

**IN THE INCOME TAX APPELLATE TRIBUNAL,
'SMC' BENCH, KOLKATA**

**Before Shri Rajpal Yadav, Vice-President (KZ)
&
Dr. Manish Borad, Accountant Member**

**I.T.A. No. 777/KOL/2022
Assessment Year: 2017-2018**

***Negus Distributors Pvt. Limited,.....Appellant
9, A.J.C. Bose Road, 6th Floor,
Kolkata-700017
[PAN: AAACN8486A]***

-Vs.-

***Assistant Commissioner of Income Tax,....Respondent
Circle-8(2), Kolkata,
Aayakar Bhawan,
P-7, Chowringhee Square,
Kolkata-700069***

Appearances by:

*Shri J.M. Thard, Advocate, appeared on behalf of the
assessee*

*Smt. Ranu Biswas, Addl. CIT, Sr. D.R., appeared on
behalf of the Revenue*

Date of concluding the hearing : February 28, 2023

Date of pronouncing the order : February 28, 2023

O R D E R

Per Rajpal Yadav, Vice-President (KZ):-

The assessee is in appeal before the Tribunal against the order of ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi dated 26.07.2022 passed for Assessment Year 2017-18.

2. The Registry has pointed out that appeal is time-barred by 94 days. In order to explain the delay, assessee has filed an explanation along with the Appeal Memo, which is available on the record. According to the assessee, an *ex-parte* order was decided by the Id. 1st Appellate Authority. It was forwarded to the Tax Consultant, who used to look after Company's regular day-to-day income-tax matters. Ultimately, papers were handed over to Shri N.M. Bhansali, Advocate for filing appeal, but Shri Bhansali developed some back pain and could not attend his Office properly and due to cumulative setting off all these circumstances, the appeal become time-barred by 94 days. After looking into the explanation of the assessee, we are satisfied that it was prohibited by sufficient reasons for not presenting the appeal within time, therefore, we condone the delay in filing the appeal and proceed to decide on merit.

3. Though the assessee has taken nine grounds of appeal, but Id. Counsel for the assessee submitted that the grievances of the assessee revolve around a single issue, namely the additions made for the purpose of section 14A ought not to have been added back in the book profit for the purpose of section 115JB.

4. Brief facts of the case are that the assessee has filed its return of income on 29.10.2017 declaring a loss of Rs.1,93,508/- and assessment order was passed under section 143(3) dated 14.11.2019. One of the disputes, which travelled upto the

Tribunal relates to enhancement of book profit for the purpose of section 115JB under MAT by the amount of disallowance made under section 14A.

5. The ld. Counsel for the assessee, at the very outset, submitted that this issue is settled and he made reference to the judgment of the Hon'ble Supreme Court in the case of Principal Commissioner of Income Tax -vs.- Atria Power Corporation Limited reported in (2022) 289 taxman page 111/ 142 taxmann.com 413. The Hon'ble Supreme Court has upheld the decision of the Hon'ble Karnataka High Court reported in 142 taxmann.com 412 (Kar.) vide which Hon'ble Supreme Court has propounded that disallowance made under section 14A, i.e. the expenditure incurred by the assessee for earning tax-free income. Such disallowance will not be included in the Book Profit under section 115JB. The SLP against this decision has been dismissed by the Hon'ble Supreme Court.

6. Apart from this, there are other large number of decisions on this point including Special Bench decision of the ITAT rendered in the case of ACIT -vs.- Vireet Investment (P) Limited reported in 82 taxmann.com 415/ 165 ITD 27 (Delhi-Trib.). Therefore, respectfully following the decisions of Hon'ble Delhi High Court as well as of Hon'ble Karnataka High Court, we allow this ground of appeal of the assessee and direct the ld. Assessing Officer not to include the amount of disallowance made under

section 14A in the Book Profit for the purpose of MAT under section 115JB.

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

Order pronounced in the open Court on 28th February, 2023.

Sd/-

Sd/-

(Manish Borad)
Accountant Member

(Rajpal Yadav)
Vice-President (KZ)

Kolkata, the 28th day of February, 2023

*Copies to :(1) **Negus Distributors Pvt. Limited,**
9, A.J.C. Bose Road, 6th Floor,
Kolkata-700017*

*(2) **Assistant Commissioner of Income Tax,**
Circle-8(2), Kolkata,
Aayakar Bhawan,
P-7, Chowringhee Square,
Kolkata-700069*

*(3) **Commissioner of Income Tax (Appeals),**
National Faceless Appeal Centre (NFAC), Delhi;
(4) **Commissioner of Income Tax-** , **Kolkata;**
(5) **The Departmental Representative**
(6) **Guard File***

TRUE COPY

By order

*Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata*

Laha/Sr. P.S.