

**IN THE INCOME TAX APPELLATE TRIBUNAL
"C" Bench, Mumbai**

**Before Shri M. Balaganesh, Accountant Member
and Shri Ravish Sood, Judicial Member**

**ITA No. 4488/Mum/2018
(Assessment Year: 2013-14)**

M/s Cyril Traders Pvt. Ltd.
84-A, Mittal Court, 224,
Nariman Point,
Mumbai – 400 021

Vs. Assistant Commissioner of
income-tax, Circle-3(1)(2),
Room No. 607, 6th Floor,
Aayakar Bhavan, M.K. Road,
Mumbai – 400020

PAN – AABCF0695A

(Appellant)

(Respondent)

Appellant by: Shri Vijay Mehta &
Shri Anuj Kisnadwala, A.Rs
Respondent by: Kumar Padmapani Bora, D.R
Date of Hearing: 29.01.2020
Date of Pronouncement: 17.02.2020

ORDER

PER RAVISH SOOD, JM

The present appeal filed by the assessee is directed against the order passed by the CIT(A)-8, Mumbai, dated 17.04.2018, which in turn arises from the order passed by the A.O under Sec. 143(3) of the Income Tax Act, 1961 (for short 'Act'), dated 29.01.2016 for A.Y. 2013-14. The assessee has assailed the impugned order on the following grounds of appeal before us:

"The Appellant objects to the order dated 17th April, 2018 passed by the Commissioner of Income Tax (Appeals)-8, Mumbai (hereinafter referred to as CIT(A)) For the Assessment year 2013-14 on following among other grounds :-

1. The Learned CIT(A) erred in confirming the addition made by Assessing officer to the book profit towards 'Expenditure relatable to any income to which section 10 applies' amounting to Rs.24,47,923/- as against Rs.13,37,508/- estimated by the Appellant. The learned CIT(A) erred in not appreciating the fact that provision of section 14A r.w. rule 8D is not applicable to Sec.115JB in view of the non obstante clause "Notwithstanding anything contained in any other provision of this Act."

2. It is therefore prayed that the order of the CIT(A) be cancelled and direction be issued to allow the appeal on the grounds raised before him.
3. The appellant reserves the right to amend, alter or add to any of the above grounds of Appeal."

2. Briefly stated, the assessee company had filed its return of income for A.Y. 2013-14 on 29.09.2011, declaring its total income at Rs.2,74,83,420/- under the normal provisions of the Act and 'book profit' of Rs.4,36,77,251/- under Sec. 115JB of the Act. Subsequently, the case of the assessee was selected for scrutiny assessment under Sec. 143(2) of the Act.

3. During the course of the assessment proceedings it was observed by the A.O that the assessee had suo motto disallowed all the expenses while calculating its business income under the normal provisions of the Act. However, while computing its 'book profit' under Sec. 115JB, it was observed by the A.O that the assessee had added back an amount of Rs.13,37,508/- as expenditure relatable to earning of the exempt dividend income as per clause (f) of Explanation 1 to Sec. 115JB of the Act. On a perusal of the records, it was observed by the A.O that the assessee during the year had received exempt dividend income of Rs.1,45,,29,020/- which however was not included in its 'book profit'. Also, it was noticed by the A.O that the assessee had made investments to the tune of Rs.46.29 crores in equity shares and mutual fund which in turn were capable of generating exempt income. On the basis of the aforesaid facts, the A.O called upon the assessee to explain as to why the disallowance under Sec.14A may not be worked out in its hands. In reply, it was submitted by the assessee that as the expenses debited to the profit and loss account had already been disallowed on a suo motto basis while computing its income under the normal provisions of the Act, therefore, there was no question of inviting any further disallowance under Sec. 14A of the Act. Also, it was the claim of the assessee that the provisions of Sec. 14A had no bearing on the computation of the 'book profit' under Sec. 115JB of the Act. However, the A.O after deliberating on the contentions advanced by the assessee was not persuaded to subscribe to the same. Observing, that the disallowance under Sec. 14A was to be computed in accordance with Rule 8D, the A.O worked out the same at an amount of Rs.24,47,923/-, as under:

The disallowance u/s. 14A/Rule 8D shall be aggregate of the following:	Amount (Rs.)
Amount of expenses directly relating to income which does not form part of the total income (Demat and Custody Charges)	92,735
Amount of the interest expenses indirectly attributable to such income, in accordance with the formula.	Nil

0.5% of the average value of investments as computed below: Average of such investment on the first and last day of previous year $\frac{479105903 + 462969103}{2} = \text{Rs. } 74,10,37,503/-$	23,55,188
0.5% of 47,10,37,503/-	
Total disallowance u/s.14A	24,47,923

As the assessee had already added an amount of Rs. 13,37,508/- while computing its 'book profit' under Sec.115JB, therefore, the balance amount of Rs.11,10,415/- [Rs.24,47,923/- (-) Rs.13,37,508/-] was added back by the A.O to the 'book profit' under Sec. 115JB of the Act. On the basis of his aforesaid deliberations the A.O re-worked out the 'book profit' under Sec.115JB at an amount of Rs.4,47,87,666/-.

4. Aggrieved, the assessee carried the matter in appeal before the CIT(A). Observing, that the issue involved in the case was squarely covered by the orders of the ITAT, Mumbai in the case of viz. (i) ITO Vs. RBK Share Broking Pvt. Ltd. 37 taxman 138 (2013); and (ii) M/s Viraj Profiles Ltd. in ITA No. 4439/Mum/2013, dated 21.10.2015, wherein the disallowance under Sec. 14A for computing 'book profit' under Sec. 115JB was confirmed by the Tribunal, the CIT(A) upheld the view taken by the A.O in the case before him. Accordingly, the appeal filed by the assessee was dismissed.

