

IN THE INCOME TAX APPELLATE TRIBUNAL

(DELHI BENCH 'C' : NEW DELHI)

BEFORE SH. N.K.BILLAIYA, ACCOUNTANT MEMBER

AND

SH. ANUBHAV SHARMA, JUDICIAL MEMBER

ITA No. 6424/Del/2018, A.Y. 2015-16

Dy. CIT, Circle-13(2), New Delhi	Vs.	M/s. JITE Shipyard Ltd. 28, Shivaji Marg, Najafgarh Road, New Delhi-110015 PAN : AABCJ8277E
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ITA No. 6631 /Del/2018, A.Y. 2015-16

M/s. JITF Shipyard Ltd. 28, Shivaji Marg, West Delhi, P.O. Ramesh Nagar New Delhi-110015 PAN : AABCJ8277E	Vs.	Asstt. CIT, Circle-13(2), Central Revenue New Delhi
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Revenue by	Mohd. Gaysuddin Ansari, CIT(DR)
Assessee by	Shri Anil Jain, CA

Date of hearing:	22.03.2023
Date of Pronouncement:	27.03.2023

ORDER

Per Anubhav Sharma, JM :

The two appeals have been filed by the Revenue and Assessee respectively against order dated 05.07.2018 passed for assessment year 2015-16, by the Commissioner of Income Tax (Appeals)-5, New Delhi (hereinafter referred to as the First Appellate Authority or in short 'Ld. F.A.A.') in regard to

the appeal before it arising out of assessment order dated 22.12.2017 u/s 143(3) of I.T. Act, 1961 (hereinafter referred to as 'the Act') passed by DCIT, Circle-13(2), New Delhi (hereinafter referred as Ld. Assessing officer or in short Ld. AO).

2. The facts are that Assessee filed return of income declaring loss of Rs. 89,44,337/- under normal provisions and at book loss of Rs. 1,93,82,227/- which was subsequently revised on 31.03.2017 at total loss of Rs. 40,00,72,770/- and book loss of Rs. 20,57,82,537/-. The case of assessee was selected for scrutiny and assessee was asked to submit note on applicability of Section 14A of the Act. Assessee had claimed that assessee had made investments in current as well as non-current investments and the non-current investments were not considered for computing disallowance. It was submitted that company had earned Rs. 13,52,493/- on current investments out of which Rs. 1,59,826/- is dividend on investments in Reliance liquidity fund daily dividend option reinvestment plan and Rs. 11,92,668/- is profit on sale of investment on Reliance liquidity fund growth option plan. While preparing the computation of total income Rs. 11,92,668/- is already offered for taxation under head 'Short term capital gain' and Rs. 1,59,826/- is considered as exempt income u/s 10(34) of the Income Tax Act. It was also submitted that current investments were made out of own funds and no investments were made from borrowed funds.

2.1 However, Ld. AO was of view that a portion of administrative expenses must have incurred as assessee is investing in various portfolios. Accordingly, re-calculated the disallowance at Rs. 4,75,45,434/- and Ld. CIT(A) has taken into consideration the submissions of assessee and relying judgment of Hon'ble Supreme Court of India in **Maxopp Investments vs. CIT** made relevant observations in para 4.4 as below:-

“4.4 It has been held that the argument that S. 14A & Rule 8D will not apply if the "dominant intention" of the assessee was not to earn dividends but to gain control of the company or to hold as stock-in-trade is not acceptable. S. 14A applies irrespective of whether the shares are held to gain control or as stock-in-trade. However, where the shares are held as stock-in-trade, the expenditure incurred for earning business profits will have to be apportioned and allowed as a deduction. It is, however, seen that consistent legal opinion including the ratio taken in Maxopp Securities is that in respect of disallowance u/s 14A is that the disallowance cannot exceed the exempt income. In the year under reference the total exempt income was Rs. 1,59,826/-. Therefore, on the basis of following judgments the disallowance is restricted to Rs. 1,59,826/-.”

3. Further, Ld. AO had also made a variation in the book profit on account of addition due to disallowance u/s 14A for the purpose of Section 115JB of the Act which has been sustained by Ld. CIT(A) however, restricting the disallowance to Rs. 1,59,826/-.

4. Revenue is in appeal raising following grounds :-

“1. Whether the Ld. CIT(A) is justified on facts and law in restricting the disallowances under section 14A of the Act, from which Rs. 4,75,45,434/- to Rs. 1,59,826/- by not considering a legal principle that allowability/disallowability of expenditure under the Act is not conditional upon the earning of the income as held by Hon'ble Supreme Court in the case of CIT vs Rajendra Prasad Moody (1978) 115 ITR 519?

2. Whether CIT(A) is justified on facts and law restricting the disallowance made under section 14A ignoring that the rule laid down by section 14A r.w. Rule 8D implies presumption taxation and calculation of disallowance as per rule 8D in natural corollary to the disallowance made under section 14A of the IT Act 1961.

3. Whether CIT(A) is justified on facts and law in ignoring the CBDT circular no. 5/2014 dated 10.12.2014 which clearly dissociates disallowance made u/s 14A of IT Act and the exempted income earned during the year.

