

IN THE INCOME TAX APPELLATE TRIBUNAL
"G" BENCH, MUMBAI

SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER

ITA No. 5585/MUM/2019
(Assessment Year: 2013-14)

DCIT Circle 3(3)(1), Mumbai,
Room No. 609, 6th Floor,
Aayakar Bhavan, M.K. Road,
Mumbai - 400020

M/s Shree Dhoot Trading & Agencies Ltd.,
171-C, 17th Floor, Mittal Court, C Wing,
Nariman Point, Mumbai – 400021
[PAN: AACCS1621C]

..... Appellant

Vs

..... Respondent

ITA No. 5872/MUM/2019
(Assessment Year: 2013-14)

M/s Shree Dhoot Trading & Agencies Ltd.,
171-C, 17th Floor, Mittal Court, C Wing,
Nariman Point, Mumbai – 400021
[PAN: AACCS1621C]

..... Appellant

DCIT Circle 3(3)(1), Mumbai,
Room No. 609, 6th Floor,
Aayakar Bhavan, M.K. Road,
Mumbai - 400020

Vs

..... Respondent

Appearances

For the Appellant/Assessee : None
For the Respondent/Department : Shri Sanjay Vishwas Rao Deshmukh

Date of conclusion of hearing : 02.11.2022
Date of pronouncement of order : 17.01.2023

ORDER

Per Rahul Chaudhary, Judicial Member:

1. These are cross appeals arising out of the order, dated 13.06.2019, passed by the Ld. Commissioner of Income Tax (Appeals)-8, Mumbai [hereinafter referred to as 'the CIT(A)'] for

the Assessment Year 2013-14, whereby the Ld. CIT(A) had partly allowed the appeal of the Assessee against the Assessment Order, dated 22.02.2016, passed under Section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').

2. The Revenue has raised the following grounds of appeal in ITA No. 5585/Mum/2019:

- "1. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was justified in restricting the disallowance u/s 14A to Rs. 1,98,47,880/- instead of Rs. 81,18,11,907/- as computed by the assessee by holding that disallowance u/s 14A is to be restricted upto the exempt income earned by the assessee which is contrary CBDT Circular 5/2014 which clarified that the Rule 8D r.w.s. 14A of the Act provides for disallowance of the expenditure even where taxpayer in a particular year has not earned any exempt income.*
- 2. Whether on the facts and circumstances of the case and in law, the Lat. CIT(A) was justified in restricting the disallowance u/s 14A to Rs 1,98,47,880/- instead of Rs. 81,18,11,907/- as computed by the assessee, by holding that disallowance u/s 14A is to be restricted upto the exempt income earned by the assessee in view of the decision of the Hon'ble Supreme Court in the case of M/s. Maxopp Investment Ltd. vs. CIT in Civil Appeal No. 104-109 2015 dated 12.02.2018, without appreciating that the Hon'ble Supreme Court in the case M/s Maxopp Investment Ltd has held that Section 14A applies irrespective of whether the shares are held to gain control or as stock-in-trade.*
- 3. Whether on the facts and circumstances of the case and in late, the Ld. CIT(A) was justified in restricting the disallowance u/s 14A to Rs. 1,98,47,880/- instead of Rs. 81,18,11,907/- as computed by the assessee by holding*

that disallowance u/s 14A is to be restricted upto the exempt income earned by the assessee in view of the finding of the Hon'ble Supreme Court in para 42 of their decision in the case of M/s. Maxopp Investment Ltd., vs. CIT in Civil Appeal No 104-109 of 2015 dated 12/02/2018, without appreciating that the Hon'ble Supreme Court in the case of M/s Maxopp Investment Ltd have upheld the principle of apportionment in cases where the assessee has mixed funds.

