

आयकर अपीलीय अधिकरण, कोलकाता पीठ “एसएमसी”, कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH: KOLKATA
श्री राजेश कुमार, लेखा सदस्य एवं श्री संजय शर्मा न्यायिक सदस्य के समक्ष
[Before Shri Rajesh Kumar, Accountant Member & Shri Sonjoy Sarma, Judicial Member]

I.T.A. No. 629/Kol/2022
Assessment Year: 2017-18

M/s Checons Ltd. (PAN: AABCC 4170 B)	Vs.	ACIT, Circle-12(1), Kolkata
Appellant / (अपीलार्थी)		Respondent / (प्रत्यर्थी)

Date of Hearing / सुनवाई की तिथि	19.12.2022
Date of Pronouncement/ आदेश उद्घोषणा की तिथि	17.01.2023
For the Appellant/ निर्धारिती की ओर से	Shri A.K. Tulsian, FCA
For the Respondent/ राजस्व की ओर से	Shri Vijay Kumar, Addl. CIT Sr. DR

ORDER / आदेश

Per Rajesh Kumar, AM:

This is the appeal preferred by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals)-NFAC, Delhi (hereinafter referred to as the Ld. CIT(A)”) dated 14.09.2022 for the AY 2017-18.

- Issue raised in ground no. 1 is general in nature and does not need any adjudication.
- Issue raised in ground no. 2 is against the order of Ld. CIT(A) upholding the addition of Rs. 19,93,513/- as made by the AO u/s 14A of the Act by ignoring the fact

that no disallowance can be made on the shares held as stock-in-trade though the assessee earned exempt income thereon.

4. Facts in brief are that during the course of assessment proceedings the AO noted that assessee has earned exempt income by way of dividend however no expenses were apportioned to the said income. The said income was earned on the mutual fund purchased such as JM Balance Mutual Fund and Tarus Bonanza Fund which were purchased and sold during the month itself. The AO rejected the contentions of the assessee that loss incurred on the said mutual funds of Rs. 1,01,42,511/- was disallowed u/s 94(7) and therefore should not be any disallowance of the expenses relating to earning of exempt income. The AO held that loss u/s 94(7) of the Act and disallowance u/s 14A of the Act are two distinct issues. Accordingly the AO computed disallowance of Rs. 19,93,513/- by taking 1% of the opening and closing balance in March, 2017 as stated in para 4.8 of the assessment order and added the same to the income of the assessee. The AO has also added the same in the calculation of book profit under MAT u/s 115JB of the Act.

5. In the appellate proceedings, the Ld. CIT(A) dismissed the appeal of the assessee by upholding the order of AO by holding that the disallowance is to be made only in respect of shares and securities held stock-in-trade in terms of decision of Hon'ble Apex Court in the case of *Maxopp Investment Pvt. Ltd. vs. CIT, New Delhi* in [2018] 91 taxmann.com 154 (SC) which yielded exempt income.

6. After hearing the rival contentions and perusing the material on record, the undisputed facts are that the mutual funds were purchased by the assessee during the month of March. We further note that these mutual funds were also sold after few days during the month of March. Therefore there was no opening and closing balance left in the beginning of the month and end of the month so far as the investments in mutual funds are concerned. The formula/mechanism as provided for quantification of expenses to be disallowed u/s 14A of the Act read with Rule 8D(2)(iii) fails and thus we find merit in the contentions of the assessee that since the mechanism

provided under the Act itself fails on the issue of average investments becoming zero therefore, we are not in a position to sustain the order of Ld. CIT(A). Accordingly we set aside the order of Ld. CIT(A) and direct the AO to delete the disallowance and consequently the ground no. 2 raised by the assessee is allowed.

7. Issue raised in ground no. 3 is against the confirmation of addition of Rs. 26,38,625/- by the Id CIT(A) as made by the AO while computing the books profit u/s 115JB of the Act which was over and above the *suo-moto* disallowance by the assessee of Rs. 3,06,644/-.

8. After hearing the rival submissions and perusing the material on record including the decision of Special Bench of Delhi Tribunal in the case of *ACIT vs. Vireet Investment Pvt. Ltd. in [2017] 82 taxmann.com 415(Del-Trib.)*, We find that the books profit are to be computed strictly in terms of provision of Section 115JB of the Act. The Hon'ble Special Bench in the case of *Vireet Investment Ltd. (surpa)* has specifically held that no disallowance u/s 14A read with Rule 8D could be made to the book profit u/s 115JB of the Act. Accordingly we set aside the order of Ld. CIT(A) and direct the AO to delete the disallowance of Rs. 26,38,625/-. Accordingly ground no. 3 raised by the assessee is allowed.

6. In the result, the appeal of the assessee is allowed.

Order is pronounced in the open court on 17th January, 2023

Sd/-
(Sonjoy Sarma /संजय शर्मा)
Judicial Member/न्यायिक सदस्य

Sd/-
(Rajesh Kumar/राजेश कुमार)
Accountant Member/लेखा सदस्य

Dated: 17th January, 2023

SB, Sr. PS

Copy of the order forwarded to:

1. Appellant- M/s Checons Ltd., P-46A, Radha Bazar Lane, Lal Bazar, Kolkata-700001.
2. Respondent – ACIT, Circle-12(1), Kolkata
3. Ld. CIT(A)-NFAC, Delhi
4. Pr. CIT- , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata