

IN THE INCOME TAX APPELLATE TRIBUNAL

"D" BENCH, MUMBAI

BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER AND

SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA no.3041/Mum./2023
(Assessment Year : 2011-12)

ITA no.3042/Mum./2023
(Assessment Year : 2012-13)

Reliance Power Limited
Reliance Centre, Ground Floor
19, Walchand Hirachand Marg
Ballard Estate, Mumbai 400 001
PAN – AAACR2365L

..... Appellant

v/s

Dy. Commissioner of Income Tax
Circle-15(3)(1), Mumbai

..... Respondent

Assessee by : Shri Jitendra Sanghvi a/w
Shri Amit Khatiwala
Revenue by : Smt. Somogyan Pal

Date of Hearing – 21/12/2023

Date of Order – 29/12/2023

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The present appeals have been filed by the assessee challenging the separate impugned orders dated 31/07/2023 and 28/07/2023, passed for the assessment years 2011-12 and 2012-13, respectively, 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)*].

2. Since both the appeals pertain to the same assessee and involve a similar issue that arises out of a similar factual matrix, therefore, these appeals were heard together and are being decided by way of this consolidated order. With the consent of the parties, the appeal for the assessment year

2011-12 is taken up as a lead case and the decision rendered therein shall apply *mutatis mutandis* to the assessee's appeal for the assessment year 2012-13.

ITA No.3041/Mum./2023
Assessee's Appeal – A.Y. 2011-12

3. In this appeal, the assessee has raised the following grounds:–

"COMPUTATION OF INCOME UNDER THE NORMAL PROVISIONS OF THE INCOME-TAX ACT, 1961 ("the Act"):

DISALLOWANCE U/S. 14A OF THE ACT

1. On the facts and in the circumstances of the case and in law, the Learned Commissioner of Income Tax (Appeals) National Faceless Appeal Centre, hereinafter referred to as ('Learned CIT(A)') erred in confirming the disallowance made by the Deputy Commissioner of Income Tax Circle (3)(3), Mumbai ("Learned Assessing Officer") u/s 14A of the Act r.w. Rule 8D(2)(ii) of the Income Tax Rules, 1962, ('the Rules') of Rs. 61,04,462 and Rule 8D(2) (iii) of Rs. 18,73,65,453 totaling to Rs 19,34,69,915 being expenditure attributable to exempt income taking all investments including investments on which income was not received during the year, as against Rs. 52,54,151 suo-moto disallowed by the appellant, thereby making a net disallowance u/s 14A of Rs. 18,82,15,764

Your Appellant submits that the disallowance worked out by the Learned Assessing Officer is erroneous and incorrect and the same ought to be worked out correctly.

2. On the facts and in the circumstances of the case and in law, the Learned CIT(A) has erred in confirming disallowance made by the Learned Assessing Officer of the proportionate interest u/s 14A of the Act r.w. Rule 8D(2)(ii) of the Rules of Rs. 61,04,462/- taking all investments including investments on which income was not received during the year, without acknowledging the fact that the value of interest free funds exceeded the total value of investments on 31.3.2010 and 31.03.2011.

Your Appellant submits that the disallowance u/s 14A of the Act r.w. Rule 8D(2)(ii) of the Rules of Rs. 61,04,462/- ought to be reduced to Nil while computing the income under the normal provisions of the Act.

3. On the facts and in the circumstances of the case and in law, the Learned CIT(A) has erred in confirming disallowance made by the Learned Assessing Officer u/s 14A of the Act r.w. Rule BD(2)(iii) of the Rules of Rs. 18,73,65,453, taking all investments including investments on which income was not received during the year.

Your Appellant submits that the disallowance u/s 14A of the Act r.w. Rule 8D(2)(iii) of the Rules of Rs. 18,73,65,453 ought to be reduced to Rs 75,00,000 with reference to investments which have yielded exempt income during the year and excluding those investments on which exempt income was not received during the year while computing the income under the normal provisions of the Act.

Without prejudice to the above, the Appellant submits that the disallowance u/s. 14A of the Act is excessive and the same ought to be reduced substantially.