4. *Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in restricting the disallowance u/s 14A to the book profit to Rs. 1,98,47,880/- instead of Rs. 81,18,11,907/- as computed by the assessee which is contrary to the decision of the Hon'ble ITAT 'D' Bench in the case of ITO vs RBK Share Broking Pvt. Ltd.-37 taxman 128(2013) and the decision of the Hon'ble ITAT 'F Bench in the case of D.C.I.T. Cen. Cir. 18 & 19. Mumbai vs. Viraj Profiles Ltd. (2015) 64 taxmann.com 52 (Mumbai-Trib/2016, 156 ITD 72 (Mumbai- Trib) wherein it is clear that the provisions of section 14A r.w.r. 8D is applicable for computation of book profit u/s 115JB of the Act.*
5. *The appellant prays that the order of CIT(A) on the above grounds be set aside and that of Assessing Officer be restored."*

3. The Assessee has raised the following grounds of appeal in ITA No. 5872/Mum/2019:

- “1. *On the facts and in the circumstances of the case and in law, the learned Commissioner of Income Tax (Appeals) [hereinafter referred to as 'the Ld. CIT(A)'] erred in making disallowance of Rs. 120,38,64,401/- of interest expenditure claimed u/s. 36(1)(iii) and the reasons assigned for doing so are wrong and contrary to the facts and circumstances of the case, the provisions of the Income Tax Act, 1961 and the Rules made there under.*

2. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in confirming action of the learned Assessing Officer of disallowing interest expenses of Rs. 120,38,64,401/- u/s. 36(1)(iii) without setting off the interest income of Rs. 36,540/- earned by the appellant, which is wrong and contrary to the facts and circumstances of the case the provisions of the Income Tax Act, 1961 and the Rules made there under.*
3. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) failed to appreciate that:*
 - a) *the appellant has given advances to its group companies for their business purposes out of commercial expediency;*
 - b) *the appellant had made investments for strategic purposes in its group companies.*
 - c) *interest cannot be disallowed u/s. 36(1)(iii) in respect of funds utilised for the purposes of making investments.*

which is wrong and contrary to the facts and circumstances of the case, the provisions of the Income Tax Act, 1961 and the Rules made there under.
4. *Without prejudice to the above, on the facts and circumstances of the case and in law the Ld. CIT(A) ought to have disallowed only proportionate finance cost of Rs. 22,70,60,173/-, in the proportion that the interest free loans bears to the total assets, and not doing so is wrong and contrary to the facts and circumstances of the case the provisions of the Income Tax Act, 1961 and the Rules made there under.*
5. (a) *On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in confirming the action of the learned Assessing Officer in considering disallowance u/s*

14A while computing book profit u/s 115JB which is wrong and contrary to the facts and circumstances of the case the provisions of the Income Tax Act, 1961 and the Rules made there under.

(b) Without prejudice to the above, the Ld. CIT(A) ought to have restricted the disallowance u/s 14A to Rs. 1,98,47,880/- for purpose of calculating book profit u/s 115JB as against Rs. 81,18,11,907/- inadvertently disallowed by the appellant which is wrong and contrary to the facts and circumstances of the case the provisions of the Income Tax Act, 1961 and the Rules made there under."

4. The relevant facts, in brief, are that the Assessee filed the return of income for the Assessment Year 2013-14 on 27.09.2013 declaring total loss at INR 62,94,74,206/- under the normal provisions of the Income Act and Book Loss of INR 63,28,67,343/- under the provisions of Section 115JB of the Act. Later on, the Assessee filed revised computation of income on 11.02.2016 declaring total loss at INR 61,22,62,358/- under the normal provisions of the Act and Book Loss of INR 63,28,67,343/- under the provisions of Section 115JB of the Act. The case was selected for scrutiny and regular assessment under Section 143(3) of the Act was completed vide order, dated 22.02.2016, assessing total loss at INR 20,03.61,984 under the normal provisions of the Act and book loss at INR 63,28,67,343/- under the provisions of Section 115JB of the Act after making an addition of INR 41,19,00,374/- under Section 36(1)(iii) of the Act.
5. Being aggrieved, the Assessee preferred appeal against the addition of INR 41,19,00,374/- made by the Assessing Officer under Section 36(1)(iii) of the Act. Further, the Assessee raised

