

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

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

I.T.A. No.4086/Mum/2019  
(Assessment year 2013-14)

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| Deputy Commissioner of Income-tax, Central Circle-4(2), Mumbai Central Range-4, Pr.C.I.T.(C)-2, Mumbai | vs | M/s K. Raheja Corp.Pvt Ltd<br>Plot No.C-30, Block-G<br>Bandra Kurla Complex<br>Bandra (E), Mumbai<br>PAN : AAACP0522B |
| <b>APPELLANT</b>   |    | <b>RESPONDENT</b>   |

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| Appellant by  | Shri Deepkant Prasad, DR |
| Respondent by | Shri Madhur Aggarwal, AR |

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| Date of hearing       | 22-02-2021 |
| Date of pronouncement | 05-03-2021 |

**ORDER**

**Per Saktijit Dey, Judicial Member—**

This is an appeal by the revenue against order dated 26-03-2019 of learned Commissioner of Income-tax (Appeals)-52, Mumbai for the assessment year 2013-14.

2. The grounds raised by the revenue pertain to part deletion of disallowance made under section 14A of the Act, both under the normal provisions as well as while computing income under section 115JB of the Act.

3. Briefly the facts are, the assessee is a resident company and is engaged in the business of development of real estate and is a hotelier. For the assessment year under dispute, assessee filed its return of income on 30-11-2013 declaring income of Rs.12,47,31,480/- under the normal provisions and book profit of Rs.29,58,28,664/- under section 115JB of the Act. While examining the balance-sheet of the assessee, the assessing officer noticed that the assessee has shown investment of Rs.458,38,23,734/- as on 31-03-2013, as compared to Rs.441,38,63,638/- as on 31-03-2012. Further, the assessee has debited an amount of Rs.1,99,89,21,721/- towards interest expenditure. On noticing these facts, the assessing officer called upon the assessee to explain why disallowance of expenditure for earning the exempt income should not be computed in terms of section 14A r.w.r. 8D. In response to the query raised by the assessing officer, the assessee furnished detailed submission stating that as against exempt income earned by way of dividend amounting to Rs.2,46,56,969/- during the year, the assessee has already disallowed an amount of Rs.67,34,981/- under section 14A of the Act. Therefore, no further disallowance should be made. The assessing officer, however, did not accept the submission of the assessee and proceeded to compute disallowance by applying the provisions of Rule 8D and worked out total disallowance at Rs.42,46,80,518/-. The assessee having already disallowed an amount of Rs.67,34,981/-, he restricted the disallowance to Rs.41,79,45,537/-. The assessee contested the aforesaid disallowance before the first appellate authority. After considering the submissions of the assessee in the light of various judicial precedents cited before him, learned Commissioner (Appeals) ultimately concluded that disallowance under section 14A r.w.r. 8D cannot exceed the exempt income earned during the year. However, he directed the assessing

officer to consider the exempt income received by way of share in profit of partnership firm amounting to Rs.51,03,366/- along with dividend income while computing disallowance under section 14A. Insofar as the issue of disallowance under section 14A r.w.r.8D while computing book profit under section 115JB is concerned, learned Commissioner (Appeals), relying upon certain judicial precedents including the decision of Tribunal, Delhi Special Bench, in case of CIT vs Vireet Investments (P) Ltd 82 taxmann.com 415, deleted the disallowance.

4. The learned Departmental Representative, while relying upon the observations of the assessing officer submitted, disallowance under section 14A has to be made in terms of Rule 8D. Further, he submitted, Explanation I(f) to section 115JB empowers the assessing officer to make disallowance of expenditure for earning exempt income.

5. Per contra, the learned Counsel for the assessee strongly relied upon the observations of learned Commissioner (Appeals). Further, he relied upon the decisions of the Hon'ble Bombay High Court in case of PCIT Vs. HSBC Invest Direct (India) Ltd. in Income Tax Appeal no.1672 of 2016 dated 4<sup>th</sup> February, 2019 and in case of M/s. Nirved Traders Pvt. Ltd. Vs. DCIT in Income Tax Appeal no. 149 of 2017 dated, 23 April, 2019. Insofar as the issue of disallowance under section 14A while computing book profit under section 115JB, learned Counsel strongly relied upon the observations of the first appellate authority.

6. We have considered rival submissions in the light of decisions relied upon and perused the materials on record. Undisputedly, during the year under consideration, the assessee has received exempt income by way of dividend amounting to Rs.2,46,55,969/-.Whereas, it has made a suo motu disallowance of Rs.67,34,981/- under section 14A of the Act. The precise issue before us is,

whether learned Commissioner (Appeals) was justified in restricting the disallowance under section 14A to the extent of exempt income earned during the year. In our view, legal principles on this issue are now fairly well settled. The decisions referred to by learned Commissioner (Appeals) clearly express this view. Even, in the decisions cited before us by learned Counsel for assessee, as noted earlier, the Hon'ble jurisdictional High Court has also expressed the view that disallowance under section 14A cannot exceed the exempt income earned during the year. Therefore, keeping in view the ratio laid down in various decisions, including, the decisions of Hon'ble jurisdictional High Court, supra, we uphold the decision of learned Commissioner (Appeals) in restricting the disallowance under section 14A to the extent of exempt income earned during the year.

7. As regards the issue of disallowance under section 14A r.w.r. 8D while computing book profit under section 115JB of the Act, it is squarely covered in favour of the assessee by the decision of the ITAT, Special Bench, New Delhi, in case of CIT vs Vireet Investments (P) Ltd (supra). Though, under Explanation I(f) to section 115JB of the Act, the assessing officer is empowered to disallow expenditure attributable to exempt income; however, the assessing officer has to identify the expenditure incurred by the assessee which is directly attributable to earning of exempt income. In the facts of the present case, the assessing officer has not identified any such expenditure. Therefore, we do not find any reason to interfere with the decision learned Commissioner (Appeals) on the issue. Grounds raised are dismissed.

8. In the result, appeal is dismissed.

Order pronounced on 05/03/2021.

Sd/-

sd/-

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|--------------------------|------------------------|
| <b>(N.K. PRADHAN)</b>    | <b>(SAKTIJIT DEY)</b>  |
| <b>ACCOUNTANT MEMBER</b> | <b>JUDICIAL MEMBER</b> |

Mumbai, Dt : 05/03/2021

Pavanan

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2. Respondent
3. The CIT concerned
4. The CIT(A)
5. The DR, ITAT, Mumbai
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By Order

Asstt. Registrar, ITAT, Mumbai