

IN THE INCOME TAX APPELLATE TRIBUNAL "D" BENCH, MUMBAI

BEFORE SHRI PRAMOD KUMAR, VP AND SHRI AMARJIT SINGH, JM

आयकर अपील सं/ I.T.A. No.484/Mum/2019

(निर्धारण वर्ष / Assessment Year: 2014-15)

ACIT, Circle 2(1)(1) R. No. 561, 5 th Floor, Aayakar Bhavan, M. K. Road, Mumbai-400020.	बनाम/ Vs.	DSP HMK Holdings P. Ltd. 11 th Floor, Mafatlal Centre, Nariman Point, Mumbai- 400021.
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स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACH1037K

(अपीलार्थी /Appellant) .. (प्रत्यर्थी / Respondent)

Revenue by:	Shri V. Sreekar (DR)
Assessee by:	Shri Madhur Agarwal

सुनवाई की तारीख / Date of Hearing: 13/02/2020

घोषणा की तारीख /Date of Pronouncement: 06/07/2020

आदेश / O R D E R

PER AMARJIT SINGH, JM:

The revenue has filed the present appeal against the order dated 28.11.2018 passed by the Commissioner of Income Tax (Appeals) -04, Mumbai [hereinafter referred to as the "CIT(A)"] relevant to the A.Y.2014-15.

2. The revenue has raised the following grounds: -

"1. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in restricting the disallowance u/s 14A made by the AO thereby overlooking the fact that it was correctly worked out as per the method of calculation prescribed in Rule 8D of Income Tax Rules, 1962.*



2. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in restricting the disallowance u/s 14A with Rule 8D when this method of working of disallowance u/s 14A with Rule 8D when this method of working of disallowance is held as reasonable method by the jurisdictional High Court in the case of Godrej & Boyce Mfg. Co. Ltd. Vs. CIT 328 ITR 81 (Bom).*
3. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in allowing relief to the assessee relying on the decision of Hon'ble Special Bench of ITAT Delhi in the case of Vireet Investment (P.) Ltd. without appreciating the facts that the issue has not reached to its finality as the Hon'ble Delhi High Court in its decision in the case of Goetz India Ltd. reported in 361 ITR 505 held that while computing Book Profit disallowance u/s 14A is required to be made.*

The appellant prays that the order of CIT(A) on the above ground be set-aside and that of the assessing officer be restored."

3. The brief facts of the case are that the assessee filed his return of income on 28.11.2014 declaring total income to the tune at Rs.35,67,13,350/- under normal provisions and Rs.60,02,10,148/- u/s 115JB. The case was selected for scrutiny under CASS. Notices u/s 143(2) & 142(1) of the I. T. Act, 1961 were issued and served upon the assessee. The assessee company was engaged in the business of investment. The assessee earned the dividend income from mutual funds in sum of Rs.2,80,25,445/- and dividend on shares in sum of Rs.1,48,17,530/-. The total income was in sum of Rs.4,28,42,975/-. The assessee suo-moto disallowance the expenditure to earn the exempt income in sum of Rs.5,72,785/-. The notice was given to the assessee as to why the disallowance u/s 14A r.w.r. 8D should not be made. After the reply of the assessee the expenditure to earn the exempt income was assessed in sum of Rs.3,55,37,232/- u/s 14A r.w.r. 8D. The assessee had already shown the expenditure to earn the income in sum of Rs.5,72,785/-, therefore, an



amount of Rs.3,49,64,447/- was disallowed and added to the income of the assessee. Accordingly, the addition was raised in view of the provisions u/s 115JB of the Act. The total income of the assessee was assessed in sum of Rs.39,78,35,330/- under normal provisions of the Act and in sum of Rs.63,51,74,595/- under the provisions of Book Profit u/s 115JB of the Act. Feeling aggrieved, the assessee filed an appeal before the CIT(A) who remanded the issue before the AO in view of the decision of the ITAT in the assessee's own case for the A.Y. 2008-09, 2009-10, 2010-11, 2011-12 & 2012-13. However, the disallowance u/s 14A r.w. Rule 8D while computing the books profit u/s 115JB of the Act has been deleted in view of the decision of the Hon'ble ITAT Delhi Special Bench in case of **ACIT Vs Vireet Investment P. Ltd.** ITA. No.502/Del/2012 and C.O. No. 68/Del/2014 The revenue was not satisfied, therefore, the revenue has filed the present appeal before us.