COMPUTATION OF INCOME UNDER THE 115JB OF THE ACT:

DISALLOWANCE U/S 14A

5. The learned GIT(A) erred in holding that the appellant has not taken the ground on addition in the book profit computation and thereby dismissing the appeal on the matter of computation of book profit.

6. On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in confirming adjustment made by the Learned Assessing Officer of Rs. 19,34,69,915 as expenses Incurred in relation to exempt income while computing book profit u/s 115JB of the Act as against of Rs 62,54,151 adjusted by the Appellant and thereby making an addition of Rs. 18,82,15,764.

Your Appellant submits that the above addition to book profit is wrongly made and the same ought to be deleted

7. The Learned GIT(A) and the Learned Assessing Officer erred in not following the decision of Supreme Court in case of Rajasthan State Warehousing 242 ITR 450 and Indian Bank Ltd 56 ITR 77 in which the Supreme Court had held that the apportionment of expenditure between exempt Income and taxable income arising out of indivisible business cannot be made.

Your Appellant submits that the expenses allocated towards the exempt income is contrary to the above decisions of Supreme Court and the said addition of Rs. 18,82,15,764 in the computation of Book profit ought to be deleted.

GENERAL

8. Your appellant craves leaves to add to alter, amend or vary all or any of the aforesaid ground of appeal as theytheir representative may deem fit."

4. The only dispute raised by the assessee is against the disallowance computed by the Assessing Officer ("AO") under section 14A read with Rule 8D of the Income Tax Rules, 1962 ("the Rules").

5. The brief facts of the case, as emanating from the record, are: The assessee is engaged in the business of power generation and investment. For the year under consideration, the assessee filed its return of income on 29/09/2011 declaring total income under normal provisions at Rs. 78,27,87,273 and book loss under section 115JB of the Act at Rs.

62,92,88,157. 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, from the accounts of the assessee, it was observed that the assessee has earned a dividend income of Rs. 139,11,16,976, which is claimed as exempt under section 10(34) and section 10(35) of the Act. Further, it was observed that the assessee has made suo moto disallowance under section 14A of the Act of Rs. 52,54,152 being the expenses related to exempt income. Since the assessee has not computed the disallowance under section 14A as per the provisions of Rule 8D of the Rules, the assessee was asked to furnish the complete details of exempt income and asked to explain as to why the expenses incurred and claimed in respect of such exempt income should not be disallowed as per the provisions of section 14A read with Rule 8D of the Rules. After considering the submissions of the assessee, the Assessing Officer ("AO") vide order dated 28/03/2013 passed under section 143(3) of the Act computed the disallowance of Rs. 18,82,15,764 under section 14A read with Rule 8D of the Rules [i.e Rs. 61,04,462 under Rule 8D(2)(ii) and Rs. 18,73,55,453 under Rule 8D(2)(iii)], after considering the suo moto disallowance made by the assessee. The AO also reduced the book loss to Rs. 44,10,72,393 after making the addition of the aforesaid disallowance under section 14A read with Rule 8D of the Rules.

6. The learned CIT(A), vide impugned order, dismissed the appeal filed by the assessee and upheld the disallowance of Rs. 18,82,15,764 made by the AO under section 14A read with Rule 8D of the Rules. Insofar as the addition of aforesaid disallowance for the purpose of computation under section 115 JB is

concerned, the learned CIT(A) held the issue to be infructuous as even after the aforesaid disallowance there was neither any additions nor any tax to be paid on that basis. Being aggrieved, the assessee is in appeal before us.

7. During the hearing, the learned Authorised Representative ("*learned AR*") submitted that while computing the disallowance under Rule 8D(2)(iii) of the Rules, the AO has also considered those investments which does not yield exempt income. The learned AR further submitted that a similar issue has been decided by the Co-ordinate Bench of the Tribunal in assessee's own case.

8. On the other hand, the learned Departmental Representative vehemently relied upon the orders passed by the lower authorities.

