

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

**BEFORE SHRI SAKTIJIT DEY (JUDICIAL MEMBER) AND  
SHRI N.K. PRADHAN (ACCOUNTANT MEMBER)**

**ITA No. 4416/MUM/2012  
Assessment Year: 2008-09  
&  
ITA No. 1860/MUM/2013  
Assessment Year: 2009-10  
&  
ITA No. 5728/MUM/2013  
Assessment Year: 2010-11**

Dy. Commissioner of Income Tax Circle-  
3(3),  
Room No. 609, 6<sup>th</sup> Floor, Aayakar Bhavan,  
M.K. Road, Mumbai-400020.

M/s Sky Appliances Ltd.,  
Vs. 171-C, Mittal Court,  
Nariman Point, Mumbai-  
400021.

**Appellant**

**PAN No. AAICS8688M  
Respondent**

**ITA No. 4511/MUM/2018  
Assessment Year: 2012-13**

M/s Sky Appliances Ltd.,  
171-C, Mittal Court, Nariman  
Point, Mumbai-400021.

Asst. Commissioner of Income  
Tax (ODS)-3, Mumbai.

**PAN No. AAICS8688M  
Appellant**

**Respondent**

Revenue by : Mr. V. Vinod Kumar, DR  
Assessee by : None

Date of Hearing : 07/10/2020  
Date of Pronouncement : 09/10/2020

ORDER

PER BENCH

The captioned appeals – three filed by the Revenue (AYs 2008-09, 2009-10 and 2010-11) and the one by the assessee (AY 2012-13) assail the order of the Ld. CIT(A) in the context of disallowance u/s 14A of the Income Tax Act, 1961 (the Act) r.w. Rule 8D of the Income Tax Rules 1962 (the Rules ) with regard to the normal computation of income as well as the computation of book profit u/s 115JB of the Act.

2. In AY 2008-09, the assessee filed before the AO its reply *vide* letter dated 02.11.2010 that no dividend has been received during the year under consideration and hence no disallowance u/s 14A r.w. Rule 8D be made. We refer here to para 5.3 of the assessment order dated 24.11.2010. However, the AO made a disallowance of Rs.1,82,70,787/-.

In AY 2009-10, the assessee filed before the AO a reply stating that no exempt income has been earned during the year under consideration and hence no disallowance u/s 14A r.w. Rule 8D be made. We refer here to para 6.3 of the assessment order dated 01.03.2011. However, the AO made a disallowance of Rs.3,82,07,503/-.

In AY 2010-11, the assessee submitted a reply before the AO stating that it has neither claimed any exempt income in the return of income nor received any dividend income and hence, no disallowance u/s 14A r.w. Rule 8D be made. We refer here to para 5.3 of the assessment order dated 26.04.2012. However, the AO made a disallowance of Rs.1,64,66,893/-.

In AY 2012-13, the assessee filed a reply before the AO *vide* letter dated 29.12.2014 stating that they have not received any dividend income and hence no disallowance u/s 14A r.w. Rule 8D be made. We refer here to para 4.2 of the assessment order dated 23.02.2015. However, the AO made a disallowance of Rs.4,85,695/-.

3. As delineated hereinabove, the assessee has not received any exempt income in the impugned assessment years. For AY 2008-09, the Ld. CIT(A) confirmed the disallowance made by the AO in the normal computation of income but deleted the disallowance made in the calculation of book profit u/s 115JB of the Act.

For AY 2009-10, the Ld. CIT(A) deleted the disallowance of Rs.3,52,29,192/- made by the AO under Rule 8D(2)(ii) by following the decision of the Hon'ble Bombay High Court in *CIT v. Reliance Utilities & Power Ltd.* 313 ITR 340 (Bom). However, he confirmed the disallowance made by the AO of Rs.29,78,311/- under Rule 8D(2)(iii). The Ld. CIT(A) deleted the addition made by the AO in the calculation of book profit u/s 115JB of the Act.

For AY 2010-11, the Ld. CIT(A) deleted the disallowance of Rs.1,49,77,348/- made by the AO under Rule 8D(2)(ii) by following the decision of the Hon'ble Bombay High Court in *Reliance Utilities & Power Ltd.* (supra). However, he confirmed the disallowance made by the AO of Rs.8,84,193/- under Rule 8D(2)(iii). The Ld. CIT(A) deleted the addition made by the AO in the calculation of book profit u/s 115JB of the Act.

For AY 2012-13, the Ld. CIT(A) confirmed the disallowance of Rs.4,85,695/- made by the AO in the normal computation of income as well as computation of book profit u/s 115JB of the Act.

4. Before us, the Ld. DR submits that even though, no exempt income is earned, still then disallowance can be made u/s 14A r.w. Rule 8D. In this context, he referred to the Circular No. 5/2014 dated 11.02.2014 issued by CBDT clarifying that “Rule 8D r.w.s. 14A of the Act provides for disallowance of the expenditure even when taxpayer in a particular year has not earned any exempt income”.

