further period of 30 days and due notice of the day so fixed shall be given on the notice board.**

12. Quite clearly, “ordinarily” the order on an appeal should be pronounced by the bench within no more than 90 days from the date of concluding the hearing. It is, however, important to note that the expression “ordinarily” has been used in the said rule itself. This rule was inserted as a result of directions of Hon’ble jurisdictional High Court in the case of Shivsagar Veg Restaurant Vs ACIT [(2009) 317 ITR 433 (Bom)] wherein Their Lordships had, inter alia, directed that “We, therefore, direct the President of the Appellate Tribunal to frame and lay down the guidelines in the similar lines as are laid down by the Apex Court in the case of Anil Rai (supra) and to issue appropriate administrative directions to all the benches of the Tribunal in that behalf. We hope and trust that suitable guidelines shall be framed and issued by the President of the Appellate Tribunal within shortest reasonable time and followed strictly by all the Benches of the Tribunal. In the meanwhile (emphasis, by underlining, supplied by us now), all the revisional and appellate authorities under the Income-tax Act are directed to decide matters heard by them within a period of three months from the date case is closed for judgment”. In the ruled so framed, as a result of these directions, the expression “ordinarily” has been inserted in the requirement to pronounce the order within a period of 90 days. The question then arises whether the passing of this order, beyond ninety days, was necessitated by any “extraordinary” circumstances.

13. Let us in this light revert to the prevailing situation in the country. On 24th March, 2020, Hon’ble Prime Minister of India took the bold step of imposing a nationwide lockdown, for 21 days, to prevent the spread of Covid 19 epidemic, and this lockdown was extended from time to time. As a matter of fact, even before this formal nationwide lockdown, the functioning of the Income Tax Appellate Tribunal at Mumbai was severely restricted on account of lockdown by the Maharashtra Government, and on account of strict enforcement of health advisories with a view of checking spread of Covid 19. The epidemic situation in Mumbai being grave, there was not much of a relaxation in subsequent lockdowns also. In any case, there was unprecedented disruption of judicial wok all over the country. As a matter of fact, it has been such an unprecedented situation, causing disruption in the functioning of judicial machinery, that Hon’ble Supreme Court of India, in an unprecedented order in the history of India and vide order dated 6.5.2020 read with order dated 23.3.2020, extended the limitation to exclude not only this lockdown period but also a few more days prior to, and after, the lockdown by observing that “In case the limitation has expired after 15.03.2020 then the period from 15.03.2020 till the date on which the lockdown is lifted in the jurisdictional area where the dispute lies or where the cause of action arises shall be extended for a period of 15 days after the lifting of lockdown”. Hon’ble Bombay High Court, in an order dated 15th April 2020, has, besides extending the validity of all interim orders, has also observed that, “It is also clarified that while calculating time for disposal of matters made time-bound by this Court, the period for which the order dated 26th March 2020 continues to operate shall be added and time shall stand extended accordingly”, and also observed that “arrangement continued by an order dated 26th March 2020 till 30th April 2020 shall continue further till 15th June 2020”. It has been an unprecedented situation

not only in India but all over the world. Government of India has, vide notification dated 19th February 2020, taken the stand that, the coronavirus “should be considered a case of natural calamity and FMC (i.e. force majeure clause) maybe invoked, wherever considered appropriate, following the due procedure...”. The term ‘force majeure’ has been defined in Black’s Law Dictionary, as ‘an event or effect that can be neither anticipated nor controlled’ When such is the position, and it is officially so notified by the Government of India and the Covid-19 epidemic has been notified as a disaster under the National Disaster Management Act, 2005, and also in the light of the discussions above, the period during which lockdown was in force can be anything but an “ordinary” period.

14. In the light of the above discussions, we are of the considered view that rather than taking a pedantic view of the rule requiring pronouncement of orders within 90 days, disregarding the important fact that the entire country was in lockdown, we should compute the period of 90 days by excluding at least the period during which the lockdown was in force. We must factor ground realities in mind while interpreting the time limit for the pronouncement of the order. Law is not brooding omnipotence in the sky. It is a pragmatic tool of the social order. The tenets of law being enacted on the basis of pragmatism, and that is how the law is required to interpreted. The interpretation so assigned by us is not only in consonance with the letter and spirit of rule 34(5) but is also a pragmatic approach at a time when a disaster, notified under the Disaster Management Act 2005, is causing unprecedented disruption in the functioning of our justice delivery system. Undoubtedly, in the case of *Otters Club Vs DIT* [(2017) 392 ITR 244 (Bom)], Hon’ble Bombay High Court did not approve an order being passed by the Tribunal beyond a period of 90 days, but then in the present situation Hon’ble Bombay High Court itself has, vide judgment dated 15th April 2020, held that directed “while calculating the time for disposal of matters made time-bound by this Court, the period for which the order dated 26th March 2020 continues to operate shall be added and time shall stand extended accordingly”. The extraordinary steps taken suo motu by Hon’ble jurisdictional High Court and Hon’ble Supreme Court also indicate that this period of lockdown cannot be treated as an ordinary period during which the normal time limits are to remain in force. In our considered view, even without the words “ordinarily”, in the light of the above analysis of the legal position, the period during which lockdown was in force is to be excluded for the purpose of time limits set out in rule 34(5) of the Appellate Tribunal Rules, 1963. Viewed thus, the exception, to 90-day time-limit for pronouncement of orders, inherent in rule 34(5)(c), with respect to the pronouncement of orders within ninety days, clearly comes into play in the present case. Of course, there is no, and there cannot be any, bar on the discretion of the benches to refile the matters for clarifications because of considerable time lag between the point of time when the hearing is concluded and the point of time when the order thereon is being finalized, but then, in our considered view, no such exercise was required to be carried out on the facts of this case.

15. In the result, the appeal of the assessee for the assessment year 2014-15 is also allowed in the terms indicated above, and the appeal of the Assessing Officer for the assessment year 2014-15 is also dismissed as infructuous. To sum up both the appeals filed by the assessee are allowed in the terms indicated above, and both the appeals filed by the Assessing Officer are dismissed as infructuous. Order pronounced under rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1962, by placing the details on the notice board.

**Sd/-**  
**Ravish Sood**  
(Judicial Member)

**Sd/-**  
**Pramod Kumar**  
(Vice President)

**Mumbai, Dated the 27<sup>th</sup> day of May 2020**

*Copies to:*

(1)	<i>The appellant</i>	(2)	<i>The respondent</i>
(3)	<i>CIT</i>	(4)	<i>CIT(A)</i>
(5)	<i>DR</i>	(6)	<i>Guard File</i>

*By order*

*Assistant Registrar  
Income Tax Appellate Tribunal  
Mumbai benches, Mumbai*