

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI 'D' BENCH, MUMBAI.

Before Shri B.R. Baskaran (AM) & Shri Narender Kumar Choudhry (JM)

I.T.A. No. 1952/Mum/2023 (A.Y. 2014-15)

Dy. Commissioner of Income Tax-15(3)(1), Mumbai.	Vs.	M/s. Reliance Power Limited H-Block, 1 st floor, Dhirubhai Ambani Knowledge City, Koperkhairane, Navi Mumbai 400 710. PAN : AAACR2365L
(Appellant)		(Respondent)

C.O No. 70/Mum/2023 (A.Y. 2014-15)
(Arising out of I.T.A. No. 1952/Mum/2023)

M/s. Reliance Power Limited H-Block, 1 st floor, Dhirubhai Ambani Knowledge City, Koperkhairane, Navi Mumbai 400 710. PAN : AAACR2365L	Vs.	Dy. Commissioner of Income Tax-15(3)(1), Mumbai.
(Cross Objector)		(Respondent)

Assessee by	Shri Jiten Sanghvi & Shri Amit Khatwala
Department by	Ms. Sanyogita Nagpal
Date of Hearing	21.09.2023
Date of Pronouncement	25.10.2023

ORDER

Per B.R.Baskaran (AM) :-

The appeal filed by the revenue and the cross objection filed by the assessee are directed against the order dated 31.3.2023 passed by Ld CIT(A), NFAC, Delhi and they relate to the assessment year 2014-15.

2. The revenue is aggrieved by the decision of Ld CIT(A) in granting relief in respect of addition made u/s 14A and 115JB of the Act. In the cross objection, the assessee seeks further relief with regard to the same.

3. The facts relating to the above said issue are discussed in brief. The assessee company is engaged in the business of development, construction and operation of power generation projects. During the year under consideration, the assessee received exempt income of Rs.4,87,59,468/- from units of mutual fund. The assessee computed disallowance u/s 14A at Rs.48,23,659/-. The AO took the view that the disallowance should be computed as per Rule 8D and accordingly computed the disallowance at Rs.152.67 crores. Subsequently, the said disallowance was reduced to Rs.135.70 crores in a rectification order passed u/s 154 of the Act. The AO adopted the figure of above said disallowance for computing book profit u/s 115JB of the Act also.

4. Before Ld CIT(A), the assessee took various contentions, which, inter alia, included a contention that the disallowance should not exceed the amount of exempt income. In this regard, reliance was placed upon the decision rendered by Hon'ble Delhi High Court in the case of Caraf Builders and Constructions P Ltd (2019)(112 taxmann.com 322)(Delhi) and the SLP filed challenging the above said decision had been dismissed (112 taxmann.com 322)(SC). Accordingly, the Ld CIT(A) directed the AO to restrict the disallowance u/s 14A of the Act to the exempt income.

5. As noticed earlier, the AO had added the amount of disallowance so computed by him u/s 14A of the Act to the book profit computed u/s 115JB of the Act. The Ld CIT(A) reversed the said action of the AO by following the decision rendered by Delhi Special Bench of ITAT in the case of Vireet Investments P Ltd (2017)(82 taxmann.com 415)(Delhi) and the Bombay High Court in the case of CIT vs. Bengal Finance & Investments P Ltd (ITA No.337 of 2013), wherein it was held that the amount of disallowance computed u/s 14A should not be imported into sec.115JB of the Act.

6. Aggrieved by the above said decisions, the revenue has filed this appeal. The assessee has filed cross objection contending that, for the

purpose of computing average value of investments under Rule 8D, only those investments which have yielded dividend income should be considered.

7. We heard the parties and perused the record. We notice that the Ld CIT(A) has followed the decision rendered by Hon'ble Delhi High Court in the case of Caraf Builders and Constructions P Ltd (supra) in holding that the disallowance u/s 14A should not exceed exempt income. With regard to the addition to be made under clause (f) of Explanation given under sec. 115JB of the Act for computing book profit, the Delhi Special Bench of ITAT has held that the disallowance computed u/s 14A of the Act cannot be imported into sec.115JB of the Act. Thus, we notice that both the decisions rendered by Ld CIT(A) is backed by judicial orders of higher forums. The revenue did not show any contrary decision before us. Accordingly, we uphold the order passed by Ld CIT(A) on both these issues.

8. In the cross objection, it is the contention of the assessee that the "average value of investments" to be computed for the purpose of Rule 8D should be computed by considering only those investments, which have yielded dividend income. The above said contention finds support from the decision rendered by Delhi Special Bench in the case of Vireet Investments P Ltd (supra). Accordingly, we direct the AO to compute average value of investments by considering only those investments, which have yielded dividend income and then compute the disallowance under Rule 8D. One more principle to be followed is that, if the own funds available with the assessee exceeds the value of investments, then no disallowance of interest expenditure is called for u/r 8D(2)(ii) of I T Rules. If the disallowance so computed by applying above said principles works out to be lower than the value of exempt income, then the disallowance u/s 14A should be restricted to the lower amount so computed. We order accordingly.

9. In the result, the appeal of the revenue is dismissed and the cross objection filed by the assessee is allowed.

Pronounced in the open court on 25/10/2023.

Sd/-
(NARENDER KUMAR CHOUDHRY)
Judicial Member

Sd/-
(B.R. BASKARAN)
Accountant Member

Mumbai; Dated : 25/10/2023

SSL

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(Judicial)
4. PCIT
5. DR, ITAT, Mumbai
6. Guard File.

BY ORDER,

//True Copy//

(Assistant Registrar)
ITAT, Mumbai