4. *CIT(A) has erred on facts in reducing the income from Rs. 4,75,45,434/- to Rs. 1,59,826/- on account of disallowance under section 14A of IT Act 1961 to be included for calculation of book profit u/s 115 J of IT Act, 1961.*
5. *That the grounds of appeal are without prejudice to each other.*
6. *That the appellant craves leave to add, alter, amend or forego any ground(s) of the appeal raised above at the time of hearing.”*

4.1. And the Assessee is in appeal raising following grounds :-

1. *“On the facts and circumstances of the case and in law the Id. CIT (A) has erred in passing appellate order in the name of amalgamated company which has ceased to exist on amalgamation.*
2. *On the facts and circumstances of the case and in law the Id. CIT (A) have failed to hold the assessment order as nullity since the same was passed on assessee which has ceased to exist.*
3. *On the facts and circumstances of the case and in law the Id. CIT (A) has erred in upholding AO’s act of recomputing appellant book loss under the provisions of section 115JB, when the section applies to assessee having book profits.*
4. *On the facts and circumstances of the case and in law the Id. CIT (A) has erred in upholding AO’s act of recomputing audited book loss when he has no power to do so.*
5. *On the facts and circumstances of the case and in law the Id. CIT (A) has erred in upholding AO’s act of reducing appellant book loss by sum of Rs. 15,59,42,068/- being the amount of genuine and ascertained expenditure on redemption premium on CCD by holding the same to be an unascertained liability.*
6. *On the facts and circumstances of the case and in law the Id. CIT (A) has erred in holding that sum of RS 1,59,826/- held by him to be disallowed u/s 14A while computing income under normal provisions of the act, would also be disallowed while computing book profit u/s 115JB.*

7. *That the above grounds of appeal are without prejudice to each other*

8. *Appellant craves for grant of permission to add, alter, or withdraw any ground(s) of appeal at any time before or during the hearing of appeal.*”

5. Heard and perused the record. Pertinent to mention here is that at the time of arguments, the ld. AR for the assessee has pressed only ground no. 3 to 6.

6. On merits of appeal by assessee the Ld. AR for the appellant submitted that as for the purpose of Section 115JB the title of the provision indicate that only in case when profit is reported a variation can be made but as assessee reported loss no variation can be made.

6.1 As with regard to the appeal of revenue he it was submitted that there is no error in the findings of Ld. CIT(A).

7. On the other hand in regard to the appeal of Revenue the Ld. DR submitted that Ld. CIT(A) has fallen in error in not considering the principles that allowability or disallowability of expenditure cannot be conditional upon earning of income. At same time defended the stand of Ld. CIT(A) in regard to appeal filed by Assessee.

8. Now, giving thoughtful consideration to the matter on record and submissions, at the outset, the argument of the Ld.AR with regard o interpretation, that u/s 115JB of the Act only in case of reporting profit variation to arrive at Book profits can be made, the Bench is not impressesd. As a matter of law, "income" or "profits and gains" should be understood as including 'loss' also so that 'profits and gains' represents 'positive' income, whereas 'loss' represents 'negative' income. Reliance for it can be placed on **Atul Kumar Deovrat & Co. v. CIT (1987) 168 ITR 286 (Cal)**. Further, in **P.R. Basavappa & Sons v. CIT; (2000) 243 ITR 776 (Kar)**, the Hon'ble High Court pointed out that it has always been understood that income includes loss, as held in **CIT**

v. Harprasad & Co. (P) Ltd. (1975) 99 ITR 118 (SC). So that reduction in loss by way of positive adjustments, i.e amount to be added back if debited to Profit and Loss Account, like in case in hand, disallowance u/s14A of the Act is made, then word 'net profit' as shown in the profit & loss account for the relevant previous year would include the 'loss' shown in the return. Thus, there is no substance in this argument or grounds raised in that regard and ground no 3 to 6 are decided against the assessee.

9. At the same time, the bench is of considered opinion that Ld. CIT(A) has taken into consideration the nature of investments to arrive the fact that exempt income was Rs. 1,59,826/- only and thus rightly restricted disallowance u/s 14 A of the Act to Rs. 1,59,826/- and reliance can be placed on Hon'ble Madras High Court judgement in the case of **M/s.Marg Limited v. CIT** (in Tax Case Appeal Nos.41 to 43 & 220 of 2017 judgment dated 30.09.2020), where it is held that the disallowance u/s 14A of the I.T.Act cannot exceed the exempt income earned during the relevant assessment year irrespective whether larger amount was disallowed by the assessee u/s 14A of the Act while filing the return of income which has been followed by Tribunal Bangalore Bench in **GMR Enterprises Pvt. Ltd. Vs DCIT (ITAT Bangalore)** IT(TP)A No.2310/Bang/2019 Order dated 28/10/2021. So there is no substance in the grounds raised by revenue in it's appeal.

10. **As a consequence of above, both the appeals are dismissed.**

Order pronounced in the open court on 27th March, 2023.

Sd/-

(N.K.BILLAIYA)

ACCOUNTANT MEMBER

Sd/-

(ANUBHAV SHARMA)

JUDICIAL MEMBER

Date:-27.03.2023

Binita, S.R.P.S

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI