

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'D', NEW DELHI**

**Before Sh. G. S. Pannu, Hon'ble President
&
Sh. Saktijit Dey, Judicial Member**

ITA No. 2914/Del/2015 : Asstt. Year : 2009-10

ITA No. 2915/Del/2015 : Asstt. Year : 2010-11

M/s Jindal Saw Ltd., 28, Najafgarh Road, New Delhi-110015	Vs	DCIT, Circle-13(2), New Delhi-110002
(APPELLANT)		(RESPONDENT)
PAN No. AABCS7280C		

ITA No. 2714/Del/2015 : Asstt. Year : 2009-10

ITA No. 3601/Del/2015 : Asstt. Year : 2010-11

ITA No. 3602/Del/2015 : Asstt. Year : 2010-11

DCIT, Circle-13(2), New Delhi-110002	Vs	M/s Jindal Saw Ltd. 28, Najafgarh Road, New Delhi-110015
(APPELLANT)		(RESPONDENT)
PAN No. AABCS7280C		

**Assessee by : Sh. Rohit Jain, Adv. &
Sh. Tavish Verma, Adv.
Revenue by : Sh. Sanjay Kumar, Sr. DR**

Date of Hearing: 12.01.2022

Date of Pronouncement: 31.01.2023

ORDER

Per Saktijit Dey, Judicial Member:

These are set of five appeals relating to the same assessee. There are two sets of cross appeals for Assessment years 2009-10 and 2010-11. Whereas, there is an appeal by the revenue arising out of rectification proceeding. These appeals arise out of three separate orders of learned Commissioner of Income Tax (Appeals), New Delhi.

ITA No. 2914/Del/2015 (assessee's appeal A.Y. 2009-10)

2. At the outset, learned Counsel appearing for the assessee, on instructions submitted that the main ground on the issue of deduction claimed towards leave encashment and the additional ground raised claiming deduction of Education Cess are not to be pressed.

3. In view of the submissions of learned Counsel, these grounds are dismissed as not pressed.

4. Thus, the only surviving issue in assessee's appeal as raised in the additional ground dated 15.01.2020 relates to the issue of disallowance of expenditure under section 14A read with Rule 8D.

5. Briefly the facts relating to this issue are, during the year under consideration, the assessee had earned exempt income by way of dividend amounting to Rs.19,068/-. Whereas, the assessee *suo motu* made disallowance of Rs.3,86,451/-. In course of assessment proceedings, the Assessing Officer being of the view that the *suo motu* disallowance made by the assessee is not in accordance with Rule 8D proceeded to compute disallowance applying the said Rule. Ultimately, he made a net disallowance of Rs.6,77,46,043/-. Assessee contested the aforesaid disallowance before the learned First Appellate Authority while deciding the issue, learned First Appellate Authority, being convinced with the fact that investments giving rise to exempt income were made out of interest free funds available with the assessee, deleted the disallowance of interest expenditure of Rs.6,12,47,501/-.

Further, considering the fact that *suo motu* disallowance made by the assessee is sufficient to cover the disallowance of administrative expenses to be made under Rule 8D(2)(iii), he restricted the disallowance to the extent of *suo motu* disallowance made by the assessee. In other words, learned Commissioner (Appeals) deleted the disallowance made by the Assessing Officer.

6. Before us, learned Counsel appearing for the assessee submitted that as per settled legal principles disallowance under section 14A read with Rule 8D cannot exceed the exempt income earned during the year. In support, he relied upon the following decisions:

- CIT Vs. Caraf Builders & Constructions (P.) Ltd.: 101 Taxmann.com 167 (Del.)
- Joint Investments Pvt. Ltd. Vs. CIT : 371 ITR 694 (Del.)

7. The learned Departmental Representative relied upon the observations of the Assessing Officer.

8. Having considered rival submissions and perused material on record, at the outset, we must observe that the additional ground raised by the assessee does not require fresh investigation into facts. Therefore, we admit the additional ground for adjudication.

