IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : G : NEW DELHI

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER
AND
SHRI VIJAY PAL RAO, JUDICIAL MEMBER

ITA No.5834/Del/2018
Assessment Year: 2015-16

DCIT, Circle-1, LTU, New Delhi.	Vs	The Oriental Insurance Co. Ltd., A-25/27, Asaf Ali Road, New Delhi. PAN: AAACT0627R
(Appellant)		(Respondent)

Assessee by	:	Shri Tarandeep Singh, CA & Shri Pulkit Verma, Advocate
Revenue by	:	Shri H.K. Chaudhary, CIT, DR
Date of Hearing	:	20.09.2021
Date of Pronouncement	:	24.09.2021

ORDER

PER R.K. PANDA, AM:

This appeal filed by the Revenue is directed against the order dated 29th June, 2018 of the CIT(A)-22, New Delhi relating to assessment year 2015-16.

2. Ground of appeal No.1 raised by the Revenue reads as under:-

> õ1. On the facts and the circumstances of the case and in law, Ld. CIT (A) has erred in deleting the addition of Rs.25,85,81,755/- made by the AO u/s 14A of the I.T. Act.ö

3. Facts of the case, in brief, are that the assessee is a Public Sector Undertaking of Government of India and is in the business of non-life insurance. It filed its return of income declaring total income under normal provisions of the Income-tax Act at a loss of Rs.186,97,30,289/- and book profit u/s 115JB i.e., MAT Scheme of Rs.565,63,58,876/-. During the course of assessment proceedings, the AO noted that the assessee has claimed the following income as exempt:-

S. No.	Particulars	Amount ( )
1.	Interest on tax free Public Sector bonds exempt under section 10 (15) (iv) (h) of the Act	4,59,58,525/-
2.	Dividend exempt u/s 10(34) of the income tax Act, 1961	2,04,22,38,227/-
	Total	2,08,81,96,752/-

4. Since the assessee has not added back disallowance u/s 14A in the computation of total income, the AO asked the assessee to explain as to why disallowance under section 14A r.w. Rule 8D should not be made. Rejecting the various explanations given by the assessee and relying on various decisions, the AO worked out the disallowance u/s 14A r.w.r. 8D of the IT Act at Rs.25,85,81,755/- which was added to the total income of the assessee.

5. In appeal, the ld. CIT(A) deleted the addition made by the AO u/s 14A r.w.r. 8D of the IT Act, 1961.

6. Aggrieved with such order of the CIT(A), the Revenue is in appeal before the Tribunal.

7. The ld. DR heavily relied on the order of the AO. He submitted that there cannot be two different views that section 44 is not applicable and section 14A is also not applicable.

8. The ld. counsel for the assessee, on the other hand, submitted that the issue stands decided in favour of the assessee by the consistent decisions of the Tribunal from A.Y. 2000-01 onwards in its own case and the decision of the Honøble Delhi High Court in assesseeøs own case i.e., PCIT vs. Oriental Insurance Company Ltd., reported in 273 Taxmann 427. He accordingly submitted that this being a covered matter in favour of the assessee, the ground raised by the Revenue should be dismissed.

9. We have heard the rival arguments made by both the sides, perused the orders of the AO and the CIT(A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. We find, the AO, in the instant case, made addition of Rs.25,85,81,755/- to the total income of the assessee by invoking the provisions of section 14A r.w.r. 8D. We find, the ld.CIT(A) deleted the addition by following the decision of his predecessor in assesseeøs own case in the preceding years. We find, the issue stands decided in favour of the assessee by the decision of the Tribunal in assesseeøs own case in various assessment years starting from A.Y. 2000-01 and onwards. We find, the Honøble Delhi High Court has dismissed the appeal filed by the Revenue in assesseeøs own case where the Tribunal had held that in view of the provisions of

section 44 r.w. the First Schedule, the provisions of section 14A are to be excluded in relation to computation of income of an insurance company. The relevant observations of the Honøble High Court at para 9 and 10 of the order reads as under:-

