

आयकर अपीलीय अधिकरण, "डी" न्याय पीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL, 'D' BENCH, CHENNAI
श्री महावीर सिंह, उपाध्यक्ष एवं श्री जी.मंजुनाथ, लेखा सदस्य के समक्ष
BEFORE SHRI MAHAVIR SINGH, VICE-PRESIDENT
AND SHRI G.MANJUNATHA, ACCOUNTANT MEMBER

आयकर अपील सं./I.T.A.No.1/Chny/2018

(निर्धारणवर्ष / Assessment Year: 2012-13)

M/s. Damayanthi Finance & Properties P.Ltd., 6, Mulla Sahib Lane, Sowcarpet, Chennai-600 079.	Vs	The Income Tax Officer, Corporate Ward-1(4), Chennai-600 034.
PAN:AAACD2393L		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थी की ओरसे/ Appellant by	:	Mr. S.Sridhar, Advocate
प्रत्यर्थी की ओरसे/Respondent by	:	Mr. AR.V.Sreenivasan , Addl.CIT

सुनवाई की तारीख/Date of hearing	:	27.10.2020
घोषणा की तारीख /Date of Pronouncement	:	27.10.2020

आदेश / ORDER

PER G.MANJUNATHA, ACCOUNTANT MEMBER:

This appeal filed by the assessee is directed against the order of the learned Commissioner of Income Tax (Appeals)-3, Chennai dated 30.11.2017 and it pertains to assessment year 2012-13.

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

- “1. The order of The Commissioner of Income Tax (Appeals) 3, Chennai dated 30.11.2017 in I.T.A.No.290/2014-15 for the above mentioned Assessment Year is contrary to law, facts, and in the circumstances of the case.
2. The CIT (Appeals) erred in not adjudicating the grounds challenging the applicability of section 14A of the Act for making disallowance/quantifying the disallowance of notional expenses

as per Rule 80 of the Income Tax Rules, 1962 without assigning proper reasons and justification.

3. *The CIT (Appeals) erred in not adjudicating the Ground No.8 of the statutory Form No.35 read with the notes of arguments dated 27.11.2017 without assigning proper reasons and justification and ought to have appreciated that the addition of Rs.25,74,797/- being the notional expenses quantified as per Rule 80 of the Income Tax Rules, 1962 in the computation of book profits u/s 115 JB of the Act was wrong, erroneous, unjustified, incorrect and not sustainable in law.*
4. *The CIT (Appeals) failed to appreciate that in any event the decision to restrict the disallowance of such expenses for earning of the dividend income while restricting such disallowance at Rs.11 ,87,297/- in para 4.3 of the impugned order was wrong, erroneous, unjustified, incorrect and not sustainable in law.*
5. *The CIT (Appeals) failed to appreciate that the earning of dividend income as assumed by the Assessing Officer at Rs.12,97,911/- as against the actual earning of dividend income at Rs.2,65,643/- was wholly unjustified & incorrect and ought to have appreciated that the cascading impact of the decision given in para 4.3 of the impugned order would justify direction for applying correct facts.*
6. *The CIT (Appeals) failed to appreciate that the quantification of notional expenses in any event for earning tax free income/maintaining the tax free portfolio as per Rule 80 of the Income Tax Rules, 1962 was wrong and incorrect on various facets, thereby vitiating the decision in para 4.3 of the impugned order.*
7. *The CIT (Appeals) failed to appreciate that there was no proper opportunity given before passing of the impugned order and any order passed in violation of the principles natural justice would be nullity in law.”*

3. Brief facts of the case are that the assessee company engaged in the business of finance, properties, trade in shares and

commodities filed its return of income for the assessment year 2012-13 on 31.01.2013 declaring Nil total income under the normal provisions of the Income Tax Act, 1961 (hereinafter referred to as "the Act") and taxable income at ₹ 1,69,920/- under section 115JB of the Act. The case has been selected for scrutiny and during the course of assessment proceedings, the Assessing Officer noticed that the assessee had earned dividend income which do not forms part of total income under the Act, but did not make any suo-moto disallowance towards expenditure incurred in relation to exempt income u/s.14A read with Rule 8D of Income Tax Rules, 1962. Therefore, taking note of investments and financed cost and other relevant expenditure, invoked Rule 8D and determined the disallowance of ₹ 25,74,797/- towards interest expenditure relatable to exempt income and 0.5%of average value of investments yielding exempt income.

