

आयकर अपीलिय अधिकरण, 'सी' न्यायपीठ, चेन्नई।
IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH: CHENNAI

श्री महावीर सिंह, माननीय उपाध्यक्ष, एवं
श्री मंजूनाथा.जी, माननीय लेखा सदस्य के समक्ष
BEFORE SHRI MAHAVIR SINGH, HON'BLE VICE PRESIDENT AND
SHRI MANJUNATHA.G, HON'BLE ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.690/Chny/2022
निर्धारण वर्ष /Assessment Year: 2018-19

M/s.Apollo Hospitals Enterprise Ltd., v. The Asst. Commissioner-
Shafee Mohammed Road, of Income Tax,
Thousands Lights, Central Circle-3(1),
Chennai-600 006. Chennai.
[PAN: AAACA 5443 N]
(अपीलार्थी/Appellant) (प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Mr.T. Banusekar, CA
प्रत्यर्थी की ओर से /Respondent by : Mr.P.Sajit Kumar, JCIT
सुनवाई की तारीख/Date of Hearing : 30.03.2023
घोषणा की तारीख /Date of Pronouncement : 19.05.2023

आदेश / ORDER

PER MANJUNATHA.G, ACCOUNTANT MEMBER:

This appeal filed by the assessee is directed against the order of the Commissioner of Income Tax (Appeals)-18, Chennai, dated 07.07.2022 and pertains to assessment year 2018-19.

2. The assessee has raised the following grounds of appeal:

1. For that the order of the Commissioner of Income Tax (Appeals) is contrary to law, facts and circumstances of the case to the extent prejudicial to the interests of the appellant and is opposed to the principles of equity, natural justice and fair play.

2. For that the Commissioner of Income Tax (Appeals) failed to appreciate that the order of the Assessing Officer is without jurisdiction.

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Disallowance made u/s.14A r.w Rule 8D

3. For that the Commissioner of Income Tax (Appeals) erred in upholding the computation of disallowance made by the Assessing Officer u/s.14A r.w Rule 8D at Rs.4,44,89,242/-.

4. For that the Commissioner of Income Tax (Appeals) erred in upholding the interest expenditure relating to exempt income to the tune of Rs.3,22,43,3847-as direct expense related to earning exempt income.

5. For that the Commissioner of Income Tax (Appeals) failed to appreciate that the disallowance u/s.14A r.w Rule 8D in accordance with the amended Rule 8D provisions is only Rs. 1,22,45,858/-.

6. For that the excess disallowance u/s.14A r.w Rule 8D made by the appellant in the computation of income for the impugned assessment year ought to be deleted.

Addition made u/s.14A r.w Rule 8D in calculating Book Profit

7. For that the Commissioner of Income Tax (Appeals) failed to appreciate that the disallowance made u/s.14A r.w Rule 8D ought not to be added to the deemed income u/s.115JB.

Disallowance made u/s.36(1)(va)

8. For that the Commissioner of Income Tax (Appeals) erred in upholding the disallowance of Rs.35,76,491/-, being aggregate of belated remittances of employees' contributions to PF and ESI u/s.36(1)(va).

9. For that the Commissioner of Income Tax (Appeals) failed to appreciate that the employees' contributions to the PF & ESI were remitted before the due date for filing the return of income of the appellant for the impugned assessment year.

10. For that the Commissioner of Income Tax (Appeals) failed to appreciate that the payment of employees' contribution to PF & ESI within due date of filing the return of income is an allowable expenditure.

Deduction u/s.80JJAA

11. For that the Commissioner of Income Tax (Appeals) erred in denying deduction u/s.80JJAA amounting to Rs. 1,51,69,5007-.

12. For that the Commissioner of Income Tax (Appeals) failed to appreciate that the appellant had raised the issue through additional ground filed before the Commissioner of Income Tax (Appeals).

13. For that the Commissioner of Income Tax (Appeals) failed to appreciate that the appellant had satisfied all the conditions to claim deduction u/s.80JJAA.

PRAYER

For these grounds and such other grounds that may be raised, may be altered, amended or modified, with the leave of the Hon'ble Tribunal before or during the hearing of the appeal, it is most humbly prayed that the Hon'ble Tribunal may be pleased to:

a) Delete the disallowance made u/s.14A r.w Rule 8D and direct the disallowance to be restricted to Rs.1,22,45,858 and / or

b) Delete the disallowance made u/s.36(1)(va) and / or

c) Allow the deduction u/s.80JJAA and /or

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d) Pass such other orders as the Hon'ble Tribunal may deem fit.

