IN THE INCOME-TAX APPELLATE TRIBUNAL "C" BENCH MUMBAI

BEFORE SHRI MAHAVIR SINGH, VICE-PRESIDENT AND

SHRI RAJESH KUMAR, ACCOUNTANT MEMBER

ITA No.3554/Mum/2019 (Assessment Year 2015-16)

DCIT- 3(2)(2), Room No.674, 6th Floor, Aayakar Bhavan, M.K. Road, Mumbai-400020.	Vs.	M/s Premier Ltd. 58, Nariman Bhavan, Nariman Point, Mumbai-400021. **PAN: AAACT5523G**
Appellant		Respondent

Appellant by : Ms. Shreeleela Pardeshi (DR)

Revenue by : Ms. Shefali (AR)

Date of Hearing : 03.11.2020

Date of Pronouncement : 12.01.2021

ORDER

PER MAHAVIR SINGH, VICE-PRESIDENT;

1. This appeal by revenue is arising out of the order of Commissioner of Income Tax (Appeals)-8, Mumbai [for short 'the ld. CIT(A)] in Appeal No. CIT-8/IT-86/2017-18 order dated 26.03.2019. Assessment was framed by DCIT Circle-3(2)(2), Mumbai under section 143(3) of the Income Tax Act, 1961 (hereinafter 'the Act') for the Assessment Year 2015-16 vide his order dated 14.12.2017.

2. The first issue in this appeal of revenue is as regards to the order of CIT(A) restricting the disallowance under section 14A of the Act r.w.r 8D of the Income Tax Rules, 1962 (hereinafter 'the Rules') to the extent of exempt income. For this, revenue has raised following ground:

1. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was right in restricting the disallowance u/s 14A to the extent of exempt income earned by the assessee which was computed as per Rule 8D of I.T Rules 1962 on the basis of CBDT Circular No.5/2014 dated 11.02.2014 which clearly states that it is not necessary to earn exempt income in a particular year in which the disallowance is made?

2. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was right in restricting the disallowance u/s 14A to the extent of exempt income earned by the assessee which is contrary to CBDT Circular No.5/2014 which clarifies that the Rule 8D r.w.s. 14A of the Act provides for disallowance of the expenditure even where taxpayer in a particular year has not earned any exempt income?

3. We have heard the rival contentions and gone through the facts and circumstances of the case. We noted that the Assessing Officer made disallowance under section 14A of the Act r.w.r 8D(2)(iii) at Rs. 29.01 lakh as against disallowance computed by assessee at Rs. 22,000/-.

4. Aggrieved, the assessee preferred appeal before the CIT(A) who restricted the disallowance at Rs. 3,000/- only, by following the decision of Hon'ble Supreme Court in the case of Maxopp Investment Ltd. Vs. CIT (2018) 402 ITR 640 (SC) by observing in para-3.1.4 as under:

3.1.4 In view of the above detailed discussion of Hon'ble se order in Maxopp Investments Ltd, it is held here that it is not a fit case for invoking provisions of section 14A as the appellant has earned exempt income of Rs 3,000/- only. Further, against this small exempt income, it has already disallowed an amount of Rs. 22,000/- So, there is no scope for any further disallowance. In view of this established judicial position, the disallowance made of Rs 3.9,01,000/- made u/s 14A in this case is hereby deleted. Since the addition does not survive in the normal provisions themselves, there is no question of their applicability u/s 115JB for MAT purposes. The same

addition is also considered as deemed to have been deleted without going into the merits of the legality of whether section 14A is applicable to MAT provisions or not. These grounds are allowed.

5. We noted that the CIT(A) has restricted the disallowance to the extent of exempt income at Rs. 3,000/- only by following the decision of Hon'ble Supreme Court in the case of Maxopp Investment Ltd. (supra) and hence we find no infirmity in the order of CIT(A). Hence, the order of CIT(A) is confirmed and this issue of revenue is dismissed.