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4. The Ld. Representative of the revenue has argued that the AO has correctly applied the provisions u/s 14A r.w.r. 8D but the CIT(A) has wrongly applied the method of calculation placed upon the different authorities, therefore, the finding of the CIT(A) is not justifiable, hence, liable to be set aside. It is specifically argued that the CIT(A) has wrongly applied the authority in the case of Vireet Investment (P) Ltd. which is not justifiable, hence, the finding of the CIT(A) is liable to be set aside. However, on the other hand, the Ld. Representative of the assessee has strongly relied upon the order passed by the CIT(A) in question. Before



going further, we deemed it necessary to advert the finding of the CIT(A)
on record: -

“6.2 Ground No. 2 & 7 vide this ground appellant has agitated against additional disallowance of an amount of Rs.3,49,64,447/- u/s 14A read with Rule 8D. In para 5 of the assessment order the Ld. AO had mentioned that the assessee company had claimed exempt income amounting to Rs.4,28,42,975/- against which the appellant had suo-moto disallowed a sum of Rs.5,72,785/- as expenditure u/s 14A read with Rule 8D. Since the appellant had earned exempt income and according to the Ld. AO the assessee company did not maintained separate accounts for investments, therefore, he applied the provisions of Section 14A read with Rule 8D and worked out a disallowance of Rs.3,55,37,232/-. After giving credit of disallowance made by the appellant itself for an amount of Rs.5,72,785/- the net disallowance made by the AO comes to Rs.3,49,64,447/-. During the course of appellate proceedings, a written submission was filed which find place in para 5 of this order. The appellant submitted that similar type of disallowances were made in appellant's own case for assessment years 2008-09,2009-10. 2010-11, 2011-12 and 2012-13. According to the appellant, the appeal of the assessee on these grounds has been decided by Hon'ble Tribunal. I have considered the submission of the appellant, the Hon'ble Tribunal in appellant's own case has held as under:

The Hon'ble ITAT during A.Y. 2008-09, in ITA No. 7598/Mum/2011 dated 22.01.2014 has held as under:

We are of the considered view that a reasonable allocation of expenditure has to be made which can be attributed to the income which is chargeable to tax. Considering the facts and circumstances of the case, we are of the considered view that expenditure of As. 4,77,890/- as worked out by the assessee, the details of which are mentioned by AO at pg. 2 of the order, is reasonable to make disallowance u/s 14A with Rule 80. Accordingly, we restrict the disallowance of R5.4,77,890/- by reversing the orders of the lower authorities below and thus allow the grounds of appeal taken by assessee.

In A.Y. 2009-10, in ITA No. 6780/Mum/2012 dated 31.03.2016

On perusal of the above decision of the Tribunal, we agree with the Id. Counsel's argument and remand the matter to the file of the AO. We direct the AO to apply the said ratio to the facts of the present case and



other decisions, if any, in force and decide the issue in accordance with law.

(Appeal effect given by AO accepting assessee's disallowance vide order dt. 30/06/2017)

In A.Y. 2010-11, in ITA No. 7135/MUM/2013 dated 22.04.2016

8 - As could be seen, in this case also, the assessee has made disallowance under section 14A which is more than reasonable considering the exempt income earned by the assessee in comparison to the taxable income. Moreover in this case also, the Tribunal has decided the issue in the AY 2008- 09 vide ITA No.7623/Mum/2011 dt.22/01/2014.

9 - That being the case, respectfully following the order of the coordinate bench of the Tribunal, we restrict the disallowance u/s 14A of the Act As. 23,08,853/-, as offered by the assessee. Accordingly, ground raised by the assessee is allowed and ground raised by the department is dismissed.

In A.Y. 2011-12, in ITA No. 5484/M/2014 dated 17.03.2016

On perusal of the above decision of the Tribunal, we agree with the Id. Counsel's argument and remand the matter to the file of the AO. We direct the AO to apply the said ratio to the facts of the present case and other decisions, if any, in force and decide the issue in accordance with law.

(Appeal effect given by AO accepting assessee's disallowance vide order dt. 30/06/2017)

In A.Y. 2012-13, in ITA No. 1159/MUM/2017 dated 25.07.2018

9- Upon further appeal, the Id. CIT(A) has restricted the same to Rs. 6.48 lacs on similar reasoning and by placing reliance on the stand of this Tribunal for earlier years.

10 - Facts being identical, taking the same stand, we confirm the action of Id. CIT(A).

Since there is neither any legal change nor any factual change therefore, respectfully following judgement of Hon'ble ITAT in appellant's own case for assessment year 2008-09, 2009-10, 2010-11, 2011-12, 2012-13, AD is directed to work out the disallowance as per the criteria decided by



Hon'ble ITAT in appellant's own case in earlier years. Hence appeal is partly allowed."

5. On appraisal of the above mentioned order, we find that the claim of the assessee was allowed on the basis of the decision of the Hon'ble ITAT in the assessee's own case for the A.Y.2008-09, 2009-10, 2010-11, 2011-12 & 2012-13. The details of decisions have been mentioned in the order reproduced above. There is no factual change. The issue has already been allowed by the Hon'ble ITAT in the assessee's own case. No law contrary to the law relied by the Hon'ble ITAT as well as by the CIT(A) in his order has been produced before us. We nowhere found any material to interfere with the finding of the CIT(A). We are of the view that the CIT(A) has decided the matter of controversy judiciously and correctly which is not liable to be interfere with at this appellate stage. Accordingly, we upheld the finding of the CIT(A) on these issues and decide these issues in favour of the assessee against the revenue.

6. So far as the applicability of the provisions u/s 14A r.w.r 8D while computing the Book Profit u/s 115JB of the I. T. Act is concerned. The CIT(A) has given the following finding.:-

“6.3 Ground No. 2g : Vide these grounds, appellant has agitated against the addition made on account of disallowance u/s.14A read with Rule 8D while computing the book profit u/s.115JB of the Income Tax Act. The appellant submitted that

As per the Explanation to Section 115JB expenditure relatable to income to which the provisions of Section 10 (except 10(38)), 11 and 12 is applicable, to the extent debited to the Profit and Loss Account, are to be added back to the net profits for the purpose of computing book profits. Disallowance u/s 14A, if any, ought to be made under clause 1' of explanation I to Section 115JB.



Section 115JB is a distinct code in itself and Section 14A, as inserted after Section 14 which provides for income classified under the five heads of income, should be applied only for computing income under those five heads only. In the absence of any specific mechanism being prescribed u/s 115JB for the purposes of determining the amount of expenditure relatable to income exempt u/s 10, 11 or 12, the principle of apportionment of expenditure as was laid down by Apex Court prior to introduction of Section 14A may be applied Furthermore. LTCG subjected to STT which is exempt u/s 10(38) forms part of the book profits. Accordingly, the expenditure relatable thereto even though disallowed u/s 14A, should not be added back in computing the book profits.

Accordingly, the expenditure relatable thereto even though disallowed u/s 14A, should not be added back in computing the book profits.

In support of its contention, appellant placed reliance on the judgement of Hon'ble ITAT Delhi Special Bench in case of ACIT Vs. Vireet Investment P. Ltd., ITA no. 502/Del/2012 and C.O. No. 68/Del/2014, Special Bench. Wherein the Hon'ble Special Bench held as under:

The special bench placed its reliance on the decision of Hon'ble Delhi High Court in the case of Pr. CIT V. Bhushan Steel Ltd.: ITA No.593/2015 wherein it upheld the decision of the Tribunal in holding that disallowance under section 14A read with Rule 8D cannot be added while computing book profits as per section 115JB as Explanation to that section does not specifically mentions section 14A of the Income Tax Act, 1961. The Review Petition filed by Revenue has been dismissed by High Court vide order dated. 03.03.2017.

Respectfully, following the judgement of Hon'ble [TAT Special Bench Delhi in case of ACIT Vs. Vireet Investment P. Ltd., ITA no. 502/Del/2012 and C.O. No. 68/Del/2014, addition made by AO of 3,49,64,44,71- while computing the book profit u/s.115JB is deleted.”

7. On appraisal of the above mentioned finding, the CIT(A) has decided the matter of controversy on the basis of decision of the Hon'ble Delhi Special Bench in the case of **ACIT Vs. Vireet Investment P. Ltd.**



ITA. No. 502/Del/2012 and C.O. No. 68/Del/2014. It is specifically held that the provisions u/s 14A r.w.r 8D is not applicable while computing the book profit u/s 115JB of the Act. No law contrary to the law relied by the CIT(A) in his order has been produced before us. The CIT(A) has correctly applied the decision in the case of **ACIT Vs. Vireet Investment P. Ltd.(supra)**. The facts are not distinguishable. Taking into account all the facts and circumstances, we are of the view that the CIT(A) has decided the matter of controversy judiciously and correctly which is not liable to be interfere with at this appellate stage. Accordingly, we decide these issues in favour of the assessee against the revenue.

Reasons for delay in pronouncement of order

6.1 Before parting, we would like to enumerate the circumstances which have led to delay in pronouncement of this order. The hearing of the matter was concluded on 07/02/2020 and in terms of Rule 34(5) of Income Tax (Appellate Tribunal) Rules, 1963, the matter was required to be pronounced within a total period of 90 days. As per sub-clause (c) of Rule 34(5), every endeavor was to be made to pronounce the order within 60 days after conclusion of hearing. However, where it is not practicable to do so on the ground of exceptional and extraordinary circumstances, the bench could fix a future date of pronouncement of the order which shall not ordinarily be a day beyond a further period of 30 days. Thus, a period of 60 days has been provided under the extant rule for pronouncement of the order. This period could be extended by the bench on the ground of exceptional and extraordinary circumstances. However, the extended period shall not **ordinarily** exceed a period of 30 days.



6.2 Although the order was well drafted as well as approved before the expiry of 90 days, however, unfortunately, on 24/03/2020, a nationwide lockdown was imposed by the Government of India in view of adverse circumstances created by pandemic covid-19 in the country. The lockdown was extended from time to time which crippled the functioning of most of the government departments including Income Tax Appellate Tribunal (ITAT). The situation led to unprecedented disruption of judicial work all over the country and the order could not be pronounced despite lapse of considerable period of time. The situation created by pandemic covid-19 could be termed as unprecedented and beyond the control of any human being. The situation, thus created by this pandemic, could never be termed as ordinary circumstances and would warrant exclusion of lockdown period for the purpose of aforesaid rule governing the pronouncement of the order. Accordingly, the order is being pronounced now after the re-opening of the offices.

6.3 Faced with similar facts and circumstances, the co-ordinate bench of this Tribunal comprising-off of Hon'ble President and Hon'ble Vice President, in its recent decision titled as **DCIT V/s JSW Limited (ITA Nos. 6264 & 6103/Mum/2018)** order dated 14/05/2020 held as under: -

7. However, before we part with the matter, we must deal with one procedural issue as well. While hearing of these appeals was concluded on 7th January 2020, this order thereon is being pronounced today on 14th 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.*

8. 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.



9. *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 work 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.

10. *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 be 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 timebound 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 refix 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.

Driving strength from the ratio of aforesaid decision, we exclude the period of lockdown while computing the limitation provided under Rule 34(5) and proceed with pronouncement of the order.

8. In the result, the appeal filed by the revenue is hereby ordered to be dismissed.

Order pronounced in the open court on 06/07/2020

Sd/-
(PRAMOD KUMAR)
VICE PRESIDENT

Sd
(AMARJIT SINGH)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 06/07/2020
Vijay Pal Singh/Sr.PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार / (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai