

**IN THE INCOME TAX APPELLATE TRIBUNAL
“F” BENCH, MUMBAI**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER &
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

**ITA Nos.1085 & 1086/Mum/2023
(A.Ys. 2013-14 & 2014-15)**

JSW Investment Pvt. Ltd. JSW Centre, Bandra Kurla Complex, Bandra (East), Mumbai – 400 051	Vs.	Dy. CIT-5(2)(1) 21, 3 rd Floor, Mittal Court, 22, Nariman Point, Mumbai – 400 020
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AAJCS2498G		
Appellant	..	Respondent

**ITA Nos.1087 & 1088/Mum/2023
(A.Ys. 2013-14 & 2014-15)**

Dy. CIT-5(2)(1) 5 th Floor, Room No. 571, Aayakar Bhavan, M.K. Road, Mumbai – 400 020	Vs.	M/s JSW Investment Pvt. Ltd. JSW Centre, Bandra Kurla Complex, Bandra (East), Mumbai – 400 051
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AAJCS2498G		
Appellant	..	Respondent

Appellant by :	Hiro Rai
Respondent by :	Lieder Panicker

Date of Hearing	24.07.2023
Date of Pronouncement	31.07.2023

आदेश / ORDER

Per Bench:

These 4 appeals comprising of 2 appeals filed by the revenue and 2 appeal filed by the assessee are pertained to assessment ear 2013-14 and assessment year 2014-15 respectively. Since, common issue on

identical facts are involved in these 4 appeals, therefore, for the sake convenience these 4 appeals are adjudicated together by taking ITA No. 1087/Mum/2023 and ITA No.1085/Mum/2023 as a lead case and its finding will be applied mutatis mutandis to the other appeals wherever these are applicable.

ITA No. 1087/Mum/2023 (Revenue Appeal)

- "1. Whether in the facts and circumstances, and in law, the Ld. CIT(A) erred in deleting the disallowance of interest expenditure of Rs.4,02,37,974/ made by the Ld. AO as the assessee had claimed the entire interest expenses directly in relation to the exempt dividend income while not giving any explanation for allocating interest expenses proportionately especially when there were no other major assets and there were no other major source of income during the year in which funds were deployed by the assessee.*
- 2. Whether in the facts and circumstances, and in law, the Ld. CIT(A) erred in deleting the disallowance of interest expenditure of Rs.4,02,37,974/ made by the Ld. AO without exercising his jurisdiction to call for report under rule 46A from the AO on the additional evidences submitted by the assessee.*
- 3. Whether in the facts and circumstances, and in law, the Ld. CIT(A) erred in holding that the sum disallowed u/s 14A cannot be added to the net profit while computing book profit u/s 115JB of the Act while not placing reliance on decision of Hon'ble ITAT Mumbai in the case of DCIT v Viraj Profiles Ltd (2016) 156 ITD 72 (Mumbai Trib.), and Dabur India Ltd v ACIT (2013) 145 ITD 175 (Mumbai- Trib.).*

The appellant prays that the order of the Ld. CIT (A) be set aside and the order of the be restored.

The appellant craves leave to add, alter, modify or amend any ground(s) of appeal which may be necessary."

2. Fact in brief is that return of income declaring total loss of Rs.25,47,30,563/- was filed on 30.11.2013. The return of income of income was subject to scrutiny assessment and order u/s 143(3) of the Act was passed on 30.03.2016 and further facts of the case are discussed while adjudicating the ground of appeal filed by the revenue.

Ground No. 1 & 2: Disallowance of interest expenditure of Rs.402,37,974/-:

3. During the course of assessment the assessing officer noticed that assessee company has earned dividend income of Rs.33,24,73,532/- on its investment in shares. The same has been claimed as exempt income

u/s 10(34) of the Act. The assessee has made disallowance u/s 14A to the amount of Rs.82,34,23,491/- being expenses incurred in relation to exempt income.

However, the AO noticed that assessee has incurred interest expenses of Rs.86,19,77,282/- on its long term and short term borrowings. On perusal of the balance sheet as on 31.03.2013 the assessing officer found that almost entire borrowed fund was utilised for making investment in shares amounting to Rs.1631 crores on which exempt income was received by the assessee. Therefore, the assessing officer has treated the entire expenses of Rs.86,19,77,282/- has incurred directly in relation to earning the exempt income. Accordingly, an amount of Rs.402,37,974/- was further added u/s 14A of the Act as expenditure earned for earning exempt income.