6. The next issue in this appeal of revenue is against the order of CIT(A) deleting the adjustment made to the book profit under section 115JB of the Act on account of expenses relatable to exempt income claimed by assessee under section 14A of the Act. For this, revenue has raised following ground:

3. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the adjustment made to Book Profit u/s 115JB of the Act on account of expenses relatable to exempt income u/s 14A of the Act without appreciating that the issue stands squarely covered by the decision of the Hon'ble ITAT 'D' Bench in the case of ITO vs. RBK Share Broking Pvt. Ltd. - 37 taxman 128(2013) and the decision of the Hon'ble ITAT 'F' Bench in the case of D.C.I. T. Cen. Cir. 18 & 19, Mumbai vs. Viraj Profiles Ltd. (2015) 64 taxmann.com 52 (Mumbai - Trib.)/2016, 156 ITD 72 (Mumbai - Trib.) wherein it is clear that the provisions of section 14A r.w.r. 8D is applicable for computation of book profit u/s 115JB of the Act?

7. We noted that the CIT(A) has restricted the disallowance of exempt income at Rs. 3,000/- only. The CIT(A) has already considered this issue and deleted the disallowance vide para-3.1.4 (which is also reproduced above) as under:

3.1.4 In view of the above detailed discussion of Hon'ble se order in Maxopp Investments Ltd, it is held here that it is not a fit case for invoking provisions of section 14A as the appellant has earned exempt income of Rs 3,000/- only. Further, against this small exempt income, it has already disallowed an amount of Rs. 22,000/- So, there is no scope for any further disallowance. In view of this established judicial position, the disallowance made of Rs 3.9,01,000/- made u/s 14A in this case is hereby deleted. Since the addition does not survive in the normal provisions themselves, there is no question of their applicability u/s 115JB for MAT purposes. The same addition is also considered as deemed to have been deleted without going into the merits of the legality of whether section 14A is applicable to MAT provisions or not. These grounds are allowed.

8. We noted that this issue is even covered by the special bench of this 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 its 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".*

9. In view of the above position, the issue is covered by the decision of Special bench of this Tribunal in the case of Vireet Investment Pvt. Ltd. (supra). Hence, respectfully following the same, we confirmed the order of CIT(A). Hence, this issue of revenue's appeal is dismissed.

10. The next issue in this appeal of revenue is against the CIT(A) deleting the disallowance of additional depreciation claimed by assessee under section 32(1)(iia) of the Act. For this, revenue has raised following ground:

4. Whether on the facts and in the circumstances of the case and in law, the Ld.CIT(A) has erred in holding that the additional depreciation is allowable on the assets put to use in earlier year without appreciating that the additional depreciation is allowable under section 32(1)(iia) of the Income Tax Act, 1961, only in respect of assessment year in which the new machinery was acquired and installed and not thereafter?

11. At the outset, the ld. Counsel for the assessee took us through the Tribunal order in assessee's own case for AY 2013-14 in ITA No. 7290 & 7314/Mum/2017 order dated 13.02.2019, wherein the same asset was under dispute and additional depreciation was allowed. The Tribunal allowed the depreciation by observing in para-9 as under:

"9. We have given a thoughtful consideration to the issue before us and are unable to persuade ourselves to subscribe to the view taken by the A.O. In order to appreciate the issue before us the relevant provision of Sec. 32 to the extent relevant for the year under consideration are culled out as under:

'Section 32 (1) In respect of depreciation of-

(i) Buildings, machinery, plant or furniture, being tangible assets.

(ii) know-how, patents, copyrights, trademarks, licences, franchises or any other business or commercial rights of similar nature, being intangible assets acquired on or after the 1st day of April, 1998, owned, wholly or partly, by the assessee and used for the purposes of the business or profession, the following deductions shall be allowed-

(iii) In the case of assets of an undertaking engaged in generation or and distribution of power, such percentage on the actual cost thereof to the assessee as may be prescribed;

(iv) In the case of any block of assets, such percentage on the written down value thereof as may be prescribed:

Provided further that where an asset referred to in clause (i) or clause (ii) or clause (iia), as the case may be, is acquired by the assessee during the previous year and is put to use for the purposes of business or profession for a period of less than one hundred and eighty days In that previous

Year, the deduction under this sub-section in respect of such asset shall be restricted to fifty per cent of the amount calculated at the percentage prescribed for an asset under clause (i) or clause (ii) or clause (iia), as the case may be:

Provided also & Explanation 1 to Explanation 5..

(iia) in the case of any new machinery or plant (other than ships and aircraft), which has been acquired and installed after the 31st day of March, 2005, by an assessee engaged in the business of manufacture or production of any article or thing or generation or generation and distribution of power, a further sum equal to twenty per cent of the actual cost of such machinery or plant shall be allowed as deduction under clause (ii).

Admittedly, the purpose of affording benefit to an assessee by way of additional depreciation under Sec.32(1)(iia) was backed with an intent to encourage industrialization i.e. either by setting up a new industrial unit or by expanding a new industrial unit by purchasing and installing new machinery or plant and putting the same to use for the purpose of business. We find that as per second proviso to Sec. 32(1) the entitlement of an assessee towards claim of depreciation in a case where a new machinery or plant acquired during the previous year is put to use for a period of less than 180 days in that previous year shall be restricted to 50% for the percentage prescribed for the said asset under clause (iia) of Sec. 32(1) of the I.T. Act. However, there is nothing available in the statute from where it can be gathered that the assessee would be disentitled for claiming the balance 50% of the additional depreciation i.e.10% in the succeeding year. In sum and substance, it can safely be concluded that there is no restriction made avai1able on the statute as per which the assessee who had put to use the new machinery for a period of less than 180 days during a year, would be divested of its entitlement to claim the balance 10% of the additional depreciation in the succeeding assessment year. Our aforesaid views is fortified by the judgment of the Hon'ble High Court of Hon’ble Madras High Court in the case of CIT, Madurai, Vs. T.P. Textiles (P) Ltd. (2017) 79 taxman.com 411 (Madras) and that of the Hon'ble High Court of Karnataka in the case of CIT Vs. Rittal India Pvt. Ltd. (2016) 380 ITR 423 (Kar). We thus being of the considered

view that no infirmity arises from the order of the CIT(A) who had rightly deleted the disallowance of additional depreciation of Rs.1,36,32,835/-, uphold his order to the said extent. The Ground of appeal No. 4 is dismissed.

12. Taking the consistent view and respectfully following the Tribunal's order in assessee's own case for earlier year, this issue of revenue's appeal is dismissed.

13. The next issue in appeal of revenue is against the order of CIT(A) deleting the disallowance of expenditure on account of sales and services under section 37(1) of the Act. For this, revenue has raised the following ground:

5. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A)has erred in deleting the addition made under section 37 on account of Sales and services without appreciating that the assessee has incurred the said expenditure as its Corporate Social Responsibility and the Income Tax Act, 1961 clearly specifies under explanation (2) to sub-section (1) of Sec. 37 that any expenditure incurred by an assessee on the activities relating to Corporate Social Responsibility referred to in section 135 of the Companies Act, 2013 shall not be deemed to be an expenditure incurred by the assessee for the purposes of the business or profession?

14. At the outset, the ld. counsel for the assessee stated that the CIT(A) has already set-aside the issue back to the file of Assessing Officer by holding that these expenses incurred under the head Corporate Social Responsibility Expenditure wrongly claimed by assessee are actually payments made for advertisement on account of business promotion and logo on Premier Ltd. The CIT(A) has directed the Assessing Officer to verify and the relevant finding of CIT(A) reads as under:

"In find that the expenses incurred by the appellant are of the nature of advertisement expenses which are incurred for the purpose of business, hence, allowable u/s 37(1) of the Act. However, the AO is directed to verify the expenses with reference to the programmes conducted at Natya-Mahotsava etc, and allow the same, if fond to be correct. This ground is therefore allowed."

15. We noted that the CIT(A) has already restored the matter back to the file of Assessing Officer for fresh consideration. Hence, we find no infirmity in the order of CIT(A). But we direct the Assessing Officer to verify the nature of expenditure first and then decide as per law whether the expenses are allowable under section 37(1) or not? Hence, this issue of revenue's appeal has been set-aside.

16. In the result, appeal of the revenue is partly allowed for statistical purposes.

Order pronounced in the open court on 12th January 2021.

Sd/-	Sd/-
RAJESH KUMAR	**MAHAVIR SINGH**
ACCOUNTANT MEMBER	**VICE-PRESIDENT**

Mumbai, Date: 12.01.2021
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Copy of the Order forwarded to :

1. Assessee
2. Respondent
3. The concerned CIT(A)
4. The concerned CIT
5. DR "C" Bench, ITAT, Mumbai
6. Guard File

BY ORDER,

Dy./Asst. Registrar
ITAT, Mumbai