9. The issue arising for consideration is, whether disallowance u/s 14A read with Rule 8D can exceed the quantum of exempt income earned in a particular assessment year. As per the settled legal principle in the decisions cited before us, the

disallowance u/s 14A read with Rule 8D cannot exceed the quantum of exempt income earned during the year. In view of the aforesaid, we direct the Assessing Officer to restrict the disallowance under Section 14A read with Rule 8D to the exempt income earned during the year. In the result, additional ground is partly allowed.

ITA No. 2714/Del/2015 (Revenue appeal A.Y. 2009-10)

10. In ground no. 1, the revenue has challenged the relief granted by learned Commissioner (Appeals) in the matter of disallowance made under Section 14A read with Rule 8D. While deciding the additional ground raised by the assessee in ITA No. 2914/Del/2015 on identical issue, we have directed the Assessing Officer to restrict the disallowance to the exempt income earned during the year. In this view of the matter, the ground raised by the revenue, having become infructuous, is dismissed.

11. The only other surviving issue in revenue's appeal, as raised in ground no. 2, relates deletion of disallowance made under section 40(a)(ia) of the Act.

12. Briefly the facts are, in course of assessment proceedings, the Assessing Officer noticed that while making payment towards bus hire charges and wharfage, the assessee has deducted tax under section 194C instead of section 194I of the Act. Referring to the order passed under section 201(1) and 201(1A) of the Act, wherein, it was held that the assessee was required to deduct tax on these payments under Section 194-I of the Act, the Assessing Officer made proportionate

disallowance under section 40(a)(ia) of the Act. Assessee contested the aforesaid disallowance before learned Commissioner (Appeals).

13. While deciding the issue in appeal, learned Commissioner (Appeals) agreed with the assessee that the appropriate provision under which tax was required to be deducted is section 194C. Further, learned Commissioner (Appeals) held that Section 40(a)(ia) can be invoked in a case where no deduction of tax has been made but not in a case where there is short deduction of tax. Accordingly, he deleted the disallowance made by the Assessing Officer.

14. We have considered rival submissions and perused material on record. Notably against the order passed under section 201(1) and 201(1A) of the Act, which forms the basis of present disallowance, the assessee had gone in appeal before learned Commissioner (Appeals) and thereafter before the Tribunal. While deciding the appeal, the Tribunal in ITA Nos. 219 & 220/Rjt./2014 dated 10.11.2017 has clearly and categorically held that the payments made towards bus hire charges and wharfage required deduction of tax at source under section 194C of the Act and accordingly, deleted the demand raised under sections 201(1) and 201(1A) of the Act. Admittedly, the assessee has deducted tax on both the payments applying the provisions of Section 194C of the Act. Thus, keeping in view the aforesaid factual position, we do not find any infirmity in the decision of learned Commissioner (Appeals). Accordingly, ground raised is dismissed. In the result, the appeal is dismissed.

15. Our decision in the aforesaid appeal will apply *mutatis mutandis* to ITA No. 2915/Del/2015 (assessee's appeal A.Y. 2010-11) and ITA No. 3601/Del/2015 (Departmental appeal A.Y. 2010-11). Accordingly, assessee's appeal is partly allowed, whereas revenue's appeal is dismissed.

ITA No. 3602/Del/2015 (Revenue appeal A.Y. 2010-11)

16. The issue raised in this appeal of the revenue is, while computing book profit u/s 115JB of the Act, whether disallowance under section 14A read with Rule 8D can be made.

17. Having considered the submissions of the parties, we are of the view, the issue is no more *res integra* in view of the decision of the Hon'ble Delhi High Court in PCIT Vs. Bhushan Steel Ltd.: ITA No. 593/2015 and the decision of the Hon'ble Special bench of the Tribunal in case of ACIT Vs. Vireet Investments (P.) Ltd.: 165 ITD 27, wherein, it has been held that while computing book profit under section 115JB of the Act, no adjustment can be made with reference to Section 14A read with Rule 8D. In this view of the matter, we do not find any infirmity in the decision of learned Commissioner (Appeals) on the issue. Accordingly, ground raised is dismissed. In the result, appeal is dismissed.

Order Pronounced in the Open Court on 31/01/2023.

Sd/-

(G. S. Pannu)
President

Sd/-

(Saktijit Dey)
Judicial Member

Dated: 31/01/2023

Subodh Kumar, Sr. PS