additional grounds contending that the Assessee had inadvertently offered disallowance of INR 84,17,14,478/- under Section 14A of the Act read with Rule 8D of the Income Tax Rules, 1962 (hereinafter referred to as 'the Rules') while computing profits under normal provisions of the Act and also while computing book profits under Section 115JB of the Act. It was contended on behalf of the Assessee that disallowance under Section 14A read with Rule 8D of the Rules should be restricted to the extent of the exempt income while computing income under normal provisions of the Act. Further, the amount of INR 84,17,14,478/- inadvertently added back by the Assessee while computing Book Profits under Section 115JB of the Act should be excluded. The CIT(A) vide order, dated 13.06.2019, partly allowed the appeal of the Assessee. The CIT(A) confirmed the addition of INR 41,19,00,374/-. Partly allowing the additional ground raised by the Assessee, the CIT(A) restricted the disallowance under Section 14A of the Act read with Rule 8D of the Rules to the amount of exempt income of INR 1,98,47,880/- earned by the Assessee during the relevant previous year. However, the CIT(A) held that provisions of Section 14A of the Act were applicable for the purpose of computing Book Profit under Section 115JB of the Act, and therefore, the amount of disallowance confirmed under normal provisions of the Act would be added back to the Net Profits while computing Book Profits under Section 115JB of the Act. Further, the CIT(A) held that the balance amount of INR 79,19,64,027/- [INR 81,18,11,907/- less 1,98,47,880/-] would be disallowed under Section 36(1)(iii) of the Act.

6. Being aggrieved by the order dated 13.06.2019 passed by the CIT(A), both, the Revenue and the Assessee are in appeal

before us.

7. When the appeals were taken up for hearing, none appeared for the Assessee. The Ld. Departmental Representative submitted that for the last three hearings no one has been appearing for the Assessee. Accordingly, we proceeded to hear the Ld. Departmental Representative to decide the appeals on merit after taking into consideration the stand taken by the Assessee before the authorities below and submissions of the Assessee reproduced in the orders passed by the Assessing Officer and the CIT(A). We would first take up the appeal of the Revenue.

Appeal by Revenue :ITA No. 5585/Mum/2019

Ground No. 1 to 3

8. Ground No. 1 to 3 raised by the Revenue pertain to restriction of disallowance under Section 14A of the Act to the amount of exempt income of INR 1,98,47,880/- while computing income under normal provisions of the Act. The contention of the Revenue is that CIT(A) was not justified in restricting the disallowance under Section 14A of the Act to INR 1,98,47,880/- instead of INR 81,18,11,907/- as computed by the Assessee.
9. We note that in the case of Pr.CIT, Patiala Vs State Bank of Patiala: 99 taxmann.com 286, the Hon'ble Supreme Court had held that that amount of disallowance under Section 14A of the Act cannot exceed the amount of exempt income. It is admitted position that the Assessee had earned exempt income of INR 1,98,47,880/- only. Accordingly, following the aforesaid judgment of the Hon'ble Supreme Court, we restrict the addition under Section 14A of the Act to INR 1,98,47,880/-.

Accordingly, Ground No. 1 to 3 raised by the Revenue are dismissed.

Ground No. 4

10. Ground No. 4 is directed against the order of CIT(A) holding that while computing Book Profits under Section 115JB of the Act the amount of disallowance computed under Section 14A of the Act to the extent of exempt income of INR 1,98,47,880/- would be added back. The contention of the Revenue is that INR 81,18,11,907/- should be added back while computing Book Profits. While adjudicating Ground No. 1 to 3 above, we have confirmed the order of the CIT(A) restricting the disallowance under Section 14A of the Act to INR 1,98,47,880/-. Accordingly, we reject the contention of the Revenue that amount of INR 81,18,11,907/- should be added while computing Book Profits under Section 115JB of the Act. Accordingly, Ground No. 4 raised by the Revenue is dismissed.

