

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

ITA No. 2551/Mum/2021
(A.Y: 2016-17)

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| ACIT, CC-3(3), Room No. 1923, 19 th Floor, Air India Bldg, Nariman Point, Mumbai-400021. | Vs. | M/sWelspun India Ltd B Wing, 9 th Floor, Trade WorldCentere, Senapati Bapat Marg, Kamala Mills Compound, Lower Parel, Mumbai - 400013 |
| PAN/GIR No. : AAACW1259N | | |
| Appellant | .. | Respondent |

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| Appellant by : | Shri Jasbir Chouhan.CIT.DR |
| Respondent by : | Shri Rajiv Khandelwal.AR |

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| Date of Hearing | 12.07.2022 |
| Date of Pronouncement | 25.07.2022 |

आदेश / O R D E R

PER PAVAN KUMAR GADALE JM:

The revenue has filed the appeal against the order of Commissioner of Income Tax (Appeals)-51, Mumbai passed u/s 143 r.w.s 153A and 250 of the Act. The revenue has raised the following grounds of appeal:

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1. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) is justified in directing the A.O to delete the disallowance made u/s 14A r.w. Rule 8D to the book profit relying on the decision of the Special Bench decision of Hon'ble ITAT Delhi in the case of Vireet Investment Pvt Ltd., without considering the fact that the department has not accepted the decision of the case of Vireet Investment Pvt Ltd.

2. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) is justified in deleting the addition of disallowance u/s 14A of the Act to the book profit of the assessee without appreciating the clause (f) of Explanation 1 to section 115JB(2) of the Act.

2. The brief facts of the case are that the assessee is engaged in the business of manufacturing of terry towels, cotton yarn, bath rugs and bedding products and trading in cotton yarn and fabric. The assessee has filed the return of income for the A.Y 2016-17 on 30.11.2016 disclosing a total income of Rs. 466,20,21,640/- under the normal provisions and offered MAT income u/s 115JB at Rs. 840,59,67,079/-. Subsequently the case was selected for scrutiny and notice u/s 143(2) of the Act was issued and the proceedings were abated due to search and seizure action u/s 132 of the Act carried out in the case of Welspun group of companies on 30.06.2017. Since the assessee is also covered under the search operations,

the notice u/s 153A of the Act was issued. In response to the notice the assessee has filed the return of income on 31.08.2018 declaring a total income of Rs. 466,20,21,640/- under normal provisions and offered MAT income u/s 115JB of the Act at Rs. 840,59,67,079/-. Subsequently, the notice u/s 143(2) and 142(1) of the Act are issued. In compliance, the Ld. AR of the assessee appeared from time to time and the case was discussed.

3. The Assessing Officer (A.O.) on perusal of the financial statements found that the assessee has received a dividend income of Rs. 6,98,93,150/- and the assessee has investment in shares of Rs. 6430.09 Mn as on 31.03.2016. The investments in shares of the companies result into dividend income and is claimed exempt. During the assessment proceedings, the assessee was asked to explain as to why expenditure u/s 14A of the Act should not be computed as per Rule 8D and the assessee has filed the detailed explanations referred at Para 6.2 of the assessment order explaining the sources of funds, the investments in shares and availability of surplus funds. But the A.O. has relied on the judicial

decisions and held that the Sec. 14A r.w.s shall apply whether the shares are held to gain control or hold as stock-in-trade. Therefore the A.O has computed the disallowance u/s 14A r.w.r 8D(2)(ii) & (iii) of Rs. 3,20,02,384/- and assessed the total income of Rs. 469,40,24,022/-. Similarly the A.O. has computed Book Profits U/sec115JB of the Act with the disallowances u/sec14A of the Act r.w.r 8D and determined the Assessed Book Profits of Rs.843,79,69,463/- and passed the order u/s 143(3) r.w.s 153A of the Act dated 28.12.2019.

4. Aggrieved by the order, the assessee has filed an appeal before the CIT(A). Whereas the CIT(A) has considered the grounds of appeal, submissions of the assessee, findings of the A.O and dealt on the facts submitted in respect of group companies and the judicial decisions relevant to the Sec. 14A r.w.r 8D of the Act. Finally the CIT(A) has relied on the order of the Hon'ble Tribunal in assessee's sister concern and granted relief and partly allowed the assessee appeal. Aggrieved by the CIT(A) order, the revenue has filed an appeal before the Hon'ble Tribunal.

