

आयकर अपीलीय अधिकरण, कटक न्यायपीठ, कटक

IN THE INCOME TAX APPELLATE TRIBUNAL CUTTACK BENCH CUTTACK

BEFORE SHRI C.M. GARG, JM & SHRI L.P. SAHU, AM

आयकर अपील सं./ITA No.343/CTK/2019

(निर्धारण वर्ष / Assessment Year :2014-2015)

Industrial Development Corporation of Orissa Limited (IDCOL), IDCOL House, Ashok Nagar, Bhubaneswar-751001	Vs	DCIT, Circle-4(1), Bhubaneswar
PAN No. : AAACI 4821 L		

(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
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निर्धारिती की ओर से /Assessee by	:	Shri S.C.Bhadra, CA
राजस्व की ओर से /Revenue by	:	Shri S.C.Mohanty, DR

सुनवाई की तारीख / Date of Hearing	:	05/03/2021
घोषणा की तारीख/Date of Pronouncement	:	09/03/2021

आदेश / ORDER

Per Bench:

This is an appeal filed by the assessee against the order passed by the CIT(A)-1, Bhubaneswar, dated 14.08.2019 for the assessment year 2014-2015, on the following grounds :-

1. *The order of assessment as well as appeal is against law, weight of evidences and probabilities of the case.*
2. *The Learned Assessing Officer as well as the Commissioner of Income Tax (Appeals) has most arbitrarily disallowed Rs. 1,63,05,059/-, u/s 14A against the exempted income of Rs.5,50,000/-, being dividend received from associate companies in routine manner, without properly recording the dissatisfaction of the Assessing Officer*
3. *The interest on Income Tax refund of Rs.8,04,924/-, which is adjusted against demand, was not properly intimated for which the same is not recognized as income.*
4. *The Learned Assessing Officer added Rs.6,66,721/-, as interest on fixed deposit based on the comment of the Auditor, which is recognized in subsequent Assessment Year.*
5. *The Learned Assessing Officer erred in adding, amount disallowed u/s 14A, of Rs. 1,63,05,059/-, Rs.8,04,924/-, on account of Income*

Tax refund and Rs.6,66,721/-, interest on fixed deposit to Book Profit u/s 111JB of Income Tax Act, as he has no jurisdiction to go beyond the net profit shown in audited Profit and Loss account. While computing deemed income u/s 115JB, he is not empowered to make adjustment beyond as prescribed in 115JB and also he cannot alter the figure as contained in Profit & Loss account.

6. *For these and other reasons, to be argued at the time of hearing the order of assessment shall be quashed to meet the end of justice.*

2. Brief facts of the case are that the assessee filed its return of income electronically on 22.11.2014 declaring total business income of Rs.Nil after set off of brought forward depreciation loss of Rs.1,98,15,886/-. The case was selected for scrutiny and statutory notices were issued to the assessee. During the course of assessment proceedings, it was noticed by the AO that the assessee has received dividend income of Rs.5,50,000/-, which has been claimed as exempt income but the assessee suo moto has not disallowed any expenditure as per Section 14A of the Income Tax Act, 1961. Accordingly, the AO calculated the disallowance u/s.14A of the Act to the tune of Rs.1,63,05,059/- and added into the total income of the assessee. Further it was observed from the 26AS statement the assessee had earned interest income on Income Tax Refund to the tune of Rs.8,04,924/- for the financial year 2013-2014, which was not credited into the profit and loss account of the assessee and it was not offered as income in the impugned assessment year. A show cause notice was issued to the assessee in this regard dated 27.10.2016 stating that why

this income should not be added back to the total income for the above assessment year as unexplained cash credit and the assessee submitted that the interest income was not credited into the profit and loss account and has not offered for taxation. Accordingly, the interest on income tax refund amounting to Rs.8,04,924/- was added as income of the assessee u/s.68 of the Act as unexplained cash credit. Further, it was observed that the assessee has not credited interest on fixed deposit amounting to Rs.6,66,721/- into the profit and loss account under the head other income, therefore, the AO issued show cause notice on 19.10.2016 as to why the interest on fixed deposit should not be added back to the total income of the assessee. In this regard, the assessee submitted reply on 27.10.2016 which reads as under :-

"Short credit of interest on fixed deposit on margin account as pointed out by audit has been accounted for in the accounts of F/Y 2014-15. However, the net impact on profit and loss account for the A/Y 2014-15 on account of all the qualification of the statutory audit has no additional bearing on taxable income."

