

आयकर अपीलीय अधिकरण
मुंबई पीठ "जे", मुंबई
श्री विकास अवस्थी, न्यायिक सदस्य एवं
श्री एस. रिफौर रहमान, लेखा सदस्य के समक्ष
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "J", MUMBAI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
SHRI S.RIFAUR RAHMAN, ACCOUNTANT MEMBER
आअसं. 280/मुं/2018 (नि. व.2013-14)
ITA NO.280/MUM/2018(A.Y.2013-14)

M/s. PHL Fininvest Pvt. Ltd.
4th Floor, Piramal Tower,
Ganpatrao Kadam Marg,
Lower Parel ,Mumbai 400 013.

PAN: AAACN-5024-A

..... अपीलार्थी /Appellant

बनाम Vs.

Dy. Commissioner of Income Tax, Range – 7(3)(2)
Room No.623, 6th Floor,
Aaykar Bhavan, M.K.Road,
Mumbai 400 020

..... प्रतिवादी/Respondent

Assessee by : Shri Ronak Doshi
Revenue by : Shri Manpreet S.Duggle &
Shri Sushil Kumar Mishra

सुनवाई की तिथि/ Date of hearing : 28/05/2021

घोषणा की तिथि/ Date of pronouncement : 20/08/2021

आदेश/ ORDER

PER VIKAS AWASTHY, JM:

This appeal by the assessee is directed against the assessment order passed under section 143(3) r.w.s. 144C(13) of the Income Tax Act, 1961 (in short 'the Act') for assessment year 2013-14.

2. The assessee in appeal initially raised four grounds of appeal. Thereafter, the assessee filed four additional grounds of appeal on 10/07/2019. On the same date the assessee filed combined grounds of appeal i.e. original grounds + additional grounds. Some of the additional grounds raised were alternate grounds to the original grounds.

3. Shri Ronak Doshi appearing on behalf of the assessee submitted at the outset that he is not pressing additional grounds No.I, II & III. Thus, the effective grounds of appeal for adjudication are as under:

“Ground I:

On the facts and circumstances of the case and in law, the Ld. AO erred in making a disallowance amounting to Rs. 67,59,6307- u/s 14A of the Act read with Rule 8D of the Income Tax Rules, 1962 ("the Rules").

The Appellant prays that the disallowance made u/s 14A r.w.r 8D of the Rules amounting to Rs. 67,59,630/-, including the suo-moto disallowance made by the Appellant, be deleted.

Ground II:

On the facts and circumstances of the case and in law, the Ld. AO erred in making a disallowance of interest of Rs. 4,50,000/- on the alleged ground that the loan taken by the Appellant was share application money received by it and thereby holding that no interest should have been paid on the alleged share application money.

The Appellant prays that the disallowance of interest of Rs. 4,50,0007- by treating loan taken as share application money be deleted

Ground III:

On the facts and circumstances of the case and in law, the Ld. AO erred in adding the disallowance made u/s 14A of the Act r.w.r 8D of the Rules amounting to Rs. 3,08,290/- while computing book profits u/s 115JB of the Act.

Ground IV:

On the facts and circumstances of the case and in law, the Ld. AO erred in erroneously calculating book profits for the purpose of section 115JB of the Act without taking into consideration the adjustments made by the Appellant in the Computation of Income.

Additional Ground IV:

On the facts and circumstances of the case and in law, the AO erred in not granting relief qua the suo moto disallowance u/s 14A of the Act made by the Appellant while computing the book profit u/s. 115JB of the Act

Therefore, the Appellant prays that the suo moto disallowance made by the Appellant be deleted while computing book profit u/s. 115JB of the Act.”

4. The Id. Authorized Representative of the assessee submitted that in ground No. I, III, IV and additional ground No. IV of appeal, the assessee has assailed disallowance made under section 14A r.w. Rule 8D. The Id. Authorized Representative of the assessee pointed that during the period relevant to assessment year under appeal, the assessee has earned dividend income of Rs.81,66,391/-. The assessee suo-motu made disallowance of Rs.64,51,340/- under section 14A of the Act in respect of exempt income. The said disallowance is primarily towards interest expenditure. The Assessing Officer while passing draft assessment order recomputed disallowance under section 14A r.w.r 8D to Rs.4,52,60,284/-. The assessee filed objections before the DRP against disallowance made by the Assessing Officer. The DRP restricted disallowance u/s 14A of the Act to Rs.67,59,630/- including suo-motu disallowance made by the assessee. The Id. Authorized Representative of the assessee submitted that a perusal of computation of income at page - 26 of the Paper Book would show that apart from suo moto disallowance of Rs.64,51,340/- on interest expenditure u/s 14A of the Act, the assessee has disallowed direct expenditure on Stamp Duty charges Rs.45,000/- and Filing fee Rs.3,20,060/-. The Id. Authorized Representative of the assessee further referred to Balance Sheet as on 31/03/2013 at page -6 of the Paper Book to show that own funds comprising of Share Capital and Reserve & Surplus are sufficient to cover the investments made. The Id. Authorized Representative of the assessee placed reliance on following decisions to contend that no disallowance can be made u/s.14A, where own interest free funds are more than the investments made:

- (i) CIT vs.HDFC Bank Ltd., 366 ITR 505(Bom);
- (ii) HDFC Bank Ltd. vs. DCIT, 383 ITR 529(Bom);
- (iii) DCIT vs. Ashok Apparels, 106 taxmann.com 63 (Bom); and
- (iv) DCIT vs. Premier Finance & Trading Co. Ltd. 262 Taxman 341(Bom)

The Id. Authorized Representative of the assessee submitted that direct expenses for earning tax free income is merely Rs.3,65,000/- hence, the same can be disallowed under Rule 8D2(i).

4.1. The Id.Authorized Representative of the assessee further submitted that the Assessing Officer has erred in invoking provisions of section 14A r.w.r. 8D under MAT provisions. The Id.Authorized Representative of the assessee submitted that the issue is now settled by the Special Bench of the Tribunal in the case of ACIT vs. Vireet Investments Pvt. Ltd., 82 taxmann.com 415. The Id.Authorized Representative of the assessee further submitted that the Hon'ble Jurisdictional High Court in the case of CIT vs. Bengal Finance & Investments Pvt. Ltd. in Income Tax Appeal No.337 of 2013 decided on 10/02/2015 has upheld the decision of Tribunal, wherein it was held that while computing book profit under section 115JB of the Act no disallowance under section 14A can be added.

5. The Id. Authorized Representative of the assessee submitted that in ground No.2 of appeal, the assessee has assailed disallowance of interest expenditure of Rs.4,50,000/- on share application money. The Id. Authorized Representative of the assessee submitted that the assessee had taken loan of Rs.4.50 crores from its holding company M/s. Piramal Enterprises Ltd. The assessee paid interest to holding company on the loan amount. The Assessing Officer has erred in treating loan as share application money. The Board of Directors of assessee/appellant vide Resolution dated 21/12/2012 converted said loan from holding company into equity share capital. The dispute is only with regard to charging of interest for a period of one month. The rate of interest is not under dispute. The DRP observed that interest should be charged upto the date of application for allotment of shares, whereas, the assessee has charged interest upto the date of allotment of shares. The Id. Authorized Representative of the assessee placed reliance on the decision rendered in the case of S.R. Thorat Milk Products Pvt. Ltd. vs. ACIT, 159 ITD 255 (Pune-Trib) to contend that interest paid on share application money pending allotment of shares would be allowable as revenue expenditure.

6. Per contra, Sh. Sushil Kumar Mishra representing the Department vehemently defended the assessment order and prayed for dismissing appeal of the assessee. The Id. Departmental Representative submitted that DRP has recomputed disallowance under Rule 8D and restricted the disallowance to Rs.3,08,000/- only in addition to suo-motu disallowance made by the assessee. The Id. Departmental Representative submitted that if contention of the assessee is to be admitted then the assessed income would be less than the returned income. In respect of assessee's claim of interest income on share application money the Id. Departmental Representative submitted that the DRP rejected assessee's claim as the assessee failed to furnish necessary documents.

7. Both sides heard, orders of authorities below examined. In respect of disallowance u/s. 14A r.w.r. 8D the content of the Id. Authorised Representative of the assessee is that no disallowance in respect of interest expenditure should be made as the assessee has sufficient own interest free funds for making the investment, interest bearing funds were not utilized for the purpose of investments. The assessee has earned dividend income of Rs.81,66,391/- during the relevant period. For earning tax free income, the assessee made suo-motu disallowance of Rs.64.51 lakhs. During the period relevant to the assessment year under appeal no new investments were made. The Id. Authorised Representative of the assessee referred to Balance Sheet at page 6 of the Paper Book to show that own funds of the assessee are much more than the investments made. Since, this argument has been made for the first time at Second Appellate stage, we deem it appropriate to restore this issue to the file of Assessing Officer to examine availability of own funds of the assessee for investment. If own funds of the assessee are sufficient to meet the investments, no disallowance under Rule 8D(2)(ii) is warranted. The ground No. 1 of the appeal is allowed for statistical purposes.

8. In ground No. II of appeal, the assessee has assailed disallowance of interest expenses Rs.4,50,000/- on loan converted into share application money. The assessee had taken unsecured loan from its holding company. Subsequently, the loan was converted into share application money. The Id. Authorised Representative for the assessee referred to the Board Resolution dated 21/12/2012 at page 98 of the paper book. A perusal of Board Resolution shows that 45,00,000 equity shares of Rs.10/- each were allotted to M/s. Piramal Enterprises Ltd. for cash at par. The shares were allotted to M/s. Piramal Enterprises Ltd. on the same date. This fact is evident from the return of allotment furnished by the assessee in prescribed form before the Registrar of Companies (at page 99 to 103 of the paper book). Now, the short dispute is whether interest on loan amount should be allowed as expenditure upto the date of application for allotment of shares or the date of allotment of shares.

Similar issue had come up before the Pune Bench of Tribunal in the case of S.R. Thorat Milk Products Pvt. Ltd. vs. ACIT (supra). After considering the decision rendered in the case of ACIT vs. Rohit Exhaust Systems (P) Ltd. in ITA No. 686 of 2011 decided on 05/10/2012, the Tribunal concluded as under:

*“10. In the light of the decision of the Co-ordinate Bench of ITAT, we find considerable merits in the argument of the assessee. We also find substance in the various contentions raised on behalf of the assessee. **We are of the view that the share application money per se cannot be characterized and equated with share capital. The obligation to return the money is always implicit in the event of non-allotment of shares in lieu of the share application money received. Allotment of share are subject to certain regulations and restrictions as provided under the Companies Act. Therefore, receipt by way of share application money is not receipt held towards share capital before its conversion. Therefore, payment of interest of share application money cannot be treated differently in the Income-tax Act.** Once the contention of the assessee that the money has been utilized for the purpose of business remains un-converted, there is no justification to hold the issue against the assessee. **Accordingly, the claim of interest expenditure on share application money as revenue expenditure deserves to be allowed.** The Assessing Officer is thus directed to delete the addition on merits. In the result, the assessee succeeds on this issue.”*

[Emphasised by us]

Thus, in view of the facts of case and the above referred decision, we hold that interest paid upto the date of allotment of shares i.e. 21/12/2012 is allowable as revenue expenditure. The short issue raised in ground of appeal no. II is allowed in favour of the assessee.

9. In ground no. III, IV and additional ground No. IV of appeal, the assessee has assailed inclusion of disallowance made under section 14A r.w. Rule 8D while computing Book Profit under Section 115JB of the Act. The Special Bench of Tribunal in the case of ACIT vs. Vireet Investments Pvt. Ltd.(supra) has held that while determining book profit under section 115JB of the Act the provision of section 14A r.w. Rule 8D are not to be invoked. Thus, in light of the decision rendered by Special Bench, the assessee succeeds on ground no. III, IV and additional ground No. IV raised in the appeal.

10. The Id. Authorised Representative of the assessee has made statement at the Bar that he is not pressing additional grounds of appeal no. I, II and III, hence, the said grounds are dismissed as not pressed.

11. In the result, appeal by the assessee is partly allowed.

Order pronounced in the open court on Friday the 20th day of August, 2021.

Sd./-

(S.RIFAUR RAHMAN)

लेखा सदस्य/ACCOUNTANT MEMBER

मुंबई/Mumbai, दिनांक/Dated: 20/08/2021

Vm, Sr. PS(O/S)

Sd./-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

प्रतिलिपि अग्रेषित Copy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त(अ)/ The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,
Mumbai
6. गार्ड फाइल/Guard file.

BY ORDER,

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