3. The brief facts of the case are that the assessee, M/s.Apollo Hospitals Enterprise Ltd., is engaged in the business of healthcare services, filed its return of income for assessment year 2018-19 on 31.10.2018 declaring total income of Rs.NIL under normal provisions and at Rs.332,56,33,091/- u/s.115JB of the Income Tax Act, 1961 (in short "the Act"). The assessee had filed its revised return of income on 29.03.2019 declaring NIL income under normal provisions and book profit of Rs.332,56,33,091/- under MAT provisions of the Act. The case was selected for scrutiny and the assessment has been completed u/s.143(3) of the Act, on 14.07.2021 and determined total income of Rs.NIL under normal provisions and book profit at Rs.333,20,90,126/- u/s.115JB of the Act, by making additions towards disallowance u/s.14A r.w.r.8D of the Income Tax Rules, 1962 (in short "the Rules"), and addition towards belated remittances of employees' contribution towards PF & ESI u/s.36(1)(va) r.w.s.2(24)(x) of the Act. The assessee carried the matter in appeal before the First Appellate Authority, and the Ld.CIT(A) for the reasons stated in their appellate order dated 07.07.2022, partly allowed the appeal filed by the assessee, where the Ld.CIT(A) deleted the additions made towards disallowance on account of expenditure on penalty. However, sustained the additions made towards disallowance u/s.14A r.w.r.8D of the IT Rules, 1962, and belated remittances of employees' contribution towards PF & ESI u/s.36(1)(va) of the Act. The Ld.CIT(A) had also rejected the additional grounds filed by

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the assessee seeking deduction u/s.80JJAA of the Act. Aggrieved by the order of the Ld.CIT(A), the assessee is in appeal before us.

4. The first issue that came up for our consideration from Ground Nos.3-6 of the assessee's appeal is disallowance u/s.14A r.w.r.8D of the IT Rules, 1962. The assessee has earned dividend income of Rs.4,36,83,999/- and has also made *suo moto* disallowance of expenditure relatable to exempt income u/s.14A r.w.r.8D of the IT Rules, at Rs.3,80,32,207/- which includes interest expenditure relating to exempt income at Rs.3,22,43,384/- and 0.5% on average investment yielding exempt income at Rs.57,88,823/-. The assessee has computed said disallowance under pre-amended Rule 8D of the Income Tax Rules, 1962. The AO has computed disallowances as per amended Rule 8D(2) of the Income Tax Rules, 1962, which has been amended w.e.f.02.06.2016, where the earlier method of computation has been substituted with new method, where disallowance of expenditure comprising of direct expenses relatable to earning exempt income, and 1% of average investments yielding exempt income. The AO by following new method determined total disallowance at Rs.4,44,89,242/-, and after reducing disallowance worked out by the assessee at Rs.3,80,32,207/- has made further disallowance of Rs.64,57,035/-.

4.1 The Ld.Counsel for the assessee referring to amended Rule 8D(2)(ii) of the Income Tax Rules, 1962, which is applicable for the impugned assessment year submitted that as per new Rule, only two category of

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disallowances are prescribed i.e. (i) direct expenses relatable to exempt income, which is NIL in the present case, and (ii) 1% on average investments yielding exempt income, which is worked out at Rs.1,22,45,858/- and said disallowance is below the amount of *suo moto* disallowance made by the AO. Therefore, the disallowance as per new method should be adopted, and suitable directions may be given to the AO to work out disallowance.

4.2 Ld.DR, Mr.P.Sajit Kumar, JCIT, submitted that there is no provision under the Act to reduce the total income computed in an assessment below the amount of the returned income. Further, in case, the assessee wants to rectify any mistakes in filing return of income, it can file revised return in terms of provisions of Sec.139(4) & 139(5) of the Act. Unless, the assessee rectifies the mistakes by filing revised return, there is no scope for the AO to reduce the returned income in an assessment. Therefore, the AO and the Ld.CIT(A) has rightly rejected the arguments of the assessee, and sustained addition made towards disallowance u/s.14A of the Act.