5. The assessee being aggrieved with the order of the CIT(A) has carried the matter in appeal before us. The Id. Authorized Representative (for short 'A.R') for the assessee took us through the facts of the case. It was averred by the Id. A.R that the lower authorities had erred in failing to appreciate that no adjustment in respect of a disallowance worked out under Sec.14A r. w. Rule 8D could be carried out while computing the 'book profit' under Sec. 115JB of the Act. In support of his aforesaid contention the Id. A.R had placed reliance on the order of the 'Special bench' of the Tribunal in the case of Vireet Investment Pvt. Ltd. (ITA No. 520/Del/2012, dated 16.06.2017) (SB). As regards the suo motto disallowance of the expenses at Rs.13,37,508/- made by the assessee while computing the 'book profit' under Sec.115JB, it was submitted by the Id. A.R. that the same could justifiably be related to the earning of the exempt dividend income by the assessee company. As such, it was the claim of the Id. A.R. that there was no justification on the part of the lower authorities in substituting the suo motto disallowance offered by the assessee under Sec. 14A while computing its 'book profit' under Sec. 115JB as against that arrived at as per the methodology envisaged in Rule 8D. In order to

buttress his aforesaid claim the Id. A.R took us through the relevant pages of the assessee's paper book (for short 'APB'), wherein the basis for the pro rata working of the expenses relatable to earning of the exempt dividend income by the assessee company stood reflected. On the basis of his aforesaid contention, it was submitted by the Id. A.R that the further enhancement of the disallowance worked out under Sec. 14A r.w. Rule 8D for the purpose of computing the 'book profit' under Sec. 115JB by the A.O clearly militated against the mandate of law and could not be sustained.

6. Per contra, the Id. Departmental Representative (for short 'D.R') relied on the orders of the lower authorities. It was submitted by the Id. D.R that the A.O had rightly worked out the 'book profit' under Sec.115JB after enhancing the same by the amount of the disallowance worked out under Sec. 14A r.w. Rule 8D.

7. We have heard the authorized representatives for both the parties, perused the orders of the lower authorities and the material available on record. We shall first advert to the contention of the Id. A.R that the lower authorities has erred in making an addition of the disallowance under Sec. 14A r.w. Rule 8D for the purpose of computing the 'book profit' under Sec. 115JB of the I.T. Act. In our considered view the issue under consideration is covered by the order of the 'Special bench' of the Tribunal in the case of **Vireet Investment Pvt. Ltd. (ITA No. 502/Del/2012 & CO No. 68/Del/2012; dated. 16.06.2017(SB))**, wherein it was observed as under:

"6.22. In view of above discussion, we answer the question referred to us in favour of assessee by holding that the computation under clause (f) of Explanation 1 to Section 115JB(2), is to be made without resorting to the computation as contemplated u/s 14A read with Rule 8D of the Income-tax Rules, 1962."

We have perused the aforesaid order of the 'Special bench' of the Tribunal and are of the considered view that as therein held, the A.O while computing the 'book profit' under Sec. 115JB shall not make any adjustment in respect of the disallowance worked out under Sec. 14A r.w. Rule 8D in the hands of the assessee.

8. As regards the quantification of the expenses incurred by the assessee for earning of the exempt dividend income at an amount of Rs.13,37,508/-, we find no infirmity in the same. On a perusal of the computation of income, we find, that the assessee had on a pro rata basis

attributed part of the expenses towards earning of the exempt dividend income. As per the records, the assessee had adopted the following basis for arriving at the amount of Rs.13,37,508/- (supra), which as per him could safely be related as having been incurred for earning of the exempt dividend income:

"Working for Disallowance u/s 14(A)

<u>Total Expenses</u>	X Exempt Income
Total Income	
<u>5,836,787</u>	X 14,706,310
64,177,243	
	13,37,508/-"

In fact, on a perusal of the 'total expenses' of Rs.58,36,787/- which had been adopted by the assessee as the base figure for working out the aforesaid amount of Rs.13,37,508/- (supra), we find that certain expenses are clearly relatable to earning of the taxable income of the assessee. Accordingly, on the basis of the aforesaid factual position we are of the considered view that the assessee had fairly worked out the expenses incurred for earning of the exempt dividend income at an amount of Rs.13,37,508/-. On the basis of our aforesaid observations, we are of the considered view that the lower authorities had erred in substituting the disallowance worked out under Sec.14A r.w. Rule 8D at an amount of Rs.24,47,923/- as against that offered by the assessee for the purpose of computing its 'book profit' under Sec. 115JB of the Act. Accordingly, not being persuaded to subscribe to the view taken by the lower authorities, we set aside the order of the CIT(A) and direct the A.O to restrict the addition in respect of the expenses related to earning of the exempt dividend income at Rs.13,37,508/- for the purpose of computing the 'book profit' under Sec.115JB of the Act, as claimed by the assessee.

8. Resultantly, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 17.02.2020

Sd/-
(M. Balaganesh)
ACCOUNTANT MEMBER

Sd/-
(Ravish Sood)
JUDICIAL MEMBER

Mumbai;
Dated: 17 /02/2020
Rohit, P.S.

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,

(Sr. Private Secretary)
ITAT, Mumbai