> õ9. We have heard learned counsels and are of the view that no substantial question of law arises for our consideration. The Tribunal has interpreted section 44 read with the first schedule and concluded that applicability of section 14A is excluded in relation to computation of income of an insurance company. We have examined the relevant provisions, section 44 begins with a non-obstante clause and overrides the other provisions of the Act as mentioned therein including section 14A. We are not convinced with the submission of Mr. Ajit Sharma that section 14A would be applicable in respect of the Respondent. Section 14A does not have independent legs to stand on. Section 14A *inter alia* begins with the words *"for the purposes of computing the total income under this chapter, no deduction shall be allowed in respect of expenditure incurred*í ..ö The chapter in question is chapter IV. This chapter also contains the provisions relating to computation of profits and gains of business or profession. Section 44 specifically excludes the provisions of the Act relating to computation of income, inter alia, those contained in "Section 28 to 43B". Thus, the exclusion would take within its sweepsection 14A which is an exemption for deductions as allowable under the Act, as provided under section 28 to 43B. Further, section 44 is a special provision applicable in the cases of insurance companies and applies, notwithstanding anything to the contrary contained in the provisions of the Income-tax Act relating to the computation of income chargeable under different heads. For computing the profits and gains of the business of insurance company, the AO had to resort to section 44 and the prescribed rules, and could not have applied section 28 to 43B, since the same were excluded from the purview of section 44. This necessarily includes the exception provision enshrined under section 14A of the Act. Therefore, in our view, the AO could not have travelled beyond section 44 in the first schedule of the Act. Besides, the tribunal has also invoked the rule of consistency since the same view of the Tribunal has prevailed in respect of the earlier assessment years i.e. 2000-01, 2001-02 and 2005-06.
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> 10. We also do not find merit in the submission of Mr. Sharma that the Tribunal should have remanded back the matter to the Assessing Officer for computation of income of the Respondent-assessee in terms of first schedule of the Act, since that was not even a ground urged by the Revenue before the Tribunal. At this stage, it is too late in the day for the Revenue to argue that notwithstanding the grounds urged to challenge the order of the CIT (A), the Tribunal should have ventured into examining the merits of the computation

> of income of the Respondent assessee in terms of section 44 read with the first schedule of the Act. No doubt, the Tribunal is a final fact-finding body. However, when the Revenue confined its challenge only in respect of the applicability of section 14A, we cannot find fault in the impugned order, on the basis of submissions not advanced before the Tribunal. We, therefore do not find any substantial question of law arising in relation to the view taken by the Tribunal.ö

10. Since the jurisdictional High Court has already decided the issue in favour of the assessee, therefore, in absence of any contrary material brought to our notice, the order of the CIT(A) on this issue is upheld and the ground raised by the Revenue is dismissed.

11. Ground of appeal No.2 by the Revenue reads as under:-

> õ2. On the facts and the circumstances of the case and in law, Ld. CIT (A) has erred in deleting 50% disallowance amounting to Rs.78,80,259/- on account of expenses incurred on Guest House made by the AO.ö

12. After hearing both the sides, we find, the assessee, during the impugned assessment year has claimed an aggregate expenditure of Rs.1,57,60,518/- on the maintenance and upkeep of the guest houses. The AO asked the assessee to explain as to why 50% of the expenses should not be disallowed as was disallowed in similar circumstances in earlier years. Rejecting the various explanations given by the assessee, the AO disallowed an amount of Rs.78,80,259/- being 50% of such expenditure on guest houses. We find, the ld.CIT(A), following the order for preceding assessment year i.e., 2014-15, deleted the disallowances. We do not find any infirmity in the order of the CIT(A) on this issue. We find, the issue stands decided in favour of the assessee by the decision of the Tribunal in assesseeøs own case. We find, the Tribunal, vide ITA No.485/Del/2016, order dated 25th February,

2015 for A.Y. 2011-12, has dismissed the appeal filed by the Revenue wherein the CIT(A) had deleted 50% of disallowance on account of guest houses by observing as under:-