5. At the time of hearing, the Ld. DR submitted that the CIT(A) has erred in deleting the disallowance u/s 14A r.w.r 8D considered by the A.O. in computing the book profits relying on the decision of the Special Bench of ITAT, Delhi in the case of ACIT Vs Vireet Investment Pvt Ltd overlooking the facts that the department has not accepted the decision and challenged before the Higher Forums

6. Contra, the Ld. AR submitted that the assessee has explained the reasons with the judicial decisions. Further the CIT(A) has dealt on the facts and the judicial decisions in assessee's Sister /group concern and granted relief and the Ld.AR supported the order of the CIT(A).

7. We heard the rival submissions and perused the material available on record. The sole grievance of the revenue/Ld.DR that the CIT(A) has erred in directing the A.O. to delete the disallowance U/sec14A r.w.r 8D of the I T Rules in computing the Book Profits U/sec115JB of the Act . At this juncture, we refer to the findings of the CIT(A) at page 6 Para 6.3 & 6.4 which is read as under:

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6.3 The submission made by the appellant has been examined. It is noted that in the case of Welspun Steel Ltd., in AY 2013-14 and 2014-15, the Hon'ble ITAT has deleted the adjustment of disallowances computed under section 14A made by the AO to the book profits. The observations of the ITAT are as reproduced below:

6.3 So far as the addition on disallowance made under section 14A read with rule 8D to the book profit is concerned, the same has been decided by the Special Bench in the case of ACIT vs. Vireet Investments Pvt. Ltd. (2017) 82 taxmann.com 415 (Delhi - Tribunal SB) wherein it has been held that while computing the book profit under clause (f) of Explanation 1 to section 115JB no addition can be made in respect of disallowance under section 14A read with Rule 8D. Accordingly, we direct the AO to delete the disallowance while computing the book profit. The appeal of the assessee is allowed.

6.4 In light of the decision of the ITAT in the case of assessee itself and the facts remaining same, it is held that the AO was not correct in recomposing the book profits of the assessee by adding the disallowance computed under section 14A of the Act. The addition made by the AO stands deleted. The ground is decided accordingly and is allowed.

8. We find in the assessee's sister concern case, the Honble Tribunal in M/S Welspun Steel Limited Vs DCIT CC 3(3) in ITA No. 6759/mum/2017 A.Y 2013-14 dated 17.01.2020 has dealt on the issue of disallowance u/s 14A r.w.r 8D of the I T rules in calculating Book profits u/s 115JB of the Act and has

deleted the disallowance and observed at page 6 Para 5&6 of the order which is read as under:

5. Issue no.2 is in connection with the raising the addition in sum of Rs.33,64,08,457/- u/s 14A r.w. Rule 8D of the Rules on account of Explanaton-1 to Section 115JB of the Act. It is also argued that the disallowance u/s 14A r.w. Rule 8D of the Rules is not liable to be added in view of the Explanation-1 of Section 115JB of the Act and in this regard. The Ld. Representative of the assessee has relied upon the decision of the Hon'ble ITAT in the case of ACIT Vs. Vireet Investment P. Ltd. (2017) 82 taxmann.com 415 (Del). However, on the other hand, the Ld. Representative of the Department has refuted the said contention. The relevant finding has been given in para no. 4.8 to 4.18 which is hereby reproduced as under.:-

“4.8. Ld. counsel submitted that Section 14A contemplates disallowance of both direct and indirect expenditure having proximate connection with the exempt income. He submitted that in terms of sub-section (1) of Section 14A of the act, any expenditure incurred in relation to exempt income is not an allowable deduction Thus, the pre-requisite condition for applying the provisions of section 14A of the Act is that some expenditure must be incurred “in relation to” the earning of exempt income. The said expression “in relation to” has been judiciously explained to mean some real and dominant relationship.

4.9. In this regard ld. counsel has relied on the decision of Hon'ble Supreme Court in the case of CIT Vs. Walford

Share & Stock Brokers 326 ITR 1, wherein it has been held by the Apex Court that there must be proximate relationship of expenditure with the exempt income for the purpose of making disallowance u/s 14A of the Act. This decision was followed by the Hon'ble Bombay High Court in the case of Godrej & Boyce Mfg. Co. Ltd. Vs. CIT 328 ITR 81 .

4.10. He further referred to the decision of Hon'ble Delhi High Court in the case of Maxopp Investment Ltd. 347 ITR 272, wherein it has been held that no disallowance could be made under the said section where no expenditure had 'actually' been incurred by the assessee in relation to earning of the exempt income. The Hon'ble Delhi High Court approved the contention raised by the assessee that the term 'expenditure incurred' appearing in Sec. 14A(1) of the Act would mean actual expenditure incurred. Thus, the provisions of sec. 14A of the Act would be applicable only when the assessee had actually incurred certain expenditure which had proximate nexus with earning of exempt income.

