

IN THE INCOME TAX APPELLATE TRIBUNAL
“G” BENCH, MUMBAI
BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER &
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No. 5651/Mum/2014

(A.Y: 2009-10)

DCIT – 8(2) Aayakar Bhavan M.K .Road Mumbai – 400020.	Vs.	Pantaloon Industries Ltd, Ground Floor, Knowledge House, Off Jogeswari Vikroli Link Road, Shyam Nagar, Jogeswari (E) Mumbai – 400060.
PAN/GIR No. : AABCP9866D		
Appellant	..	Respondent

ITA No. 5958/Mum/2014

(A.Y: 2009-10)

Pantaloon Industries Ltd Ground Floor, Knowledge House, Off Jogeswari Vikroli Link Road, Shyam Nagar, Jogeswari (E) Mumbai – 400 060.	Vs.	DCIT – 8(2) Aayakar Bhavan M.K .Road, Mumbai – 400 020.
PAN/GIR No. : AABCP9866D		
Appellant	..	Respondent

Appellant/Respondent by :	Mr. Vipul Joshi & Ms. Dinkle Haria.AR
Respondent/Appellant by :	Mr. Jasbir S. Chouhan. DR

Date of Hearing	13.07.2022
Date of Pronouncement	25.07.2022

आदेश / O R D E R

PER PAVAN KUMAR GADALE JM:

The cross appeal is filed by the revenue and the assessee against the order of Commissioner of Income Tax (Appeals)-17, Mumbai passed u/s 154 and 250 of the Act. We shall take up the assessee appeal in ITA No.5958/Mum/2014 for the A.Y 2009-10 as lead case and the facts narrated. The assessee has raised the following grounds of appeal:

- 1.1 *The Learned Commissioner of Income - tax (Appeals) - 17, Mumbai, ["Ld. CIT (A)"] erred in confirming the action of the A.O. in passing the order U/s. 154 of the Income - tax Act, 1961 ["the Act, purporting to rectify a mistake apparent from the assessment order passed u/s. 143 (3) of the Act by him.*
- 1.2 *While doing so, the Ld. CIT (A) failed to appreciate that the rectification order was bad, illegal and void for the following, among other, reasons:*
 - (i) *That the A.O. did not have jurisdiction to pass the order in as much as there was no "mistake apparent from the record" within the meaning of section 154 of the Act.*

- (ii) *The original assessment order, which are sought to be rectified had already merged with the appellate order.*
- (iii) *The rectification order was passed with flagrant breach of the principles of natural justice.*

1.3 *It is submitted that, in the facts and the circumstances of the case, and in law, the rectification order to be held as bad, illegal and without jurisdiction.*

WITHOUT PREJUDICE TO THE ABOVE

2.1 *It is submitted that, otherwise also, in the facts and the circumstances of the case, and in law, on merits also, the action of the A.O. was bad in law.*

3. *The Appellant craves leave to add, alter, delete or modify all or any the above ground at the time of hearing.*

2. The brief facts of the case are that the assessee company is engaged in the business of manufacturing of readymade garments and trading of fabrics. The assessee has filed the return of income for the A.Y 2009-10 on 29.09.2009 disclosing a total loss of Rs. 48,66,08,173/- and the return of income was processed u/s 143(1) of the Act. Subsequently, the case was selected for scrutiny and notice u/s 143(2) and 142(1) of the Act are issued . In compliance to the notice, the Ld. AR of the assessee appeared from time to time and submitted the details and the case was

discussed. On perusal of the financial statements the A.O. found that the assessee has earned dividend income on shares of Rs.76,22,191/- and claimed exemption u/s 10(34) of the Act. However no expenditure was disallowed by the assessee for earning exempt income. The A.O. has issued notice, to explain why the expenses attributable to earning exempt income should not be disallowed U/sec14A r.w.r 8D of the I T Rules. The assessee has filed the explanations on 11.10.2011 mentioning that the assessee has not incurred any expenditure related to earning exempt income. (i) The A.O. was not satisfied with the submissions and prima-facie found that there are certain expenses which are directly relating to the assessee earning exempt income and invoked the provisions of sec14A r.w.r 8D(2)(iii) and computed the disallowance of Rs. 19,86,20,162/-.(ii) Similarly the A.O. found that the VAT was not paid before the due date u/sec139(1) of the Act and was disallowed U/sec43B of the Act of Rs. 8,815/-.(iii) the A.O. found that there are prior period expenses claimed and the assessee has not submitted the details and they are not forming part of the current year expenses and

made addition of Rs. 72,529/-.(iv) the A.O. found that as per the Form no 26AS and ITS, there is a difference in gross receipts reconciliation and made addition of Rs.1,45,916/-.Finally the A.O. has assessed the total loss of Rs. 287,760,750/- and passed the order u/s 143(3) of the Act dated 24.10.2011.

3. Subsequently, the A.O. has issued notice u/s 154 of the Act in respect of rectification of mistake apparent from record for not considering the disallowance u/sec14A r.w.r 8D2(iii) of the I T Rules in computing the Book Profits U/sec115JB of the Act. Whereas, the assessee has filed a letter dated 21-03-2013 raising the objections on the claim. Finally the A.O. has passed the rectification order by determining the Book profits u/s 115JB of the Act including the disallowance u/s 14A of the Act which worked out to Rs9,98,01,440/- and passed the order u/s 154 of the Act dated 24.04.2013.

4. Aggrieved by the order u/s 154 of the Act the assessee has filed an appeal before the CIT(A). Whereas the CIT(A) considered the grounds of appeal, submissions of the assessee, findings of the A.O and

on the disputed issue with respect to disallowance u/s 14A of the Act, the CIT(A) has confirmed the action of the A.O in computing the Book profits u/s 115JB of the Act and granted relief in other grounds of appeal and partly allowed the assessee appeal. Aggrieved by the order of the CIT(A) on the disputed issue with respect to jurisdiction of the A.O. and sustaining the disallowance u/sec14A r.w.r 8D in computing the Book profits U/sec115JB of the Act the assessee has filed an appeal with the Honble Tribunal.

5. At the time of hearing, the Ld.AR submitted that the CIT(A) has erred in considering the disallowance u/s 14A of the Act in computing the Book Profits U/sec115JB of the Act and substantiated the submissions with the judicial decisions and prayed for allowing the assessee appeal. Contra, the Ld.DR supported the order of the CIT(A) on this disputed issue.

6. We heard the rival submissions and perused the material on record. The sole crux of the disputed issue envisaged by the Ld.AR that the CIT(A) has erred in sustaining the disallowance u/s 14A of the Act r.w.r

8D2 of the I T rules being part of the book profits computed u/sec115 JB of the Act. We find that the provisions of section 14A of the Act are limited for the purpose of computation of income and cannot be considered in computing Book Profits U/sec115JB of the Act. Hence that the disallowance U/sec14A r.w,r 8D2 of the I T Rules cannot be part of the Book profits calculated u/s 115JB of the Act. We find that the Ld. AR has relied on the following judicial decisions.

(i) CIT v/s. Essar Teleholdings Ltd. - 1.T.A. No. 438 of 2012, Order Dated 07.08.2014, Bombay High Court]

(ii) CIT v/s. Bengal Finance & Investment P. Ltd. - [ITXA No. 337 of 2013, Order Dated 10.02.2015, Bombay High Court]

(iv) ACIT v/s. Vireet Investments (P.) Ltd. - [(2017) 165 ITD 27 (Delhi - Trib.) (SB)]

(v)

(iv) Reliance Industrial Infrastructure Ltd. v/s. Addl. CIT - [I.T.A. Nos. 69 & 70 / Mum / 09, Order Dated 05.04.2013]

(v) Bank of India v/s. ACIT - [(2020) 122 taxmann.com 247 (Mum - Trib.)]

7. We rely on the ratio of Special Bench decision in the case of ACIT Vs. Vireet Investments Pvt Ltd (165 ITD 27) (Delhi) on this disputed issue. We do not agree with the observations of the CIT(A) with respect to disallowance made u/s 14A of the Act is part of book profits and is not sustainable. Accordingly, we direct the A.O. to exclude the disallowance U/sec14A r.w.r 8D2 of the I T Rules in computing the Book Profits U/sec115JB of the Act and allow the grounds of appeal of the assessee.

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

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9. We find the revenue has filed the appeal challenging the action of the CIT(A) in restricting the disallowance u/sec14A in computing the Book Profits u/sec115JB (f) of the Act. Whereas the assessee appeal ITA no 5651/Mum/2014 was allowed with the observations that the disallowance U/sec14A r.w.r 8D2 of the I T Rules cannot be part of the Book profits calculated u/s 115JB of the Act. Since the disallowance u/sec14A of the Act is not a part of Book profits calculation duly

supported with the judicial decisions as discussed in the above paragraphs. The grounds of appeal raised by the revenue becomes infractus and dismissed.

10. In the result, the appeal filed by the revenue is dismissed and the assessee appeal is allowed.

Order pronounced in the open court on 25.07.2022.

Sd/-

(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Sd/-

(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated 25.07.2022

KRK, PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)
4. Concerned CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

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आदेशानुसार / BY ORDER,

(Asst. Registrar)
ITAT, Mumbai