4. Being aggrieved by the assessment order, the assessee preferred an appeal before the learned CIT(A). Before the CIT(A), the assessee has challenged disallowances computed by the Assessing Officer under section 14A read with Rule 8D and has also challenged additions made by the Assessing Officer towards computation of book profit u/s.115JB of the Act on account of

disallowances computed under section 14A of the Act. The learned CIT(A) after considering the submissions of the assessee allowed partial relief in respect of disallowance computed under rule 8D(2)(iii) being 0.5% of the average value of investments and restricted disallowances computed by the Assessing Officer to ₹ 1,54,043/- as against disallowance computed by the Assessing Officer at ₹ 15,41,543/-. As regards disallowance of interest, the learned CIT(A) upheld the disallowance determined by the Assessing Officer, however, restricted the total disallowance computed u/s.14A read with Rule 8D to the extent of exempt income earned by the assessee which is at ₹ 12,97,911/-. Being aggrieved by the order of the CIT(A), the assessee is in appeal before us.

5. The learned A.R. for the assessee, at the time of hearing, only argued on the issue of additions made by the Assessing Officer towards disallowance computed u/s.14A read with Rule 8D of the I.T. Rules, 1962, to book profit computed under section 115JB of the Act. The learned counsel for the assessee referring to page 3 of the assessment order submitted that the Assessing Officer has not made any additions to total income declared under normal provisions of the Act, whereas he has made addition to book profit

computed under section 115JB of the Act. He further argued that notional disallowances computed under section 14A read with rule 8D cannot be added back to book profit computed under section 115JB of the Act.

6. The learned DR, on the other hand, referring to para 4 to 4.3 of the learned CIT(A) order submitted that the assessee had pleaded before the CIT(A) to restrict the disallowances computed u/s.14A of the Act to the extent of exempt income being dividend earned at ₹ 12,97,911/- and hence, there is no merit in the argument of the assessee on the issue of adjustment made to book profit computed u/s. 115JB of the Act.

7. We have heard both the parties and perused the material available on record and gone through the orders of the authorities below. The only argument taken by the counsel for the assessee is with regard to adjustment made to book profit computed u/s.115JB of the Act towards disallowance computed u/s.14A read with Rule 8D of the Income Tax Rules, 1962 for ₹ 25,74,797/-. It is well settled principle of law by the decision of the ITAT., Special Bench, Delhi in the case of ACIT Vs. Vireet Investments P. Ltd., (2017) 165 ITD 27 (Del), where the Tribunal after considering relevant provisions of

section 115JB of the Act held that computation under clause (f) of Explanation 1 to section 115JB of the Act has to be made without resorting to computation as contemplated u/s.14A read with Rule 8D of the Income Tax Rules, 1962. Therefore, we are of the considered view that the Assessing Officer has erred in making additions towards disallowance computed u/s. 14A read with Rule 8D to compute book profit under section 115JB of the Act, hence, we direct the Assessing Officer to delete the adjustment made to book profit towards disallowance computed u/s.14 of the Act.

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

Order pronounced in the open court on 27th October, 2020

Sd/-
(महावीर सिंह)
(Mahavir Singh)
उपाध्यक्ष / Vice-President

Sd/-
(जी.मंजुनाथ)
(G. Manjunatha)
लेखा सदस्य / Accountant Member

चेन्नई/Chennai,
दिनांक/Dated 27th October, 2020
DS

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. Appellant
2. Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.