4. Aggrieved, the assessee filed the appeal before the Id. CIT(A). The Id. CIT(A) has deleted the disallowance of additional interest expenditure of Rs.402,37,974/- holding that assessee has also utilised the interest bearing fund for investment in fixed deposit along with investment in shares.

ITA No. 1085/Mum/2023 (Assessee's Appeal)

- “1. The learned CIT(Appeals) was not justified in rejecting the claim of the appellant that while computing the disallowance u/s 14A read with rule 8D, only the dividend yielding investments were to be taken into account.
2. The learned CIT(Appeals) was not justified in rejecting the claim of the appellant that the disallowance u/s 14A should not exceed the amount of the exempt income.
3. The appellant claims that both the above arguments apply to the computation of the disallowance u/s 14A for the purposes of computing the normal income under the Act and also while computing the book profit u/s 115JB of the Act.

The Appellant craves leave to add to, to alter or to amend the above Grounds of Appeal.”

Ground No. 1 to 3: While computing disallowance u/s 14A r.w.Rule 8D only the dividend yielding investment were to be taken into account & disallowance u/s 14A should not exceed the amount of exempt Income:

7. During the course of appellate proceedings before the ld. CIT(A) the assessee filed additional ground of appeal stating that only those investment needs to be considered from which the assessee has earned exempt dividend income and also pleaded that disallowance u/s 14A r.w.Rule 8D ought to be restricted to exempt income.

8. However, the ld. CIT(A) has dismissed the additional ground of appeal of the assessee after referring the amendment made in the Finance Act 2022 in respect of Sec. 14A w.e.f 01.04.2022 in a case where the income, not forming part of the total income under this act, has not accrued or arisen or has not been received during the previous year relevant to an assessment year and the expenditure has been incurred during the previous year in relation to such income not forming part of the total income.

The ld. CIT(A) has also referring the decision of ITAT Gauhati in the case of Williamson Financial Services Ltd. (ITA No. 154 to 156/Gau/2019) dated 06.07.2022 wherein held that aforesaid amendment was clarificatory in nature and would apply retrospectively.

9. During the course of appellate proceedings before us the ld. Counsel submitted that ld. CIT(A) has incorrectly applied the amended provision of Sec. 14A w.e.f 01.04.2022 retrospectively. The ld. Counsel submitted that amended provision of Sec. 14A is to be applied retrospectively and in this regard placed reliance on the decision of Hon'ble High Court of Delhi in the case of Pr. CIT(Central) Vs. Era Infrastructure (I) Ltd. (2022) 141 taxmann.com 289 (Delhi). On the proposition that disallowance u/s 14A r.w.rule 8D cannot exceed the exempt income the ld. Counsel has placed reliance on the decision of Hon'ble Bombay High Court in the case of Nirved Traders Pvt. Ltd. Vs. DCIT (2020) 421 ITR 142 (Bom) and the Hon'ble High Court of Calcutta in the case Pr.CIT Vs. Shalimar Pettel Feeds Ltd. (2023) 453 ITR 547

(Cal) and the Hon'ble Bombay High Court in the case of Pr.CIT Vs. HSBC Investment Direct (I) Ltd. (2020) 421 ITR 125 (Bom). Regarding contention of the assessee that only those investments should be considered for computing disallowance u/s 14A which yielded exempt income during the relevant assessment year, the ld. Counsel has referred decision of Hon'ble Delhi High Court in the case of Cargo Motors Pvt. Ltd. Vs. DCIT (2023) 453 ITR (Delhi).

On the other hand, the ld. D.R supported the order of CIT(A) in respect of issues contested in the grounds of appeal filed by the assessee. Regarding ground of appeal filed by the Revenues, the Ld. D.R submitted that AO could not verify that assessee had also made investment in the fixed deposit as no remand report called by the ld. CIT(A).

Ground No. 1 and 2 of the Revenue and Ground No. 1 to 3 of the assessee:

10. Heard both the sides and perused the material on record. The ld. CIT(A) has deleted the additional interest expenditure disallowed by the AO u/s 14A of the Act holding that assessee had also utilised interest bearing funds for making investment in the fixed deposit. During the course of appellate proceedings before the ld. CIT(A) the assessee has filed additional ground of appeal requesting that only those investment which have yielded exempt income needs to be considered for computing disallowance u/s 14A r.w.Rule 8D of the I.T. Rule. The assessee has also filed alternative ground of appeal before the ld. CIT(A) that disallowance u/s 14A r.w.rule 8D ought to be restricted to exempt income. However, it is found that the ld. CIT(A) has dismissed the ground of appeal of the assessee after referring the amendment made by the Finance Act to Sec. 14A w.e.f 01.04.2022 and the decision of

ITAT Gauhati in the case of Williamson Financial Services Ltd. (ITA No. 154 to 156/Gau/2019) dated 06.07.2022.