4.3 We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. The provisions of Rule 8D(2) of the IT Rules, 1962, has been amended by the Income Tax (Fourteenth Amendment) Rules, 2016 w.e.f. 02.06.2016, notified vide Notification No.43/2016. As per which, the expenditure in relation to income which does not form part of the total income shall be aggregate of the following amounts viz., (i) the amount of expenditure directly relating

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to income which does not form part of the total income and, (ii) an amount equal to 1% of the annual average of the monthly averages of the opening and closing balance of the value of investment, income from which does not or shall not form part of the total income. The assessee has computed disallowance under pre-amended Rules while filing return of income and made *suo moto* disallowance of Rs.3,80,32,207/-, which is comprising of interest disallowance u/r.8D(2)(ii) and disallowance of other expenses u/r.8D(2)(iii) of the IT Rules. The AO has computed disallowance u/s.14A r.w.r.8D of the IT Rules, by following new Rules and determined total disallowance at Rs.4,44,89,242/-. In the process, the AO considered interest expenses disallowed by the assessee u/r.8D(2)(ii) of the IT Rules, as direct expenses, and further computed 1% of monthly average of investment yielding income. It was the arguments of the assessee that direct expenses relatable to exempt income is 'nil'. Further, interest expenses do not relate to exempt income. Therefore, only 1% of monthly average of investment yielding exempt income i.e. Rs.1,22,45,858/- needs to be disallowed. We find that although, the assessee has determined disallowance u/s.14A of the Act, at Rs.3,80,32,207/-, but such disallowances computed by the assessee is not in accordance with Rules applicable for the impugned assessment year. Therefore, the same cannot be taken into consideration. In so far as disallowances computed by the AO as per new Rules, there is no dispute with regard to 1% of monthly average income yielding exempt income, and to that extent, we confirm

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disallowance worked by the AO at Rs.1,22,45,858/-. In so far as interest expenses are concerned, whether it relates to direct expenses earning exempt income or not; has to be examined in light of borrowed funds of the assessee and investments to ascertain whether any direct link between borrowed funds and investments in shares & securities, which yield exempt income. In case, interest expenses are relatable to exempt income, then, same needs to be considered under direct expenses. But, facts need to be examined. Therefore, the issue of disallowance of interest expenses has been set aside to the file of the AO for further verification. In so far as arguments of Ld.DR that assessed income cannot go below the returned income, we are of the considered view that correct amount of tax payable by the assessee needs to be determined by the AO even in a case, the assessee reports higher income by mistaken of law or facts. Therefore, when the disallowance as per law is lesser than the amount of disallowance worked by the AO, there is no restriction under the law to reduce such disallowance as per law while computing such disallowance in the course of assessment proceedings. Therefore, we reject the arguments of the Ld.DR and direct the AO to determine correct amount of disallowance u/s.14A of the Act, by applying Rule 8D(2) of the IT Rules, in light of our discussion given hereinabove.

5. The next issue that came up for our consideration from Ground No.7 of the assessee's appeal is additions made u/s.14A r.w.r.8D of the IT Rules, in calculating book profit u/s.115JB of the Act. Having heard both the sides,

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we find that this issue is squarely covered in favour of the assessee by the decision of the Special Bench, ITAT Delhi in the case of ACIT v. Vireet Investment (P) Ltd., reported in [2017] 165 ITD 27 (Delhi-Trib.) (SB). We further noted that the Hon'ble Karnataka High Court in the case of CIT v. Gokaldas Images (P) Ltd., reported in [2020] 429 ITR 526 (Kar.), had considered an identical issue and held that disallowance made u/s.14A of the Act, should not be added to book profit of the assessee computed u/s.115JB of the Act. Therefore, by following the decisions of Special Bench, ITAT Delhi and the Hon'ble Karnataka High Court, we direct the AO to delete the addition made towards disallowance u/s.14A of the Act, to book profit computed u/s.115JB of the Act.

6. The next issue that came up for our consideration from Ground Nos.8-10 of the assessee's appeal is disallowance made u/s.36(1)(va) of the Act, towards belated remittances of employees' contribution towards PF & ESI. The Ld.Counsel for the assessee, at the time of hearing, fairly admitted that this issue is covered against assessee by the decision of the Hon'ble Supreme Court in the case of Checkmate Services (P) Ltd. v. CIT [2023] 290 Taxman 19 (SC), for which, the Ld.DR also consented.

6.1 We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. We find that the Hon'ble Supreme Court in the case of Checkmate Services (P) Ltd., (supra) had considered the issue of disallowance of belated remittances of employees' contribution towards PF & ESI u/s.36(1)(va) r.w.s.2(24)(x) of

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the Act & s.43B of the Act, and after considering relevant facts held that belated remittances of employees' contribution towards PF & ESI, cannot be allowed as deduction if such contribution is remitted beyond due date under respective Act. Therefore, by following the decision of the Hon'ble Supreme Court in the case of Checkmate Services (P) Ltd., (supra), we confirm the additions made by the AO and reject the ground taken by the assessee.

7. The next issue that came up for our consideration from Ground Nos.11-13 of the assessee's appeal is deduction claimed u/s.80JJAA of the Act. The facts with regard to impugned dispute are that the assessee has made a fresh claim of deduction u/s.80JJAA of the Act, for Rs.1,51,69,500/- by rising additional grounds of appeal before the Ld.CIT(A). However, the claim for deduction u/s.80JJAA of the Act, was not made either in the return of income filed for the relevant assessment year or before the AO during the course of assessment proceedings. The Ld.CIT(A) rejected additional grounds filed by the assessee claiming deduction u/s.80JJAA of the Act, on the ground that the assessee has not given any valid reason 'as to why' the deduction was not claimed in the return of income and further, the assessee could not satisfy conditions prescribed u/s.80JJAA of the Act, by filing report of Accountant along with return of income filed for the relevant assessment year. Therefore, opined that the assessee is not entitled for deduction u/s.80JJAA of the Act.

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7.1 The Ld.Counsel for the assessee referring to application in terms of Rule 29 of the Income Tax (Appellate Tribunal) Rules, 1963, submitted that the assessee has filed certain additional evidences which are very crucial to decide the issue and said documents were neither furnished before the AO nor before the Ld.CIT(A). The Counsel further submitted that the reasons for non-furnishing of the said document before the Ld.CIT(A) was that the First Appellate Authority did not specifically called for relevant documents, but simply he rejected the claim of the assessee on the ground that the assessee has not satisfied conditions prescribed under the provisions of u/s.80JJAA of the Act. He further submitted that the main reason for the Ld.CIT(A) to reject said claim was non-filing of report of Accountant as per Clause-(c) of sub-section (2) to sec.80JJAA of the Act, but fact remains that filing of Audit Report is made mandatory w.e.f. AY 2020-21. Therefore, the reasons given by the Ld.CIT(A) to deny deduction is incorrect. The Counsel further submitted that the assessee is otherwise eligible for deduction. Therefore, the matter may be remitted back to the file of the AO to verify the claim of the assessee and to decide the issue of deduction claimed u/s.80JJAA of the Act.

7.2 The Ld.DR present for the Revenue opposing application filed by the assessee in terms of Rule 29 of the Income Tax (Appellate Tribunal) Rules, 1963, submitted that the assessee could not explain 'as to why' it could not submit those documents before the AO. Further, the assessee did not make any claim in the return of income. Therefore, the AO and the Ld.CIT(A)

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has rightly rejected the claim of the assessee and their orders should be upheld.

7.3 We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. If the assessee is eligible for any deduction, if he satisfies conditions therein, then, there is no reason for the AO to deny such deduction on technical grounds, including non-claiming of said deduction in the return of income filed for the relevant assessment year. It is a well settled principal of law by the decision of the various courts that correct tax payable by the assessee should be computed by the AO, even if assessee makes a wrong claim by mistaken of law or facts. In this case, there is no dispute that the assessee did not make any claim in the return of income or even in the revised return filed for the relevant assessment year. However, the assessee has made a claim for the first time before the Ld.CIT(A) along with report of Accountant as required u/s.80JJAA(2)(c) of the Act, and reasons given by the Ld.CIT(A) to deny deduction was that the assessee did not file Audit Report of Accountant as required under Clause (c) to sub-sec.2 to sec.80JJAA of the Act. But, fact remains that filing of Audit Report of Accountant was made mandatory by the Finance Act, 2020, w.e.f. 01.04.2020, and thus, same is applicable from the AY 2021-22 onwards, and not applicable to impugned assessment year. Therefore, the reasons given by the Ld.CIT(A) to reject the claim of the assessee is incorrect. Further, the assessee claims that it was otherwise eligible for claiming deduction u/s.80JJAA of the Act, and it

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is ready to furnish necessary evidences before the AO to justify its claim. Therefore, we are of the considered view that the issue needs to go back to the file of the AO to verify the claim of the assessee in light of provisions of Sec.80JJAA of the Act, and thus, we set aside the issue to the file of the AO and direct the AO to re-examine the claim of the assessee and decide the issue in accordance with law.

8. In the result, appeal filed by the assessee is partly allowed for statistical purposes.

Order pronounced on the 19th day of May, 2023, in Chennai.

Sd/-
(महावीर सिंह)
(MAHAVIR SINGH)
उपाध्यक्ष /VICE PRESIDENT

Sd/-
(मंजूनाथा.जी)
(MANJUNATHA.G)
लेखा सदस्य/ACCOUNTANT MEMBER

चेन्नई/Chennai,

दिनांक/Dated: 19th May, 2023.

TLN

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

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|----------------------------|---------------------------|--------------------|
| 1. अपीलार्थी / Appellant | 3. आयकर आयुक्त / CIT | 5. गार्ड फाईल / GF |
| 2. प्रत्यर्थी / Respondent | 4. विभागीय प्रतिनिधि / DR | |