The reply of the assessee was not accepted by the AO and, therefore, the AO added the same into the total income of the assessee. Further the AO while calculating the deemed total income u/s.115JB of the Act, the disallowance made u/s.14A of the Act and further disallowance were also added into the book profit u/s.115JB of the Act.

3. Aggrieved from the order of the AO, the assessee filed appeal before the CIT(A) and the CIT(A) after considering the submissions of the assessee, dismissed the appeal of the assessee.
4. Feeling aggrieved from the order of CIT(A), the assessee is in appeal before the Income Tax Appellate Tribunal.
5. Ld. AR before us has filed written submissions, which read as under :-

Ground No. 1: The Learned Assessing Officer as well as the Commissioner of Income Tax (Appeals) has most arbitrarily disallowed Rs.1,63,05,059/-, u/s 14A against the exempted income of Rs.5,50,000/-, being dividend received from associate companies in a routine manner, without properly recording the dissatisfaction of the Assessing Officer.

IDCOL, is a wholly owned Government Company set up in the 1962, to promote, establish and execute Industries in Odisha. It set up various manufacturing units in the state of Odisha for industrialization, having employee strength of 20,000, across these units. The Government on principles, in the year 1992, decided to demerge the Industrial Undertakings from the holding company with an object of privatization. In this process, the appellant, the holding company, acquired 100% share of its subsidiaries, leaving assets and liabilities to the said subsidiary companies. The appellant company in between could able to sale only few wholly owned companies and rest of wholly owned subsidiary companies became sick.

*Your Honour is requested to refer **page no. -10 of Statement of Account** of appellant which contained non-current investment, detail of which contained in **page no. - 19** of the Statement of Account. Total investment under this head amounts to Rs.1403 crore, (**page no. - 12 of Statement of Account**), virtually with negligible market value. Except one associate company, Utkal Moulders Ltd., none of the companies has ever paid any dividends. Your Honour may go through the Balance Sheet of IDCOL Kalinga Iron Works (**page no.-12 of Statement of Account**). Its total share capital amounts to Rs.1201 crore, belongs to appellant and its accumulated loss amounts to Rs.1,173 crore, contained in the same page, besides loan of Rs.4,623/- crore of borrowing from the appellant company (**page no.- 128 of Statement of Account**). For all purpose, the value of share is zero and it is appearing in the Balance Sheet of the appellant from the inception of transfer.*

The appellant, has not spent a single pie to manage these shares. It has only one associate company namely Utkal Mulders Ltd.,

a. Disallowance of expenses u/s 14A amounting to Rs.1,63,05,059/-.

As mentioned in the Assessment Order, the appellant has disclosed receipt of dividend amounting to Rs.5,50,000/- and claimed exemption without disallowing the expenditure or claiming expenditure nil. Under the head other income, it is disclosed as dividend in the Statement of Accounts. Similarly, the dividend is received from Utkal Moulders Ltd., for investment of Rs.55,00,000/-, which appears in the Statement of Accounts. If the accounts for last years are examined, i.e. starting from Financial Year 12-13 to 13 -14, the total investment remain constant, which is disclosed under the head non-current investment (**page no. 19 of Statement of Account**). The investment by Utkal Moulders Ltd. In different years is as under:

Details of Share Certificates	Amount (in Rs)
1. 30,000 fully paid equity shares of Rs. 10.00 each in Utkal Moulders Ltd. Vide certificate No. 016, dated 01.02.1994.	: 3,00,000.00
2. 80,000 fully paid equity shares of Rs.10.00 each in Utkal Moulders Ltd. Vide certificate No.020, dated 13.03.1995	: 8,00,000.00
3. 4,40,000 fully paid equity shares of Rs.10.00 each in Utkal Moulders Ltd. Vide certificate No. 52, dated 31.03.2008.	: 44,00,000.00
Total Investment	55.00.000.00

The last investment was made in the year 2007 – 08

It is clear that during the year under context, the appellant has not incurred any expenditure for acquiring investment. The shareholder made one remittance of dividend of Rs.5,50,000/-, through the State Bank of India, which is located in same floor of the building where the head office of appellant is located. Therefore, for all purpose, no expenditure is incurred by the appellant to earn dividend, which is exempted.

Your Honour may refer to the Assessment Order **para - 2, page no. -1**, where the Learned Assessing Officer has mentioned that he has asked to furnish documents, ledger and other details. The said documents are verified and placed under the record. **He also mentioned that the Authorised Representative of the Appellant, produced bill/vouchers, which were test checked and sample copies of some vouchers are kept in record.** To sum up, the Learned Assessing Officer has not detected any expenditure against to the dividend income from the examination of Books of Account including bills and vouchers. The Learned Assessing Officer without going through the provision contained in section 14A, directly jumped into disallowance of expenses u/s 14A read with Rule 8D.