4.11. Ld. counsel pointed out that the contention of Revenue that disallowance calculated u/s 14A read with Rule 8D of the I.T. Rules should be ipso facto incorporated in clause (f) of Explanation 1 of section 115JB of the Act on the ground that the scope of both the provisions are similar is not correct inasmuch as while u/s 14A the expression used is 'in relation', u/s 115JB of the Act, the term used is 'relatable to' .

4.12. *Ld. counsel submitted that this reasoning is legally untenable because sec. 14A contained in Chapter IV of the Act begins with the phrase "for the purposes of computing the total income under this Chapter". It was pointed out that income under the normal provisions of the Act is computed under the five heads specified in section 14. Provisions relating to computation of income under different heads are contained in sections 14 to 59, forming part of Chapter IV of the Act. In other words, the said Chapter provides for computation of income of an assessee under the normal provisions of the Act. As a necessary corollary, provisions of section 14A cannot be extended to any Chapter, other than Chapter IV of the Act.*

4.13. *Section 115JB finds place under Chapter XII-B of the Act. Being so, provisions of sec. 14A contained in Chapter IV cannot be imported and incorporated u/s 115JB more so when clause (f) to Explanation 1 to the said section contains no reference to section 14A of the Act.*

4.14. *Ld. counsel submitted that if provisions of Sec. 14A are to be imported into section 115JB of the Act, the same would tantamount to reading additional words into the statute which is not permissible and would be against the cardinal rule of 'literal interpretation'. In this regard ld. counsel has relied on following decisions: - Jugal Kishore Saraf v. Raw Cotton Co. Ltd. AIR 1955 SC 376, wherein it has been observed as under: "*

The cardinal rule of construction of statutes is to read the statutes literally, that is, by giving to the words their

ordinary, natural and grammatical meaning. If, however, such a reading leads to absurdity and the words are susceptible of another meaning, the Court may adopt the same. But if no such alternative construction is possible, the Court must adopt the ordinary rule of literal interpretation. In the present case, the literal construction leads to no apparent absurdity and therefore, there can be no compelling reason for departing from that golden rule of construction. "

4.15. He also relied on various other Supreme Court decisions as mentioned in the Broad Proposition advanced by the ld. counsel. Ld. counsel also referred to the Jurisdictional High Court in the case of Great Eastern Exports v. CIT 332 ITR 14, wherein also it has been held that if the language of the statute is plain and capable of one and only one meaning, that obvious meaning is to be given to the said provision.

4.17. Accordingly, ld. counsel submitted that applicability of provisions of sec. 14A is confined to computation of tax liability under the five heads of income enumerated in sec. 14 under normal provisions contained in Chapter IV of the act. The said section 14A cannot be extended and read into section 115JB, falling under Chapter XII-B of the Act.

4.18. Ld. counsel further submitted that scope of section 14A and section 115JB of the act are entirely different. He submitted that u/s 14A of the Act disallowance is made of expenditure in relation to the earning of income not forming part of the total income. Thus, section 14A takes within its

sweep both direct and indirect expenditure having proximate connection with earning of exempt income. However, under clause (f) of Explanation 1 to section 115JB of the Act, only those expenditure debited to the profit and loss amount, which are relatable to earning of income exempt u/s 10 (excluding section 10(38) or section 11 or section 12 are added back while computing adjusted book profit. Thus, only direct expenditure associated with the earning of said income would be added back.”

6. On appraisal of the above mentioned finding, it is quite clear that the provisions of Section 14A of the Act is confines to the nowhere provisions of Chapter IV of the Act and the said Section 14A cannot be extended and read into section 115JB falling under Chapter XII-B of the Act. Accordingly, no addition is required u/s 14A and Section 115JB of the Act, hence, we delete the addition and allowed the claim of the assessee

9. We find that the facts of the present case are identical to the decision rendered in the group/sister concern case as discussed in the above paragraphs. The Ld. DR submitted that the revenue has not accepted the decision of the Special Bench of ITAT, Delhi and is challenged before the Honble High Court. The Ld. DR could not convert the observations/ findings of the CIT(A) with any new cogent material or information to take a different view. We find the CIT(A) has relied on the judicial decisions and co-ordinate

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bench decision of the ITAT in the sister concern case and deleted the disallowance U/sec14A r.w.r 8D of the I T Rules in calculating the Book Profits U/sec115JB of the Act and passed a reasoned order. Accordingly, we do not find any infirmity in the order of the CIT(A) on this disputed issue and uphold the same and dismiss the grounds of appeal of the revenue.

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

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.

आदेशानुसार / BY ORDER,

//True Copy//

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ITA No. 2551/Mum/2021
M/s. Welspun Ind Ltd., Mumbai.

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(Asst. Registrar)
ITAT, Mumbai