However, we find that in this regard, Hon'ble Bombay High Court in the case of Cargo Motors Pvt. Ltd. Vs. DCIT (2023) 453 ITR (Delhi) held that for making disallowance u/s 14A only those investments are to be considered for computing the average value of investment which yielded exempt income during the relevant assessment year. The Hon'ble Delhi High Court in the case of Principal CIT (Central) Vs. Era Infrastructure (India) Ltd. (2022) 141 taxmann.com 289 (Delhi) held that amendment made by Finance Act 2022 to Sec. 14A will take effect from 01.04.2022 and cannot be presumed to have retrospective effect.

In view of the aforesaid judicial findings Ld. Representatives pleaded before us to restore the issue in both the appeal to the file of the AO for deciding a fresh as laid down in the judicial pronouncement as referred supra in this order.

Normally whenever any irregularity crept in the proceedings then after removing the irregularity proceedings is to be initiated from that stage but by remitting the issue to the Ld. First Appellate Authority we would be multiplying the litigation because the ld. CIT(A) would call for a remand report from the AO and proceedings would commence on two stages. In order to avoid that situation we would deem it proper to set aside the order of the ld. CIT(A) and remit the issue to the file of the AO for deciding a fresh. Therefore, grounds of appeal No. 1 & 2 of the Revenue and Grounds of appeal No. 1 to 3 of the assessee are allowed for statistical purposes.

Ground No. 3: Deleting the disallowance u/s 14A in computing book profit u/s 115JB of the Act:

11. During the course of assessment the assessing officer has also added the expenses disallowed u/s 14A for computing book profit u/s 115JB of the Act.

12. The assessee filed the appeal before the ld. CIT(A). However, the ld. CIT(A) allowed the appeal of the assessee holding that amount disallowed u/s 14A could not be added to the net profit while computing book profit u/s 115JB of the Act.

Ground No. 3 of the Revenue is dismissed following the decision of the special bench of ITAT Mumbai in the case of ACIT Vs. Vireet Investment Pvt. Ltd. (2017) 82 taxmann.com 415 wherein held that expense incurred to loan except income not to added for computing book profit u/s 115JB of the Act. Therefore, ground of appeal No. 3 of the Revenue is dismissed.

ITA No. 1086/Mum/2023 (Assessee's Appeal)

13. Since the facts and issue involved in this appeal are similar to the ITA No. 1085/Mum/2023 as adjudicated supra therefore applying the finding of ITA No.1085/Mum/2023 as mutatis mutandis this appeal of the assessee is also allowed for statistical purposes.

ITA No. 1088/Mum/2023 (Revenue's Appeal)

Ground No. 1 to 3:

14. Since the facts and issue involved in this appeal vide ground no. 1 to 3 are similar to the ITA No. 1087/Mum/2023 as adjudicated supra vide ground 1 & 2 therefore applying the finding of ITA No.1087/Mum/2023 as mutatis mutandis ground no 1 & 2 of the appeal of the revenue is also allowed for statistical purposes and Ground No. 3 of the Revenue stand dismissed.

Ground No. 4: Allowing interest amount of Rs.436,272/- on deleting payment of TDS:

15. The assessing officer has disallowed the interest of delayed payment of TDS of Rs.436,272/- u/s 37(1) of the Act.

16. The assessee filed the appeal before the ld. CIT(A). The ld. CIT(A) has allowed the claim of the assessee after referring the decision of ITAT benches.

17. We find that the ld. CIT(A) has not considered the decision of Hon'ble Madras High Court in the case of CIT Vs. Chennai Properties 239 ITR 435. After hearing both the sides we restore this issue to the file of the assessing officer for deciding afresh after considering the decision of Hon'ble Madras High Court in the case of CIT Vs. Chennai Properties 239 ITR 435 wherein held that such deduction is not permissible under section 37 of the Act. Therefore, ground no 4 is allowed for statistical purposes.

18. In the result, the appeals of the assessee and appeal of the revenue are partly allowed for statistical purposes.

Order pronounced in the open court on 31.07.2023

Sd/-

(Amit Shukla)
Judicial Member

Place: Mumbai
Date 31.07.2023
Rohit: PS

Sd/-

(Amarjit Singh)
Accountant Member

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,
Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण/ ITAT, Bench,
Mumbai.