Section 14A of the Income Tax Act. 1961 reads as follows:

14A (1) For the purposes of computing the total income under this Chapter, 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 this Act.

(2) The assessing Officer shall determine the amount of expenditure incurred in relation to such income which does not form part of the total income under this act in accordance with such method as may be prescribed, if the Assessing Officer, having regard to the accounts of the assessee, is not satisfied with the correctness of the claim of the assessee in respect of such expenditure in relation to income which does not form part of the total income under this Act.

(3) The provisions of sub-section (2) shall also apply in relation to a case where an assessee claims that no expenditure has been incurred by him in relation to income which does not form part of the total income under this Act.

According to the provisions of the above section, it implies that method prescribed under Rule 8D shall not be applicable in all cases where the assessee has earned exempted income. Method prescribed under Rule 8D is applicable where the Assessing Officer is not satisfied with the correctness of the claim of the assessee and the Assessing Officer has to record the reasons for such non satisfaction about the claim from the accounts of the assessee after due verification.

*Upon the above matter, the Honourable ITAT, Panaji Bench, in the case of **Sesa Goa Ltd. vs JCIT**, Goa (ITA No. 72/PNJ/2012 & 85/PNJ/2012), held that " there must be proximate cause based on relation of expenditure that tax exempt income is established, only then a disallowance can be made u/s 14A. Onus to establish proximate cause is on revenue. Before making any disallowance under section 14A, AO is required to record a satisfaction, having regard to accounts of assessee, that claim of the assessee that expenditure incurred is not related to income forming part of total income is incorrect. He is also required to record reasons for arriving at such satisfaction. AO in the instant case rejected explanation of assessee that no administrative expenditure incurred on earning dividend income, considering magnitude of investment and dividend income received. According to TPO, disallowance made by assessee was very less but how they are less and how other expenses incurred by assessee related to dividend income had not been brought on record. AO nowhere pointed out proximate connection of other expenses not apportioned by assessee for earning dividend income. AP has not pointed out expenses excluded by assessee for disallowance has proximate connection with dividend income. No discrepancy in claim of assessee was pointed out. Disallowance made u/s 14A r. w. Rule 8D deleted. Assessee's ground allowed."*

*Further, in the case of **J K investors vs ACIT** (ITA No. 7858/Mum/2011), the Honourable ITAT, J Bench, Mumbai, held that " para 18 - After considering the principles laid down by various judgments, it is imperative that the assessing Officer can invoke Rule 8D only when he records satisfaction in regard to the correctness of the*

claim of the assessee, having regard to the accounts of the assessee. The condition precedent for the assessing Officer entering upon a determination of the amount of the expenditure incurred in relation to exempt income is that the assessing officer must record that he is not satisfied with the correctness of the claim of the assessee in respect of such expenditure or no expenditure, as the case may be, in relation to exempt income. The Assessing officer would have to indicate cogent reasons for the same. Therefore, it is all the more necessary that AO has to examine the accounts of assessee first and then if he is not satisfied with the correctness of the claim, only he can invoke Rule 8D. No such examination was made or satisfaction was recorded by AO in this case. It was noticed that the Assessing Officer has not considered the claim of the assessee at all and he has straightway embarked upon computing disallowance under Rule 8D on the presumption that portfolio management involves atleast 2% of charges. Disallowance under section 14A required finding of incurring of expenditure had been incurred, disallowance under section 14A could not stand. We notice that assessee itself disallowed the interest which is directly applicable, Demat charges and administrative exp on estimation totaling to Rs. 1,55,44,610/-. Assessee is a hundred crore turnover company. The Learned Assessing Officer has not examined any expenditure claimed in Profit & Loss account so as to relate to exempt income, nor gave a finding that assessee claim is not correct for any reason. Rule 8D cannot be invoked directly without satisfying about the claims or otherwise. Consequently, the disallowance was not permissible. We therefore, allow the ground of appeals.