Appeal by Assessee :ITA No. 5872/Mum/2019

Ground No. 1 to 4

11. Ground No. 1 to 4 are directed against disallowance of interest made under Section 36(1)(iii) of the Act. The relevant facts for adjudication of the grounds are that during the assessment proceedings, the Assessing Officer noted that the Assessee had debited interest expenditure of INR 90,81,57,785/- to the Profit & Loss Account. Further, the Assessee had also debited interest expenses of INR 31,55,54,496/- in books of the investment division. Thus, the Assessee had claimed total interest expenditure of INR 122,37,12,281/- for the Assessment Year 2013-14. The Assessing Officer made a disallowance of INR

41,19,00,374/-. The reasons for disallowance given by the Assessing Officer in the Assessment Order was that the Assessee had borrowed funds and paid interest on the same, however, the Assessee has granted interest free loans and advances to its related parties. According to the Assessing Officer the Assessee had failed to demonstrate that the loans and advances given to the related parties were utilized for the purpose of business of the Assessee. Since the Assessee did not have positive capital and reserves, the Assessing Officer concluded that the loans and advances were given out of borrowed funds only on which interest was paid by the Assessee. Accordingly, the Assessing Officer made disallowance of INR 41,19,00,374/- holding the same to be non-business expenditure.

12. Being aggrieved, the Assessee carried this issue in appeal before CIT(A) who confirmed the addition of INR 41,19,00,374/- under Section 36(1)(iii) of the Act, being the difference between total interest expenditure of INR 122,37,12,281/- and suo-moto disallowance of interest of INR 81,18,11,907/- offered by the Assessee in terms of Section 14A of the Act read with Rule 8D(2)(ii) of the Rules. Since the CIT(A) had granted relief to the Assessee by restricting the disallowance under Section 14A of the Act to INR 1,98,47,880/- being the amount of exempt income earned by the Assessee during the relevant previous year, the CIT(A) held that the balance amount of INR 79,19,64,027/- [INR 81,18,11,907/- less INR 1,98,47,880/-] would be disallowed under Section 36(1)(iii) of the Act. Thus, in effect, as per the order passed by CIT(A) an amount of INR 120,38,64,401/- got to be disallowed under Section 36(1)(iii) of the Act.

13. Being aggrieved, the Assessee is now in appeal before us. The contentions of the Assessee in this regard as gathered from the written submission dated 10.05.2019 filed by the Assessee before CIT(A) as reproduced at page 4 to 14 of the order passed by the CIT(A) are that the loans and advances were granted by the Assessee to the related parties on account of commercial expediency and therefore, no disallowance under Section 36(1)(iii) of the Act can be made without prejudice to the aforesaid it was contended on behalf of the Assessee that entire amount of interest could not have been disallowed and only proportionate disallowance could have been made under Section 36(1)(iii) of the Act.

14. We note that the CIT(A) rejected the contention of the Assessee that no disallowance can be made under Section 36(1)(iii) of the Act by confirming the factual finding returned by the Assessing Officer that the Assessee did not surplus funds to give loans and advances and had utilized borrowed funds to give loans and advances to its related parties. Further, the CIT(A) held that while the Assessee had contended that loans and advances were given on account of commercial expediency, the Assessee did not explain/prove what was the commercial expediency. Having perused the orders passed by Assessing Officer and the CIT(A) we concur with the factual findings returned by the Assessing Officer and CIT(A). The Assessee had failed to explain the commercial expediency for granting loans & advances to related parties, and also controvert the findings returned by the Assessing Officer that the Assessee did not have surplus funds for granting the aforesaid loans & advances. Accordingly, we reject the

contention of the Assessee that no disallowance was warranted under Section 36(1)(iii) of the Act. Thus, Ground No. 1 to 3 raised by the Assessee are dismissed.