> õ10. The ld. CIT (A) deleted 50% of the disallowance of Rs.47,43,236/- made by the AO on account of expenses incurred on guest house repairing. Again, it is brought to our notice by the ld. AR for the assessee that this issue has already been decided in favour of the assessee by the coordinate Bench of the Tribunal right from AYs 2001-02 to 2005-06. Coordinate Bench of the Tribunal in AY 2005-06 determined this issue in favour of the assessee by following the order of AY 2000-01 and 2001-02 in assessee's own case by returning following findings :-
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>> "10. The learned counsel for the a4sessee pointed out that in assessment year 1999-2000, the Tribunal vide order dated 25.7.2008 in ITA No.4565/ Delhi/2002 has accepted the assessee's contentions, A copy of the said order of the Tribunal is placed at pp, 78 to 82 of the paper book.
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>> 11. The learned Departmental Representative, on the other hand, strongly justified the order of the CIT(A), in the light of his discussion in the impugned order.
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>> 12. We have carefully considered; the rival contentions and gone through the records, The Tribunal in assessment year 1999- 2000 has held that expenditure incurred for maintenance of the company's own guest houses is covered under section 30(a)(ii) of the Act. Therein the Tribunal accepted the plea of the assessee that in respect of the guest houses owned by the assessee, repair expenses will have to be allowed as deduction under section 30(O)(ii) of the Act. Once the expenditure is allowable under section 30(O)(ii), if the expenditure of incurred on repair and maintenance of guest house taken on lease should also be allowed. In the light of the aforesaid order of the Tribunal, we decide the matter, for the AYs in question, in favour of the assessee."
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> 11. So, following the decision rendered by the coordinate Bench of the Tribunal, we are of the considered view that when the expenditure incurred by the assessee company for maintenance of company's own guest houses, the same is covered u/s 30(a)(ii) of the Act. The repair expenses thereof would also be allowed as deduction as section 30(a)(ii) of the Act. So, we

> find no ground to interfere with the findings returned by the ld. CIT (A) and consequently ground no.2 is determined against the Revenue.ö

13. Respectfully following the consistent decisions of the Tribunal in assesseeøs own case in the preceding years on this issue, we do not find any infirmity in the order of the CIT(A) in deleting 50% disallowance of guest house expenses. Ground of appeal No.2 by the Revenue is accordingly dismissed.

14. Ground of appeal No.3 by the Revenue reads as under:-

> õ3. On the facts and the circumstances of the case and in law, Ld. CIT (A) has erred in deleting an addition of Rs.25,85,91,755/- being disallowance u/s 14A of the I.T. Act made by the A.O. for the purpose of 115 JB of the Act.ö

15. Facts of the case, in brief, are that the AO computed the book profit u/s 115JB by adding the disallowance u/s 14A made by him at Rs.25,85,81,755/-. In appeal, the ld.CIT(A), following the order for A.Y. 2014-15, deleted the addition made by the AO at Rs.25,85,81,755/- for the purpose of computation of book profit u/s 115JB of the IT Act.

16. Aggrieved with such order of the CIT(A), the Revenue is in appeal before the Tribunal.

17. The ld. DR heavily relied on the order of the AO.

18. The ld. Counsel for the assessee, on the other hand, while supporting the order of the CIT(A), submitted that the AO made the disallowance u/s 14A r.w. Rule 8D while computing the book profit u/s 115JB without appreciating the following two issues:-

> õ1. Method of computation of disallowance prescribed under Rule 8D is not applicable while computing Book Profit u/s 115JB.
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> 2. Provisions of sub-section (2) and (3) of section 14A cannot be imported into clause (f) of Explanation to section 115JA while computing adjusted book profit.ö

19. Referring to the decision of the Tribunal in the case of Goetze (India) Ltd. vs. CIT, reported in 32 SOT 101 (Del), the decision of Kolkata Bench of the Tribunal in the case of Integrated Mining Ltd. vs. DCIT, reported in 67 taxmann.com 260 and the decision of the Honøble Karnataka High Court in the case of Shobha Developers Ltd. vs. DCIT, reported in 434 ITR 266 (Kar.), he submitted that the issue stands squarely covered in favour of the assessee.

20. We have considered the rival arguments made by both the sides and perused the orders of the authorities below. We find, the AO, in the instant case, made addition of Rs.25,85,81,755/- which was disallowed by him u/s 14A of the Act for computation of the book profit u/s 115JB of the IT Act. We find, the ld.CIT(A), following the orders of his predecessor, deleted the addition of Rs.25,85,81,755/- being the disallowance u/s 14A of the Act made by the AO for the purpose of section 115JB of the Act. We do not find any infirmity in the order of the CIT(A) on this issue. We find, the Honøble Karnataka High Court in the case of Shobha Developers Ltd. (supra) has held that disallowance made u/s 14A could not be added to book profit of the assessee u/s 115JB of the Act. The relevant observations of the Honøble High Court read as under:-

õ6. We have considered the submissions made on both sides and have perused the record. Before proceeding further, it is apposite to take note of relevant extract of Section 115JB of the Act, which reads as under:

115JB. (1) Notwithstanding anything contained in any other provision of this Act, where in the case of an assessee, being a company, the income-tax, payable on the total income as computed under this Act in respect of any previous year relevant to the assessment year commencing on or after the 1st day of April, 2012, is less than eighteen and one-half per cent of its book profit, such book profit shall be deemed to be the total income of the assessee and the tax payable by the assessee on such total income shall be the amount of income-tax at the rate of eighteen and one-half per cent.

(f) the amount or amounts of expenditure relatable to any income to which section 10 (other than the provisions contained in clause (38) thereof) or section 11 or section 12 apply; or

(i) the amount or amounts set aside as provision for diminution in the value of any asset, if any amount referred to in clauses (a) to (i) is debited to the statement of profit and loss or if any amount referred to in clause (j) is not credited to the statement of profit and loss, and as reduced by,--

(i) the amount withdrawn from any reserve or provision (excluding a reserve created before the 1st day of April, 1997 otherwise than by way of a debit to the statement of profit and loss), if any such amount is credited to the statement of profit and loss:

(5) Save as otherwise provided in this section, all other provisions of this Act shall apply to every assessee, being a company, mentioned in this section.

7. Thus from perusal of the relevant extract of Section 115JB, it is evident that Sub-Section (1) of Section 115JB provides the mode of computation of the total income of the assessee and tax payable on the assessee under Section 115JB of the Act. Sub-Section (5) of Section 115JB provides that save as otherwise provided in this section, all other provisions of this Act shall apply to every assessee being a company mentioned in this Section. Therefore, any expenditure relatable to earning of income exempt under Section 10(2A) and Section 10(35) of the Act is disallowed under Section 14A of the Act and is added back to book profit under clause (f) of Section 115JB of the Act, the same would amount to doing violence with the statutory provision viz., Sub-Section (1) and (5) of Section 115JB of the Act. It is also pertinent to mention here that the amounts mentioned in clauses (a) to (i) of explanation to Section 115JB(2) are debited to the statement of profit and loss account, then only the provisions of Section 115JB would apply. The disallowance under Section 14A of the

Act is a notional disallowance and therefore, by taking recourse to Section 14A of the Act, the amount cannot be added back to book profit under clause (f) of Section 115JB of the Act. It is also pertinent to mention here that similar view, which has been taken by this court in Gokaldas Images (P) Ltd. supra was also taken by High Court of Bombay in 'THE COMMISSIONER OF INCOME TAX-8 VS. M/S BENGAL FINANCE & INVESTMENTS PVT. LTD.', I.T.A.NO.337/2013. It is pertinent to note that in Rolta India Ltd., the Supreme Court was dealing with the issue of chargeability of interest under Section 234B and 234C of the ct on failure to pay advance tax in respect of tax payable under Section 115JA/ 115JB of the Act and therefore, the aforesaid decision has no impact on the issue involved in this appeal. Similarly, in MAXOPP Investment Ltd., supra the Supreme Court has dealt with Section 14A of the Act and has not dealt with Section 115JB of the Act. Therefore, the aforesaid decision also does not apply to the fact situation of the case.

In view of preceding analysis, the substantial questions of law framed by a bench of this court are answered in favour of the assessee and against the revenue. In the result, the order passed by the tribunal dated 09.01.2015 insofar as it pertains to the findings recorded against the assessee is hereby quashed.

In the result, the appeal is allowed.ö

21. Respectfully following the decision of the Honøble Karnataka High Court, cited (supra) we hold that the disallowance made u/s 14A could not be added to the book profit u/s 115JB of the Act. Accordingly, the order of the CIT(A) on this issue is upheld and the ground raised by the Revenue is dismissed.

22. In the result, the appeal filed by the Revenue is dismissed.

The decision was pronounced in the open court on 24.09.2021.

Sd/-	Sd/-
(VIJAY PAL RAO) JUDICIAL MEMBER	(R.K. PANDA) ACCOUNTANT MEMBER

Dated: 24th September, 2021

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Copy forwarded to :

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asstt. Registrar, ITAT, New Delhi