*The same view has been upheld by the Honourable ITAT, A Bench, Kolkata, in the case of **REI Agro Ltd. vs. DCIT** (ITA No 1331/Kol/2011) that "we have considered the rival submissions. A perusal of the provisions of section 14A, more specifically sub -section (2), shows that if the AO is not satisfied with the correctness of the claim of the assessee, then the AO shall determine the amount of expenditure incurred in relation to such income, which does not form part of total income under the Act. For this the method is prescribed in rule 8D. The provisions of section 14A, sub-section (3) specifies the provision of 14A (2) would also apply where the assessee makes a claim that there is no expenditure incurred. This is because if the assessee does not make a disallowance under section 14A in its computation of total income, when filing the return, then if subsection (3) was not available, the AO might not be able to make a disallowance under section 14A. Thus, where the assessee makes a claim that only a particular amount is to be disallowed under section 14A or where the assessee does not make a disallowance under section 14A, if the AO proposes to invoke the section 14A, he is to record a satisfaction on that issue. This satisfaction cannot be a plain satisfaction or a simple note. It is to be done with regard to accounts of the assessee, In the present case, there is no satisfaction by the AO and consequently, in view of the decision of the coordinate bench of this Tribunal in the case of **Balarampur Chini Mills Ltd.**, referred to supra, no disallowance under section 14A can be made."*

*Delhi High Court in the case of **Joint Investment Pvt. Ltd. vs CIT 372 ITR 0694** held that "in view of the peculiar wording of Section 14A(2) that computation of disallowance of the assessee, or claim that no expenditure was incurred for earning exempt income should be examined with reference to the accounts and only if the assessee's explanation was unsatisfactory, can the AO proceed further".*

It is further held that "by no stretch of imagination can Section 14A or Rule 8D be interpreted so as to mean that the entire tax-exempt income was to be disallowed".

The above case clearly spells out that without recording satisfaction, the AO cannot proceed further that is 8D of Income Tax Rule.

The Court also observed that disallowance u/s 14A cannot exceed exempt income. In the case of appellant, the exempt income is Rs. 5,50,000/-. The Learned Assessing Officer disallowed expenses of Rs. 1,63,05,059/-, against the said exempted income.

Latest judicial pronouncements on the above issue are as under:

1 *Madras High Court - Marg Ltd. vs. Commissioner of Income Tax - [2020] 120 taxmann.com 84 (Madras)*

"21.....The legal position, as interpreted above by various judgments and again reiterated by us in this judgment, remains that the disallowance of expenditure incurred to earn exempted income cannot exceed exempted income itself and neither the Assessee nor the Revenue are entitled to take a deviated view of the matter. Because as already noted by us, the negative figure of disallowance cannot amount to hypothetical taxable income in the hands of the Assessee. The disallowance of expenditure incurred to earn exempted income has to be a smaller part of such income and should have a reasonable proportion to the exempted income earned by the Assessee in that year, which can be computed as per Rule 8D only after recording the satisfaction by the Assessing Authority that the apportionment of such disallowable expenditure under section 14A made by the Assessee or his claim that no expenditure was incurred is validly rejected by the Assessing Authority by recording reasonable and cogent reasons conveyed to Assessee and after giving opportunity of hearing to the Assessee in this regard."

2. *Commissioner of Income Tax vs. Celebrity Fashion Ltd. - [2020] 119 taxmann.com 426 (Madras)*

"18. Therefore, to apply the provisions of Section 14A of the Act, the Assessing Officer should have recorded a finding as to how Sub-Section (1) of Section 14A of the Act would stand attracted. In the absence of any such finding, the disallowance made was not justifiable. In fact, the Assessing Officer straightaway proceeded to the second limb of Section 14(2) of the Act, which is impermissible".

3. DCIT vs. DML Exim (P.) Ltd. - [2020] 118 [taxmann.com](#) 491 (Rajkot - Trib.)

If AO had not recorded his satisfaction as to the correctness of claim of the assessee in respect of expenditure in relation to exempt income, invocation of rule 8D for disallowing expenses u/s 14A is unsustainable

4. PCIT vs. Moonstar Securities Trading and Finance Co. (P.) Ltd.- [2019] 105 [taxmann.com](#) 275 (SC)

High Court upheld Tribunal's order holding that AO could not straightaway reject the expenditure offered for disallowance u/s 14A and apply rule 8D without assigning any reasons, SLP filed against said decision dismissed by SC

The Supreme Court dismissed SLP of the department against the Judgment of Delhi High Court (ABCAUS 2639 (2018) (11) SC.

*In the case of **Maxopp Investment Ltd. vs CIT** reported in 402 ITR 640 (2018), Supreme Court in **para -41**, held that before applying the theory of apportionment, the AO needs to record satisfaction that having regard to the kind of assessee, suo motu disallowance u/s 14A was not correct. Hence, as per the decision of the Supreme Court the AO needs to record satisfaction that claim of assessee of no expenditure against dividend is not correct. The learned Assessing Officer has not recorded his satisfaction of being disallowing expenditure u/s14A in a cumbersome manner.*

In the light of the above decision and facts, addition amounting to 1,63,05,059/-, shall be deleted.