Further the Ld. DR relies on the order of the Tribunal in the case of M/s RBK Share Broking Pvt. Ltd. (ITA No. 7546/Mum/2011 & ITA No. 6678/Mum/2011) in support of his contentions that the AO has rightly made the addition while arriving at the book profit u/s 115JB of the Act.

5. We have heard the Ld. DR and perused the relevant materials on record. The reasons for our decisions are given below.

There is no dispute in these appeals that the assessee did not earn any exempt income. Also there is no dispute that the assessee did not make any claim for exemption.

That when there is no exempt income earned by the assessee, no disallowance u/s 14A of the Act can be made is no longer *res integra*.

In *Pr. CIT v. Huntsman International (India) Pvt. Ltd.* (ITA No. 1619 of 2016), the Hon'ble Bombay High Court *vide* order dated 30.01.2019 has held that:-

"5. This question relates to disallowance made by the Assessing Officer under Section 14A of the Income Tax Act, 1961 r/w Rule 8D of the Rules of the expenditure incurred by the assessee for earning exempt income. The Tribunal by the judgment which is impugned in this appeal held that the assessee had not earned any exempt income during the year under consideration. The Tribunal, therefore, followed the decision of Delhi High Court in case of *CIT vs. Holcim India (Pvt.) Ltd.* (2014) 272 CTR 282. In such decision, the Delhi High Court ruled that when there is no exempt income earned by the assessee, no disallowance under Section 14A of the Act can be made. It is pointed out to us that this Court in *Principal CIT vs. M/s. Rivian International (P) Ltd.*, by order dated 21.11.2017, following the judgment of Delhi High Court in case of *Holcim India (P) Ltd.* (*supra*), has adopted the same principle making following observations :-

"3. We have given careful consideration to the submissions. On facts, it appears from the impugned judgment that the assessee had made investment in shares of closely held companies which did not declare any dividend. On fact, there is no dispute that the assessee has not earned any exempt income during the year under consideration. After consideration of Section 14A, the Delhi High Court followed decisions of certain other High Courts. Section 14A of the said Act provides that for the purpose of computing the total income, no deduction shall be allowed in respect of expenditure incurred by the assessee in relation to income which does not form part of the total income under the said Act. In other words, Section 14A provides that if there is an income which does not form a part of the total income under the said Act, the expenditure which is incurred for earning the income is not an allowable deduction. Therefore, during the relevant year, if

the assessee has not earned any tax free income, the corresponding expenditure incurred cannot be taken into consideration for dis-allowance.

4. We respectfully concur with the view taken by the Delhi High Court as the said view can always be taken on fair reading of Section 14A of the said Act. A Division Bench of Allahabad High Court has also taken a similar view in the case of Commissioner of Income Tax vs. Shivam Motors (P) Ltd. (supra). Hence, in our view, no fault can be found with the impugned judgment of the Appellate Tribunal whereby dis-allowance under Section 14A was ordered to be deleted. No substantial question of law arises. Appeal is, accordingly, dismissed."

6. Counsel for the assessee also brought to our notice the fact that the Supreme Court in case of CIT vs. Chettinad Logistics (P) Ltd. has dismissed the Revenue's SLP against the judgment of the Delhi High Court in Holcim India (P) Ltd. (supra), taking a similar view."

5.1 Thus when there is no exempt income earned by the assessee, no disallowance under Section 14A of the Act can be made. Similar is the decision by the Hon'ble Bombay High Court in *Pr. CIT v. M/s Ballarpur Industries Ltd.* (ITA No. 51 of 2016) and the decision by the Hon'ble Punjab & Haryana High Court has held in *CIT v. Winsome Textiles Industries Ltd.* (2009) 319 ITR 204 (P&H).

6. The Special Bench of the Tribunal in the case of *ACIT v. Vireet Investment (P.) Ltd.* (2017) 82 taxmann.com 415 (Delhi-Trib.) (SB) has held that computation under clause (f) of Explanation 1 to section 115JB(2) is to be made without resorting to computation as contemplated u/s 14A r.w. Rule 8D.

7. Therefore, respectfully following the decisions narrated at para 5, 5.1 and 6 hereinabove, we dismiss the appeal filed by the Revenue for the AYs 2008-09, 2009-10 and 2010-11.

Similarly, following ratio laid down in the above decisions, we allow the appeal filed by the assessee for AY 2012-13.

8. In the result, the appeals filed by the Revenue are dismissed, whereas, the appeal filed by the assessee is allowed.

**Order pronounced through notice board under rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1963.**

Sd/-  
**(SAKTIJIT DEY)**  
**JUDICIAL MEMBER**

Sd/-  
**(N.K. PRADHAN)**  
**ACCOUNTANT MEMBER**

Mumbai;  
Dated: 09/10/2020  
*Rahul Sharma Sr. PS*

**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,  
  
(Dy./Asstt. Registrar)  
**ITAT, Mumbai**