9. We have considered the submissions of both sides and perused the material available on record. We find that the Co-ordinate Bench of the Tribunal in assessee's own case in DCIT v/s M/s Reliance Power Ltd., ITA No. 1952/Mum/2023, for the assessment year 2014-15, vide order dated 25/10/2023 following the decision of the Special Bench of the Tribunal in the case of ACIT vs. Vireet Investment (P) Ltd. (2017) 165 ITD 27 (Delhi-Trib.) directed the AO to compute the average value of investments by considering only those investments which yields exempt income and then compute the disallowance under Rule 8D of the Rules. The Co-ordinate Bench further directed that if own funds available with the assessee exceed the value of investments, then no disallowance of interest expenditure is called for under Rule 8D(2)(ii) of the Rules. The relevant findings of the Co-ordinate Bench, in the aforesaid order, are reproduced as under:-

"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 IT 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."

10. The learned Departmental Representative could not show us any reason to deviate from the aforesaid order and no change in facts and law was alleged in the relevant assessment year. Thus, the AO is directed to compute the disallowance under section 14A read with Rule 8D of the Rules in view of directions as rendered in the aforesaid order. We order accordingly.

11. In the result, the appeal by the assessee is allowed for statistical purposes.

ITA no.3042/Mum./2023
Assessee's Appeal – A.Y. 2012-13

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

"COMPUTATION OF INCOME UNDER THE NORMAL PROVISIONS OF THE INCOME-TAX ACT, 1961 ("the Act");

DISALLOWANCE U/S. 14A OF THE ACT

1. On the facts and in the circumstances of the case and in law, the Learned Commissioner of Income Tax (Appeals) - National Faceless Appeal Centre, hereinafter referred to as ('Learned CIT(A)') erred in confirming the disallowance made by the Deputy Commissioner of Income Tax Circle (3)(3), Mumbai ('Learned Assessing Officer') u/s 14A of the Act r.w. Rule 8D(2)(ii) of the Income Tax Rules, 1962 ("the Rules") of Rs. 1,91,19,843 and Rule 8D(2) (iii) of Rs. 33,41,36,946 totaling to Rs 35,32,56,789 being expenditure attributable to exempt income taking all investments including investments on which income was not received during the year, as against Rs. 52,64,929 suo-moto disallowed by the appellant, thereby making a net disallowance u/s 14A of Rs. 34,79,91,860.

Your Appellant submits that the disallowance worked out by the Learned Assessing Officer is erroneous and incorrect and the same ought to be worked out correctly.

2. On the facts and in the circumstances of the case and in law, the Learned CIT(A) has erred in confirming disallowance made by the Learned Assessing Officer of the proportionate interest u/s 14A of the Act r.w. Rule 8D(2)(ii) of the Rules of Rs. 1,91,19,843/- taking all investments including investments on which income was not received during the year, without acknowledging the fact that the value of interest free funds exceeded the total value of investments on 31.3.2011 and 31.03.2012.

Your Appellant submits that the disallowance u/s 14A of the Act r.w. Rule 8D(2)(ii) of the Rules of Rs. 1,91,19,843/- ought to be reduced to Nil while computing the income under the normal provisions of the Act.

3. On the facts and in the circumstances of the case and in law, the Learned CIT(A) has erred in confirming disallowance made by the Learned Assessing Officer u/s 14A of the Act r.w. Rule 8D(2)(ii) of the Rules of Rs. 34,79,91,869/- taking all investments including investments on which income was not received during the year.

Your Appellant submits that the disallowance u/s 14A of the Act r.w. Rule 8D(2) (iii) of the Rules of Rs. 34,79,91,869 ought to be reduced to Rs 75,00,000 with reference to investments which have yielded exempt income during the year and excluding those investments on which exempt income was not received during the year while computing the income under the normal provisions of the Act.

4. Without prejudice to the above, the Appellant submits that the disallowance u/s 14A of the Act is excessive and the same ought to be reduced substantially."

13. Since in this appeal also the grievance of the assessee is limited to computation of disallowance by the AO under section 14A read with Rule 8D of

the Rules, therefore our findings/conclusions as rendered in assessee's appeal for the assessment year 2011-12 shall apply *mutatis mutandis* to the present appeal and the AO is directed to compute the disallowance under section 14A read with Rule 8D of the Rules accordingly.

14. In the result, the appeal by the assessee is allowed for statistical purposes.

15. To sum up, both the appeals by the assessee are allowed for statistical purposes.

Order pronounced in the open Court on 29/12/2023

Sd/-
B.R. BASKARAN
ACCOUNTANT MEMBER

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

MUMBAI, DATED: 29/12/2023

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