The fact of the case is similar to the case of Smt. Indrani Patnaik ITA No. 393 & 394/CTK/2018, pronounced by the Honourable Bench on 26.08.2020, which fully covered the case of the appellant. Three copies of the same case is submitted before the office of the ITAT on 24.09.2020, for reference of the Honourable Bench and CIT, ITAT.

As per the various decision, starting from ITAT to Supreme Court, it is concluded that "No expenditure incurred for earning exempt income, should be examined with reference to the account and only if the assessee's explanation was un-satisfactory, can the AO proceed further. Recording of dissatisfaction is mandatory".

In the instant case, the AO examined the Books of Account, kept record, ledger copy and vouchers. He could not locate any exempt income. Then he creates so many stories in the Assessment Order. The Learned Commissioner of Income Tax (Appeals), mentioned in para-3, page-2, of her order, which is quoted from the Assessment Order.

"The assessee has a sizeable investment portfolio, which certainly requires being and is being, managed. This would entail making new as well as disposing investments already made. Even the decision to hold an investment requires a periodic review of its performance as well as of the investment environment/scenario. Could this be without any associated cost? Even as much as maintaining and keeping the records, including safe keeping of the securities (where not dematerialized), entails cost. A meeting of the assessee with his investment consultant or broker in relation to an IPO or any other emerging investment option is to be conducted (say). This would require visit by the consultant to the assessee's premises or vice versa. This explains the appropriation of the expenditure claimed on telephone, electricity, conveyance etc.."

It is a case where, the assessee company had borrowed certain funds on which liability to pay interest is being incurred and on the other hand certain amounts had been invested in earning tax free income as "share of profit from partnership firm". In view of the massive turnover of the assessee and its complicated flow of funds, it is difficult to identify as to which funds have been used for what purpose. This is where section 14A comes into picture. This position is strengthened by High Court of Punjab & Haryana, in Avon Cycle Ltd. Vs. Commissioner of Income-tax, Ludhiana [2015] 53 taxmann.com 297 (Punjab & Haryana).

These observations are only presumption. As mentioned earlier, investment in wholly owned subsidiaries, starting from the year 1992, remained in same book value. For all purpose, the value of investment is zero. It has never planned to go for IPO. None of the share are listed. As mentioned earlier, to earn dividend in case of Rs.55,00,000/-, no expenditure is incurred.

*Regarding payment of Interest, it contains in **Page no.- 24** of the statement of account, which are interest on Government loan. These interests are paid for availing cash credit from State Bank of India, which is secured working capital loan. Another interest provided on account of loan from the Government, which is continuing since so many years and also a proposal is pending for waiver/conversion of loan into equity.*

As mentioned earlier, equity disclosed in the non - current investment, is mostly in the wholly owned subsidiary, since after 1992, allotted against the transfer of the assets. Hence, there is no question of investment made from the borrowed funds. The assumption of the Learned Assessing Officer, as well as Learned Commissioner of Income Tax, are completely without any merit.

b. Addition of interest on refund of Rs.8,04,924/-.

As explained, at the time of hearing, that refund along with interest is not credited in the account since, the entire amount of refund and interest amounting to Rs.3094,170/-, has been adjusted against the demand, as per the letter of DCIT dtd. 10th April 2014. Hence, letter of

DCIT is received during F. Y. 2014 - 15, for which effect of interest was not given.

c. Addition of interest on Fixed Deposit amounting to Rs.6,66,721/-.

As per Audit observation, profit has been understated due to short credit of interest on F. D. on Margin Account. As per compliance, rectification has already made in the Financial Year 2014 - 15. The fact and reply are recorded in the Assessment Order. Interest is accounted for in the Assessment Year 2014 -15, for which addition may kindly be deleted. **(Ref: page no. 46 para - c, e, f, g of Report and Accounts)**

d. Re-computation of Deemed total income u/s 115JB.

The Learned Assessing Officer, whatever addition made is added to Book Profit, which is against the provision contains in section 115JB.

The appellant is a government corporation and prepares its account as per schedule - III, to the Companies Act 2013. The account is audited by the Statutory Auditor and AG, Odisha. The Book Profit is determined at Rs.2,15,18,378/-. The Learned Assessing Officer added disallowance made by himself us 14A amounting to Rs. 1,63,05,059/-, interest refund of Rs.8,04,924/-, interest on FD amounting Rs.6,66,721/- **Clause "f"** to addition u/s 115JB speaks that amount of expenditure relatable to any income to which section 10, is applicable shall be added to Book Profit. In the case of the appellant, in its Profit and Loss account no expenditure against exempted income is claimed. And also, interest on F. D. amounting to Rs.6,66,721/- and interest on Income Tax refund are not credited to Profit and Loss Account Therefore, no addition to Book Profit disclosed by the appellant shall be made.

Your Honour is requested to refer the case of DCIT vs. Ms. Integrated Coal Mining Ltd., ITA No.1031/Kol/2017, contained from **page no. 16 to 23 of the Paper Book**. In **page no. - 22, para - 3.2**, it is mentioned that

"We have heard the rival submissions. We find lot of force in the argument of the Learned AR that computation of disallowance under Rule 8D can be used only for computation of income under normal provisions of the Act and not for book profits u/s 115JB of the Act. Unless an item is debited in the profit and loss account, the same cannot be the subject matter of addition to book profit under clause (f) of Explanation to section 115JB of the Act. The disallowance made u/s 14A of the Act read with Rule 8D is only artificial disallowance and obviously the same is not debited in the profit and loss account and the same cannot be imported into clause (f) of Explanation to section 115JB of the Act".

The latest decisions on the above issue are as under:

The amount to be added back u/s 115JB should be only such amount as debited to P&L A/c and is directly related to earning of aforesaid exempt income.

In this regard, reliance can be placed on the following judicial pronouncements:

1 *K. B. Mehta Construction (P.) Ltd. vs. DCIT - [2020] 119 taxmann.com 456 (Ahmedabad - Trib.)*

Disallowances made u/s 14A read with rule 8D could not be applied to provisions of section 115JB.

2. *Zaveri & Co. (P.) Ltd. vs. DCIT- [2020] 118 taxmann.com 429 (Ahmedabad - ITAT)*

*"16. Now coming to the issue of inclusion of disallowance made under section 14A in the book profit determined under section 115JB of the Income-tax Act, 1961, the Id. counsel for the assessee at the very outset submitted that this issue is covered in favour of the assessee by the decision of Special Bench in the case of Asstt. CIT v. **Vireet Investments (P.) Ltd.** [2017] 82 taxmann.com 415/165 ITD 27 (**Delhi - Trib**) (**SB**), wherein it is held that **no increase or decrease can be effected in the book profit calculated under section 115JB on account of certain disallowance made under section 14A.***

17. Considering the above facts, we are of the view that Special Bench of the ITAT in the case of Vireet Investment (P.) Ltd. (supra) has formulated following question for adjudication on this issue:

"Whether the expenditure incurred to earn exempt income computed u/s. 14A could not be added while computing book profit u/s. 115JB of the Act."

*18. Special Bench answered this question in favour of the assessee and held that computation for the purpose of clause (f) of Explanation 1 to section 115JB(2) is to be made without resorting to the computation as contemplated under section 14A r.w. rule 8D. Respectfully following the above decision of the Special Bench, we reject this ground of appeal in both the years and **direct the AO not to make adjustments in book profit for the purpose of MAT liability on the basis of calculations made with Rule 8D of the Income-tax Rules.***

In addition to the above, Id. AR also submitted that the assessee has received dividend of Rs.5,50,000/- on investment of company on a single instances and no any further fresh investments were made during the impugned assessment year and no other expenditures have

been incurred towards earning of exempt income, therefore, the AO is not justified to make addition to the tune of Rs.1,63,05,059/-.

6. On the other hand, ld. DR submitted that the assessee should have been disallowed suo moto u/s.14A of the Act because the assessee is paying interest and for maintaining the investments he is incurring some expenses which has not been quantified by him. Section 14A r.w.rule 8D provides that exemption income has to be disallowed, therefore, the AO has correctly calculated the disallowance u/s.14A r.w.rule 8D following the CBDT Circular No.5/2014, dated 11.02.2014 and following the case laws which are in favour of the assessee. In respect of other additions, ld. DR relied on the orders of authorities below.

7. After hearing both the sides and perusing the entire material available on record and the orders of the authorities below, we observe that the assessee received dividend to the tune of Rs.5,50,000/- during the impugned assessment year whereas the AO has disallowed the amount of Rs.1,63,05,059/-. This issue has been settled by various courts including the coordinate bench of the Tribunal that the disallowance u/s.14A of the Act should be restricted to the exempted income received by the assessee during the impugned assessment year. In support of our above view, reliance is placed on the decision of the coordinate bench of the Tribunal in the case of M/s. Shri Ramalinga

Mills Ltd., ITA No.686/CTK/2019, order dated 10.11.2020, wherein the Tribunal at para 4 has held as under :-

*"4. None appeared for the assessee. We have heard the learned DR, perused the materials available on record and gone through the orders of the authorities below. The solitary issue that came up for consideration in the given facts and circumstances of the case is disallowance of expenditure in relation to exempt income u/s.14A read with Rule 8D of I.T. Rules, 1962. The facts borne out from records clearly indicate that the assessee has earned dividend of ` 24,611/- for the impugned assessment year . It is a well settled principles of law that disallowance computed u/s.14A read with Rule 8D shall not swallow entire income earned for the year. In other words, disallowance of expenditure u/s.14A read with Rule 8D shall not exceed exempt income earned for the year. This principle is supported by the decision of Hon'ble Delhi High Court in the case of [Cheminvest Ltd. vs.CIT](#) (2015) 378 ITR 33, where it was clearly held that disallowance of expenditure u/s 14A shall not exceed exempt income earned for the year . A similar view has been taken by the Chennai Bench of the Tribunal in the case of *M/s.Voltech Engineers Pvt. Ltd Vs. DCIT* (2017) 163 ITD 469. In this case, although the dividend income earned for the year is at ` 24,611/-, the Assessing Officer has computed disallowance of Rs.1,29,66,368/- which is in excess of exempt income earned for the year. Therefore, considering the facts and circumstances of the case and also by following the decision of the Hon'ble Delhi High Court in the case of *Cheminvest Ltd. (supra)*, we direct the Assessing Officer to restrict the disallowance computed u/s.14A read with Rule 8D of I.T.Rules, 1962 to the extent of exempt income earned for the year."*

8. Respectfully following the above observations of the Tribunal, we restrict the disallowance u/s.14A of the Act upto Rs.5,50,000/-, which is a dividend received by the assessee and exempt under the provisions of the Income Tax Act. Thus, ground No.2 is partly allowed.

9. With regard to ground Nos.3, on perusal of the assessment order, we observe that the assessee had received interest income on refund during the financial year 2013-2014 but it was not reflected in the profit and loss account and this issue was added by the AO u/s.68 of the Act as unexplained cash credit to which the CIT(A) has confirmed

the order of the AO. For completeness of our order, we would like to reproduce the provisions of Section 68 of the Act, as under :-

Cash credits.

68. *Where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the sum so credited may be charged to income-tax as the income of the assessee of that previous year :*

Provided *that where the assessee is a company (not being a company in which the public are substantially interested), and the sum so credited consists of share application money, share capital, share premium or any such amount by whatever name called, any explanation offered by such assessee-company shall be deemed to be not satisfactory, unless—*

- (a) the person, being a resident in whose name such credit is recorded in the books of such company also offers an explanation about the nature and source of such sum so credited; and*
- (b) such explanation in the opinion of the Assessing Officer aforesaid has been found to be satisfactory:*

Provided further *that nothing contained in the first proviso shall apply if the person, in whose name the sum referred to therein is recorded, is a venture capital fund or a venture capital company as referred to in clause (23FB) of section 10.*

On careful reading of the above provisions of Section 68 of the Act, we noticed that in this case the assessee had derived this income on refund i.e. the source is explained. Ld. AR of the assessee submitted that the refund along with interest is not credited in the account since, the entire amount of refund and interest amounting to Rs.30,94,170/- has been adjusted against the demand, as per the letter of DCIT dated 10th April, 2014. It was also submitted by Ld. AR of the assessee that the letter of DCIT is received during F.Y.2014-2015 for which effect of interest was not given. It was also contended by the Ld. AR of the assessee that the amount of interest could not be quantified as

department has not informed the refund component and interest component. Since, interest and refund is not credited to the profit and loss account, no addition can be made. On further perusal of the assessment order, it is noticed that the source is explained that it is an interest income on refund. Merely not credited in the profit and loss account, it cannot be added as unexplained cash credit u/s.68 of the Act. In view of the above, we direct the AO to delete the addition of Rs.8,04,924/- made u/s.68 of the Act. Thus, ground No.3 is allowed.

10. With regard to ground No.4, on perusal of the assessment order, the assessee has received interest on fixed deposit amounting to Rs.6,66,721/- which was not credited into the profit and loss account. Further the assessee had submitted before the CIT(A) that this amount has been accounted for in the accounts for the financial year 2014-2015 i.e. the assessment year 2015-2016, therefore, this issue requires further verification on the part of the AO as to whether the assessee has offered it as income for the assessment year 2015-2016. If it is found that the assessee has offered it as income then the addition should be deleted. The AO is also directed to consider while deciding this issue considering his submission made before both the authorities below. Accordingly, we remit this issue to the file of AO for deciding this issue in terms of our above observations after providing reasonable opportunity of being heard to the assessee. The assessee is directed to

cooperate with the AO for early disposal of the case. Thus, ground No.4 is allowed for statistical purposes.

11. In ground No.5, there is a grievance of the assessee that the disallowance made u/s.14A of the Act along with other disallowances, should not be added while calculating the book profit of the assessee. In respect of disallowance u/s.14A of the Act, ld. AR of the assessee relied on the decision of coordinate bench of the Tribunal in the case of M/s. Integrated Coal Mining Ltd., ITA No.1031/Kol/2017, order dated 07.12.2018, wherein the Tribunal while considering the similar issue, has held as under :-

10. In ground no 2 and 4 raised by the assessee relates to disallowance of Rs. 51,22,210/- under section 14A of the Income Tax Act, 1961 in computation of book profit u/s 115JB of the Act.

11. At the outset itself, the learned counsel for the assessee submitted before us that grounds no. 2 and 4 raised by the revenue are squarely covered by the judgement of the Hon'ble ITAT Kolkata in assessee's own case in ITA No. 1146/Kol/2012, for A.Y. 2008-09, order dated 30.11.2015 wherein the Tribunal held as follows:

"3. The next ground to be decided in this appeal is that whether the disallowance u/s 14A of the Act could be made to the book profits computed u/s 115JB of the Act. The assessee has raised the following ground before us:

'1(d) That the finding recorded by the learned CIT(Appeals) in the appellate order while confirming the action of the Assessing Officer in making the impugned further disallowance of expenditure amounting to INR 44,91468/- u/s.14A of the Act read with Rule 8D of the Income-tax Rules, 1962 is based merely on conjecture, surmise and presumptions."

3.1. The Learned AR argued that Rule 8D is meant only for computation of income under normal provisions of the Act and not for book profit u/s115JB of the Act. The Learned DR argued that the disallowance u/s 14A of the Act would automatically fall in clause (f) of the Explanation to section 115JB of the Act and hence needs to be added back for computation of book profits u/s .115JB of the Act

3.2. We have heard the rival submissions. We find lot of force in the argument of the Learned AR that computation of disallowance under Rule 8D can be used only for computation of income under normal provisions of the Act and not for book profits u/s 115JB of the Act. Unless an item is debited in the profit and loss account, the same cannot be the subject matter of addition to book profits under clause (f) of Explanation to section 115JB of the Act. The disallowance made u/s 14A of the Act read with Rule 8D is only artificial disallowance and obviously the same is not debited in the profit and loss account and the same cannot be imported into clause (f) of Explanation to Section 115JB of the Act.

3.3. We have already held that no disallowance u/s 14A of the Act would operate in the facts and circumstances of the case. Accordingly, the ground no. 1(d) raised by the assessee is allowed.

12. As the issue is squarely covered in favour of the assessee by the order of the Division Bench in assessee's own case in ITA No. 1146/Kol/2012 for A.Y. 2008-09, order dated 30.11.2015 (supra) and there is no change in facts and law and the learned DR for the revenue did not bring any material on record to controvert the aforesaid findings. Therefore, respectfully following the judgement of the Division Bench, we dismiss ground no. 2 and 4 raised by the Revenue

Respectfully following the above observations of the coordinate bench of the Tribunal, we are of the opinion that the addition made u/s.14A, should not be added back while computing the book profit of the assessee for the impugned assessment year. Further in respect of other additions, ld. AR has not contested. Consequently, appeal of the assessee is partly allowed for statistical purposes.

12. In the result, the appeal of the assessee is partly allowed for statistical purposes.

Order pronounced in the open court on 09/03/ 2021.

Sd/-

(C.M.GARG)

न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-

(L.P.SAHU)

लेखा सदस्य / ACCOUNTANT MEMBER

कटक Cuttack; दिनांक Dated 09/03/2021

Prakash Kumar Mishra, Sr.P.S.

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

1. अपीलार्थी / The Appellant-
Industrial Development
Corporation of Orissa Limited
(IDCOL), IDCOL House, Ashok Nagar,
Bhubaneswar-751001
2. प्रत्यर्थी / The Respondent-
DCIT, Circle-4(1), Bhubaneswar
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कटक / DR, ITAT,
Cuttack
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

(Senior Private Secretary)

आयकर अपीलीय अधिकरण, कटक/ITAT, Cuttack