15. However, we find merit in the contention advanced by the Assessee before CIT(A) that only proportionate disallowance of interest could have been made under Section 36(1)(iii) of the Act. In Ground No. 4 raised by the Assessee in its appeal, the Assessee has computed proportionate disallowance of interest of INR 22,70,60,173/- in proportion that interest free loans & advances were to total assets of the Assessee. However, we note that in proceedings before CIT(A) the Assessee had computed the amount of proportionate disallowance at INR 23,08,10,676/-. The relevant extract of submissions dated 10.05.2019 filed by the Assessee before CIT(A) as reproduced on page 13 and 14 of the order passed by CIT(A) read as under:

"It is submitted that the disallowance u/s 36(1)(iii) of the Act cannot be made on proportionate basis on the Business Assets held by the appellant company. In the assessment order, the Id. AO has not taken into account the assets held by the appellant company for the purpose of business.

<i>Particulars</i>	<i>As on 31.03.13.</i>	<i>As on 31.03.12</i>
<i>xx</i>	<i>xx</i>	<i>xx</i>
<i>Xx</i>	<i>xx</i>	<i>xx</i>
<i>Average value of loans & advances</i>		<i>1,68,69,46,329/-</i>
<i>G. TOTAL</i>	<i>9,76,48,13,897/-</i>	<i>8,12,28,93,659/-</i>
<i>AVERAGE VALUE OF ASSETS</i>		<i>8,94,38,53,778/-</i>

From the above table it will be appreciated that investments are to be considered for the purpose of disallowance u/s 14A r.w.r. 8D. Further Fixed assets, inventories Trade receivables,

cash and Bank Balances and Other current Assets are business assets of the appellant and thus they cannot be considered for the purpose of calculating disallowance u/s 36(1)(iii). It is submitted that disallowance/s 36(1)(iii) cannot be invoked on business assets of the entity and it shall be restricted to short term loans and advances and long term loans and advances only. Therefore the Id. AO should have invoked the provisions of section 36(1)(ii) only in respect of average value of short term and long term loans and advances as on 31st March 2012 and 31st March 2013 amounting to Rs. 1,68,69,46,329/-. Thus, without prejudice to our submission that no disallowance is warranted in appellants' case, the amount of disallowance u/s 36(1)(iii) if any should be restricted to Rs. 23,08,10,676/- being proportionate of short term and long term loans and advances which is calculated as under:

$$122,37,12,281 \times \frac{1,68,69,46,329}{8,94,38,53,778} = 23,08,10,676$$

16. Accordingly, Ground No. 4 raised by the Assessee is partly allowed and amount of disallowance under Section 36(1)(iii) of the Act is restricted to INR 23,08,10,676/-.
17. Ground No. 5 (a) & 5(b) are directed against the order of CIT(A) holding that disallowance of INR 1,98,47,880/- made under Section 14A of the Act would be added back while computing Book Profits under Section 115JB of the Act. While in Ground No. 5(a) the Assessee has contended that disallowance made under Section 14A of the Act cannot be added while computing Book Profits under Section 115JB of the Act, in Ground No. 5(b), raised without prejudice to Ground No. 5(a), the Assessee has contended that CIT(A) ought to have restricted disallowance under Section 14A to INR 1,98,47,880/- for the purpose of calculating Book Profits under Section 115JB of the Act. While adjudicating Ground No. 4 raised by the Revenue in paragraph 10 above we have rejected the contention of the Revenue that amount of INR 81,18,11,907/- should be added while

computing Book Profits under Section 115JB of the Act and thus confirmed the order of CIT(A) holding that INR 1,98,47,880/- should be added while computing Book Profits under Section 115JB of the Act. Accordingly, Ground No. 5(a) raised by the Assessee is dismissed while Ground No. 5(b) raised by the Assessee is allowed.

18. In the result, the appeal preferred by the Revenue [ITA No. 5585/Mum/2019] is dismissed whereas the appeal preferred by the Assessee [ITA No. 5872/Mum/2019] is partly allowed.

Order pronounced on 17.01.2023.

Sd/-
(Om Prakash Kant)
Accountant Member

Sd/-
(Rahul Chaudhary)
Judicial Member

मुंबई Mumbai; दिनांक Dated : 17.01.2023
Alindra, PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR,
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार /(Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai