

IN THE INCOME TAX APPELLATE TRIBUNAL

"D" BENCH, MUMBAI

BEFORE SHRI G.S. PANNU, PRESIDENT, AND
SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA no.1480/Mum./2023

(Assessment Year : 2015-16)

M/s. Dosch Pharmaceuticals Pvt. Ltd.
15-C, Laxmi Industrial Estate
New Link Road, Andheri (West)
Mumbai 400 053 PAN – AAACD2320F

..... Appellant

v/s

Asstt. Commissioner of Income Tax
Circle-9(3)(1), Mumbai

.....Respondent

Assessee by : Shri Jose Pulikkodan
Revenue by : Smt. Mahita Nair

Date of Hearing – 13/07/2023

Date of Order – 27/07/2023

ORDER

The present appeal has been filed by the assessee challenging the impugned order dated 02/03/2023 passed under section 250 of the Income Tax Act, 1961 (*"the Act"*) by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [*"learned CIT(A)"*], for the assessment year 2015-16.

2. In this appeal, the assessee has raised the following grounds:-

"1. In the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in not appreciating the fact that an order u/s 154 of the Income-tax Act, 1961(IT Act, 1961) dated 28.02.2020, was made by the Assessing Officer without providing an proper opportunity as per law and illegally assuming that the appellant had no objection to the addition proposed to be made.

2. In the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in not appreciating the fact that an order u/s 154 of the Income-tax Act, 1961(IT Act, 1961) dated 28.02.2020, made on a debatable issue, relating to inclusion of disallowance u/s 14A of the IT Act, 1961, for the purpose of computing the Total Income under the MAT provisions of section 115JB of the IT Act, 1961, is a void order, as the provisions of section of 154 of the IT Act, 1961 can be invoked only in case of a glaring, patent, and obvious mistake.

3. In the facts and circumstances of the case and in law, the Ld CIT(A) has erred in upholding the decision of the Assessing Officer that disallowance under Section 14A of the IT, Act 1961 read with Rule 8D of the IT Rules 1962, amounting to Rs.9,02,01,185/- is to be considered for the purpose of computing the Total Income under the MAT provisions of Section 115JB of the IT Act, 1961.

4. In the facts and circumstances of the case and in law, the Ld CIT(A) has erred in not appreciating the fact that the disallowance made u/s 14A of the IT Act, 1961 is a notional disallowance, computed on an estimate basis under the provisions of Rule SD of the IT Rules, 1962 and that the Assessing Officer has not brought any evidence on record to bring about any proximate relationship with the investment & exempt income, to be linked to any particular expenses, for the purpose of invoking the provisions of explanation 1 of clause (f) of section 115JB(2) of the IT Act, 1961.

5. The Appellant craves to reserve the right to add, alter, or amend any ground or grounds of appeal on or before the hearing."

3. The brief facts of the case as emanating from the record are: The assessee is a manufacturer and exporter of pharmaceutical products. For the year under consideration, the assessee filed its return of income on 30/09/2015, declaring a total income of Rs.3,95,99,830. Subsequently 20/10/2015, the assessee filed its revised return of income. The return filed by the assessee was selected for scrutiny and statutory notices under section 143(2) as well as section 142(1) of the Act were issued and served on the assessee. During the assessment proceedings, upon perusal of the details filed by the assessee, it was noticed that the assessee has made investments in the instruments from which it has received exempt income in the form of dividend amounting to Rs.160,48,90,158, in its books of accounts. It was also noticed that the assessee had borrowed funds for these investments and had debited

interest expenditure in its books of accounts. However, no disallowance has been made by the assessee under the provisions of section 14A of the Act read with Rule 8D of the Income Tax Rules, 1962. During the assessment proceedings, the attention of the assessee was drawn to the interest expenses amounting to Rs. 8.97 crore debited to the profit and loss account and the assessee was requested to furnish the details and purpose of the borrowings. Further, the assessee was asked to explain and furnish the working of disallowance shown in the computation of income under section 36 of the Act of Rs. 3,11,19,218. In response thereto, the above disallowance was shown as disallowance under section 14A of the Act as the amount of expenditure directly related to exempt income being interest on loans taken for investment in mutual funds. However, no working of disallowance as per the provisions of section 14A read with Rule 8D was furnished by the assessee. Thereafter, the assessee furnished the working showing the disallowance of Rs. 9,02,01,184 under section 14A read with Rule 8D. The Assessing Officer vide order dated 22/12/2017, passed under section 143(3) of the Act came to the conclusion that out of the total interest cost of Rs. 8,97,03,854, debited to the profit and loss account a sum of Rs.7,19,30,654, is directly attributable to investments in units of mutual funds from which exempt income by way of dividends is received. Accordingly, the AO came to the conclusion that the same is liable for disallowance in terms of provisions of section 14A read with Rule 8D and computed the disallowance of Rs. 9,02,01,085, under section 14A and, inter-alia, added the same to the total income of the assessee under normal provisions of the Act.

4. Subsequently, vide order dated 28/02/2020, passed under section 154 of the Act the disallowance amounting to Rs. 9,02,01,185, made under section 14A read with Rule 8D was added to the book profit under section 115 JB of the Act.

5. The learned CIT(A), vide impugned order, by placing reliance upon the decision of the coordinate bench of the Tribunal in DCIT v/s Viraj Profiles Ltd (2015) 64 taxmann.com 52 dismissed the appeal filed by the assessee and held that the AO has rightly disallowed expenditure by invoking the provisions of section 14A read with Rule 8D for computing book profit under section 115JB(2) read with clause (f) to Explanation 1 to section 115JB(2) of the Act. Being aggrieved, the assessee is in appeal before us.

6. During the hearing, the learned Authorised Representative submitted that the learned CIT(A) followed the decision of the coordinate bench of the Tribunal in Viraj Profiles Ltd (supra), however, the subsequent decision by the Special Bench of the Tribunal in ACIT vs Vireet Investment (P) Ltd.: [2017] 58 ITR(T) 313 (Delhi - Trib.) (SB) has decided the issue on merits in favour of the assessee.

7. On the other hand, the learned departmental Representative vehemently relied upon the order passed by the lower authorities.

8. Having considered the submissions of both sides and perused the material available on record, we find that the Special Bench of Tribunal in Vireet Investment (P) Ltd. (supra) held that computation under clause (f) of Explanation 1 to section 115JB(2) is to be made without resorting to the

computation as contemplated under section 14A read with Rule 8D of the Income-tax Rules, 1962. Thus, respectfully following the aforesaid decision of the Special Bench of Tribunal cited supra, we direct the AO to compute the book profit under section 115JB of the Act, without resorting to computation under section 14A read with Rule 8D. Grounds No. 3 and 4 raised in assessee's appeal are accordingly decided.

9. Grounds No. 1 and 2 raised in assessee's appeal were not pressed during the hearing. Accordingly, the same are dismissed as not pressed.

10. In the result, the appeal by the assessee is partly allowed.

Order pronounced in the open Court on 27/07/2023

Sd/-
G.S. PANNU
PRESIDENT

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

MUMBAI, DATED: 27/07/2023

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The PCIT / CIT (Judicial);
- (4) The DR, ITAT, Mumbai; and
- (5) Guard file.

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Assistant Registrar
ITAT, Mumbai