

THE INCOME TAX APPELLATE TRIBUNAL
"K" Bench, Mumbai
Shri B.R. Baskaran (AM) & Shri Kuldip Singh (JM)

I.T.A. No. 2721/Mum/2016 (A.Y. 2010-11)

M/s. Awas Developers & Construction Private Ltd. Thar & Co. 2 nd Floor, Capri, Anant Kanekar Marg, Bandra-E Mumbai-400 050 PAN : AADCA0702D (Appellant)	Vs.	ACIT, Central Circle-5(4) 1927, 19 th Floor Air India Building Nariman Point Mumbai-400 020. (Respondent)
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Assessee by	None
Department by	Shri Rajesh Mishra
Date of Hearing	12.05.2022
Date of Pronouncement	17.05.2022

ORDER

Per B.R.Baskaran (AM) :-

The assessee has filed this appeal challenging the order dated 27.11.2015 passed by learned CIT(A)-53, Mumbai and it relates to A.Y. 2010-11.

2. The assessee is aggrieved by the decision of learned CIT(A) on the following issues :-

- a) Partial confirmation of disallowance made under section 14A.
- b) Addition of the amount disallowed under section 14A to the net profit for the purpose of computing book profit under section 115JB of the Act.

3. None appeared on behalf of the assessee, even though the notice of hearing was sent to the party by registered post on earlier occasion and further adjournment was granted in earlier occasions to the assessee at its specific

request. Hence, we proceed to dispose of the appeal ex-parte, without presence of the assessee.

4. We have heard learned Departmental Representative and perused the records. The facts are that the assessee is engaged in the business of builder and land developer. During the year under consideration, it received dividend income of Rs. 33 lakhs and claimed the same as exempt. However, it did not make any disallowance under section 14A. Hence, the Assessing Officer computed the disallowance under section 14A of the Act by applying rule 8D, which worked out to Rs. 1,69,58,544/-. The Assessing Officer added the same to the total income of the assessee.

5. Before learned CIT(A), the assessee raised various contentions including contention that disallowance should not exceed exempt income. The Learned CIT(A) rejected all the contentions of the assessee. However, he noticed that the disallowance worked out by the Assessing Officer under section 8D(2)(iii) is on the higher side i.e. it was more than the expenditure actually debited to the Profit and loss account. Accordingly he reduced the disallowance under section 8D(2)(iii). Accordingly he restricted the disallowance under section 14A of the Act to Rs. 1,39,76,016/-. The Ld CIT(A) further noticed that the assessing officer has not added the amount of disallowance computed u/s 14A of the Act to the net profit while computing book profit u/s 115JB of the Act. Accordingly, he directed the AO to add the above said amount for computing book profit u/s 115JB of the Act. The assessee is aggrieved by the order passed by Ld CIT(A).

6. We noticed that one of the contentions urged before learned CIT(A) by the assessee was that the disallowance to be made under section 14A should not exceed exempt income. We notice that this contention is supported by the decision rendered by Hon'ble Delhi High Court in the case of Cheminvest Ltd. Vs. CIT (2015) (378 ITR 33)(Del). Hence, without going into other contentions urged by the assessee, we are of the view that this contention of the assessee

may be accepted as it is supported by the decision rendered by Hon'ble Delhi High Court. Accordingly, we hold that the disallowance under section 14A should not exceed the exempt income. We noticed earlier here that disallowance computed by the Assessing Officer and also learned CIT(A) has exceeded exempt income. Accordingly we set aside the order passed by learned CIT(A) and direct the Assessing Officer to restrict disallowance under section 14A of the Act to the amount of exempt income.

7. The next grievance of the assessee is that the Ld CIT(A) was not justified in directing the AO to make addition of the amount of disallowance computed u/s 14A of the Act to the net profit while computing book profit u/s 115JB of the Act. We notice that the direction so given by Ld CIT(A) is in contradiction with the decision rendered by Special bench of Delhi Tribunal in the case of Vireet Investments P Ltd (165 ITD 27), where in it was held that the disallowance computed u/s 14A of the Act cannot be adopted for making addition under clause (f) of Explanation 1 to sec.115JB, meaning thereby, the addition for the purpose of sec.115JB has to be computed independently out of the relevant financial statements. Accordingly, we set aside the order passed by Ld CIT(A) on this issue and restore the same to the file of AO with the direction to compute the disallowance for the purpose of clause (f) of Explanation 1 to sec.115JB of the Act from the financial statements.

8. In the result, appeal filed by the assessee is treated as partly allowed.

Order pronounced in the open court on 17.05.2022.

Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER

Sd/-
(B.R. BASKARAN)
ACCOUNTANT MEMBER

Mumbai; Dated : 17/05/2022

Copy of the Order forwarded to :

1. The Appellant

*M/s. Awas Developers &
Construction Private Ltd.*

2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai

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