

IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI 'C' BENCH, MUMBAI.

Before Shri B.R. Baskaran (AM) & Shri Pavan Kumar Gadale (JM)

I.T.A. No. 3055/Mum/2022 (A.Y. 2014-15)

ITO-7(3)(1) Room No. 126J 1 <sup>st</sup> Floor Aayakar Bhavan M.K. Road Mumbai-400 020. (Appellant)	Vs.	M/s. PDL Realty Pvt. Ltd. 8 <sup>th</sup> Floor, Piramal Tower Ganpatrao Kadam Marg Lower Pare, Mumbai 400 013. PAN : AAGCP0375A (Respondent)
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Assessee by	Shri Ronak Doshi & Ms. Mansi Padiyar & Mr. Priyank Gandhi
Department by	Shri Jogendra Singh
Date of Hearing	01.02.2023
Date of Pronouncement	02.02.2023

ORDER

Per B.R.Baskaran (AM) :-

The Revenue has filed this appeal challenging the order dated 3.10.2022 passed by the learned CIT(A), National Faceless Appeal Centre, Delhi and it relates to A.Y. 2014-15.

2. The grounds of appeal urged by the revenue read as under :

1. "Whether on the facts of the case that the assessee company did not have own funds to invest in the capital of the LLP and further that the investment has been made on borrowed capital/funds and under the circumstances of the case and in law, the Ld.CIT(A) was justified in treating income of Rs.31,80,30,762/- claimed by the assessee as profit from LLP as exempt which has direct bearing on the borrowed capital.
2. "Whether on the facts and under the circumstances of the case and in law, the Ld.CIT(A) was justified in deleting the disallowance of interest expenses made under rule 8D2(ii) while computing disallowance u/s 14A r.w.r. 8D?"

3. "Whether on the facts and under the circumstances of the case and in law, the Ld.CIT(A) was justified in deletion of disallowance made u/s 14A of the Act while computing book profit u/s.115JB of the Act?"
4. The appellant craves to leave to alter, amend, modify or substitute any ground/grounds and to add any new ground or grounds or before the appeal is disposed off?"

3. Facts relating to the case are stated in brief. The assessee company is engaged in the business of real estate development. The assessee is also a partner in a limited liability partnership firm named Systems (I) Pvt. Limited. The Assessing Officer noticed that the assessee has borrowed money from M/s. Piramal Realty Pvt. Ltd. and invested the same in the above said limited liability partnership firm. The assessee has paid interest of Rs.3.54 crores on the above said loan. The Assessing Officer noticed that the share income from the above said limited liability partnership firm was claimed as exempt. Accordingly, he took the view that the above said interest expenditure should be treated as relatable to the exempt income earned by the assessee. Accordingly, he held the same is required to be disallowed under section 14A of the Act. The AO also added the above said disallowance to net profit while computing book profit u/s 115JB of the Act. It is pertinent to note that the assessee had earned interest income of Rs.3.58 crores from the above said partnership firm on the capital investment made by it. However, the AO disallowed the above said interest income of Rs.3.58 crores u/s 14A of the Act.

4. The learned CIT(A) deleted the addition made u/s 14A of the Act on the reasoning that the interest income earned by the assessee on the capital of the partnership firm is taxable as business income. Accordingly he allowed the appeal of the assessee. Aggrieved, the Revenue has filed this appeal before us.

5. The first ground raised by the Revenue relates to exemption granted to the share of profit from limited liability partnership. This issue does not arise

out of the assessment order and it is not the case of the Assessing Officer that the share of profit received from limited liability partnership firm is not exempt under section 10(2A) of the Act. Hence, we are of the view that the Revenue could not have raised this ground and accordingly dismiss the same.

6. The Second ground raised by the revenue relates to interest disallowed under section 14A of the Act. The Learned AR submitted that the assessee had incurred interest expenditure of Rs.3.54 crores on the loan taken by the assessee for making investment in the above said partnership firm. At the same time, the assessee has earned interest income of Rs. 3.58 crores from the partnership firm on the capital invested out of borrowed funds. If the interest expenditure of Rs. 3.54 crores is netted off against interest income, there is net interest income of around Rs.4 lakhs. He submitted that, only net interest expenditure should be taken into account for the purpose of sec.14A of the Act. In support of this proposition, the Learned AR placed his reliance on the decision rendered by Hon'ble High Court of Bombay in the case of Jubilant Enterprises Pvt. Ltd. (Income Tax Appeal No. 1512 of 2014), wherein Hon'ble Bombay High Court has held that the disallowance could be related to net interest only and not the gross interest. Accordingly he submitted that there is no requirement of making any disallowance under section 14A of the Act, since there is net interest income in the instant case.

7. We have heard learned DR on this issue and perused the record. We noticed that, as submitted by Ld A.R, the assessee has earned net interest income of around Rs.4.00 lakhs. The Hon'ble Bombay High Court has held in the case of Jubilant Enterprises Pvt. Ltd. (supra) that the disallowance under section 14A can be made only on net interest expenditure. Since in the instant case there is no net interest expenditure, rather there is net interest income, the question of making disallowance under section 14A does not

arise. Accordingly we confirm the decision rendered by the learned CIT(A) of the above said reasoning.

8. The Assessing Officer has also added the interest disallowance made under section 14A to the net profit, while computing book profit under section 115JB of the Act. The Learned AR submitted that no addition of interest expenditure is called for, when there is net interest income. However, we noticed that the assessee has earned exempt share of profit from the partnership firm to the tune of Rs. 31.80 crores. Hence, as per Clause (f) of Explanation 1 to section 115JB of the Act, the expenditure relatable to earning of exempt income is liable to be added. However, the same has to be computed independently from the annual accounts of the assessee without having resort to provisions of section 14A of the Act as held by Special Bench of Delhi of ITAT in the case of Vireet Investment Pvt. Limited (165 ITD 27). Accordingly, we modify the order passed by the learned CIT(A) on this issue and direct the Assessing Officer to compute the disallowance under clause (f) of Explanation (1) to section 115JB of the Act on the basis of annual accounts of the assessee.

9. In the result, appeal filed by the Revenue is treated as partly allowed.

Pronounced in the open court on 2.2.2023.

Sd/-  
(PAVAN KUMAR GADALE)  
Judicial Member

Sd/-  
(B.R. BASAKARAN)  
Accountant Member

Mumbai; Dated : 02/02/2023

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai

6. Guard File.

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BY ORDER,

(Assistant Registrar)  
ITAT, Mumbai