

**IN THE INCOME TAX APPELLATE TRIBUNAL,
KOLKATA BENCH "C", KOLKATA**

**BEFORE SHRI SONJOY SARMA, HON'BLE JUDICIAL MEMBER
AND SHRI GIRISH AGRAWAL, HON'BLE ACCOUNTANT MEMBER**

**ITA No.2549/Kol/2019
Assessment Year: 2012-13**

ACIT, Kolkata	CIR-6(2),	Vs.	M/s. Williamson Magor & Co. Ltd. 4, Mangoe Lane, Kolkata - 700001. PAN: AAACW 2369 P
(Appellant)		(Respondent)	

**C.O. No.7/Kol/2022
(Arising out of ITA No. 2549/Kol/2019)
Assessment Year: 2012-13**

M/s. Williamson Magor & Co. Ltd. 4, Mangoe Lane, Kolkata - 700001. PAN: AAACW 2369 P	Vs.	ACIT, Kolkata	CIR-6(2),
(Appellant)		(Respondent)	

Present for:

Appellant by : Shri N.S. Saini, AR & Shri Sonu Agarwal, FCA
Respondent by : Shri Amal Kamat, CIT & Shri Raja Sengupta, ACIT

Date of Hearing : 21.06.2022

Date of Pronouncement : 05.09.2022

ORDER

PER SONJOY SARMA, JM:

This appeal filed by the Revenue and the cross-objection filed by the Assessee are directed against the order of the Learned Commissioner of Income Tax (Appeals) – 2, Kolkata (hereinafter the [‘ld. CIT(A)’] passed u/s 250 of the Income-tax Act, 1961 (the ‘Act’) dated 04.09.2019 for the Assessment Year 2012-13. The grounds raised by the revenue as well as cross-objection raised by the assessee are as follows:

Grounds of Revenue

“Whether on the fact and in the circumstances of the case, the ld. CIT(A) has erred in law in giving direction for re-computation of amount of disallowance u/s 14A

r.w.r. 8D of the Income Tax Rules, 1962 which is liable to be added to the book profit u/s 115JB.

ii. That the appellant craves for leave to add, delete and modify any of the grounds of appeal before or at the time of hearing”.

Grounds of Cross-Objector

i. On the facts and in the circumstances of the case as well as in law the ld. CIT(A) erred in not adjudicating the plea of the appellant that the issue of making the addition under clause (f) of section 115JB of the Act taking the amount disallowed under the provisions of section 14A read with Rule 8D of Income Tax Rules is a debatable issue which cannot be rectified under the provisions of section 154 of the Act.

ii. The appellant craves leave to add, alter, amend and/or withdraw any of the grounds or ground of cross-objections either before or at the time of appeal hearing.”

2. At the time of hearing, the ld. counsel for the assessee submits that grievance of the Revenue as well as the Assessee was redressed by the Tribunal in ITA No. 2258/Kol/2017 which was instituted by the Revenue and C.O. No. 2/Kol/2018 filed by the assessee respectively aggrieved by the order of ld. CIT(A) passed u/s 250 of the I.T. Act and revenue had raised the following grounds:

“i. Whether on the facts and in circumstances of the case, Ld. CIT(A) erred in deleting the addition u/s 14A Rule-8D(2) of the LT. Act made by the AO and directed to re-compute the disallowance depending on the judicial pronouncement of Hon'ble ITAT, Kolkata without appreciating the fact that interest bearing loan fund was utilized in dividend earning investment made in group companies.

ii. Whether on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in not appreciating the fact as stated in CBDT's Circular No. 05/2014 that those investments may be taken into consideration for computation of Rule 8D which have not earned any exempt income during the year.

iii. That it is humbly requested to set aside the order of Ld. CIT(A) and restore back the assessment order passed by the AO.

iv. That the appellant craves for leave to add, delete, amend or modify any ground before or at the time of appellate proceedings.”

3. The assessee had filed cross-objection against the order of Id. CIT(A) on the following grounds:

“i. For that on the facts and in the circumstances of the case, the Id. CIT(A) erred in directing the AO to re-compute the disallowance u/s 14A read with Rule 8D(2)(iii) @ 0.5% of the average cost of Investments which had produced the tax free dividend income during the year; ignoring &/or overlooking the fact that Investments which had produced tax free dividend interalia included investments made by the assessee for strategic business purposes in its capacity as "Promoter" and therefore disallowance u/s 14A was not warranted.

ii. For that on the facts and in the circumstances of the case, the AO be directed not to make disallowance u/s 14A read with Rule 8D(2)(iii) in relation to strategic investments made by the appellant in its associate & subsidiary companies.

iii. For that on the facts and in the circumstances of the case, the CIT (A) erred in not adjudicating Ground No. 2(c) taken by the appellant objecting to the assessment of book profit u/s 115JB of the I. T. Act.

iv. For that on the facts and in the circumstances of the case, the AO should not have made addition to the net profit, declared in the audited Profit & Loss Account, by the amount of disallowance of expenses; made as per formula prescribed in Rule 8D(2).

v. For that the appellant craves leave to file additional grounds and/or amend or alter the grounds already taken either before or at the time of hearing of the appeal.”

3.1. The assessee had filed additional grounds in the same cross-objection which are reads as follows:

“i. For that on the facts and circumstances of the case, the manner of invocation of section 14A(2) and application of Rule 80 by the AO was ab initio void & bad in law and in that view of the matter the disallowance of Rs. 10,14,84,350/- made by the AO u/s 14A read with Rule 8D deserves to be cancelled.

ii. For that on the facts and circumstances of the case, the disallowance of Rs. 10,14,84,350/- made by the AO in terms of Rule 8D; without recording cogent satisfaction pointing out the incorrectness in the disallowance of Rs. 3,46,20,191/- suo moto offered by the assessee was in gross violation of the provisions of section 14A(2) read with Rule 8D(1) and in that view of the matter the impugned disallowance made by the AO be held to be bad in law and accordingly deleted.

iii. For that the appellant craves leave to submit additional grounds and/or amend or alter the grounds already taken either at the time of hearing of the appeal or before.”

The ld. AR submits that the matter has been resolved before us as per the order dated 31.12.2019 passed by the Tribunal and there is no need to adjudicate this appeal filed by the Revenue and cross-objection no. 2/Kol/2018 filed by the assessee.

4. The ld. DR was fair enough and submitted that he has no objection in respect of such prayer made by the ld. AR. Since the matter became infructuous in terms of the above order passed in ITA No. 2258/Kol/2017 and C.O. No. 2/Kol/2018 by the Tribunal and there is no need to adjudicate the present appeal and connected cross-objection filed by the assessee as it becomes infructuous.

5. We after hearing the rival submission of the party and considering the facts and circumstances of the case, we dismiss the appeal as it becomes infructuous.

6. In the result, the appeal of the Revenue as well as the cross-objection filed by the assessee is dismissed.

Order pronounced in the open court on 05.09.2022.

**Sd/-
(GIRISH AGRAWAL)
ACCOUNTANT MEMBER**

**Sd/-
(SONJOY SARMA)
JUDICIAL MEMBER**

Kolkata, Dated: 05.09.2022.

Biswajit, Sr. P.S.

Copy to:

1. The Appellant: ACIT, CIR-6(2), Kolkata.
2. The Respondent: M/s. Williamson Magor & Co. Ltd.
3. The CIT, Concerned, Kolkata
4. The CIT (A) Concerned, Kolkata
5. The DR Concerned Bench

//True Copy//

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata