

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

**BEFORE SHRI ABY T VARKEY, JUDICIAL MEMBER &
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

**ITA No.3295/Mum/2023
(A.Y. 2013-14)**

M/s Atul Projects India Private Limited, 5 th Floor, Trade Avenue Andheri East, Suren Road Chakala Mumbai – 400 093	Vs.	DCIT-9(1)(2) (Now Jurisdiction with DC CC(2)(4)) Room No. 802, 8 th Floor, Pratishtha Bhavan, Old CGO, Annexe, M.K. Road Mumbai - 400020
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No:AAGCA5921P		
Appellant	..	Respondent

Appellant by :	Mahaveer Jain
Respondent by :	Harmesh Lal

Date of Hearing	01.01.2024
Date of Pronouncement	05.01.2024

आदेश / O R D E R

Per Amarjit Singh (AM):

This appeal filed by the assessee is directed against the order passed by the Id. CIT(A)-48, Mumbai, dated 12.05.2023 for A.Y. 2013-14. The assessee has raised the following grounds before us:

- “1. That on the facts and circumstances of the case and in law, order passed by the Ld. CIT(A) is bad in law.
2. 2.1 That on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in confirming the action of AO in rejecting the claim of appellant that only 80% of rental income should be taxed instead of 100% of rental income received from ICICI Bank.
- 2.2 That on the facts and circumstances of the case and in law, the Ld. CIT(A) further erred in ignoring the latest order of the Hon'ble Bombay High Court passed in 2018 in the appellants case whereby the undisputed

rent has already been paid retrospectively to the other party and the same cannot be added again in the appellants hands.

3. *That the Ld. CIT(A) erred in upholding the rejection of the appellant's claim regarding deduction u/s 80IB(10) in respect of the project blue mountain*
4. *That the Ld. CIT(A) erred in upholding the disallowance of Rs. 8,27,330/- u/s 14A [in normal computation as well as computation u/s 115JB], thereby completely ignoring the fact that the appellant had not incurred any expenditure during the previous year for earning the exempt income*
5. *That the appellant craves leaves to add, alter or delete all or any of the grounds of appeal.”*

2. Fact in brief is that return of income declaring total income at Rs.10,88,39,590/- was filed after claiming deduction under chapter VIA of Rs.205,70,003/-. The case was subject to scrutiny assessment and notice u/s 143(2) of the Act was issued on 01.09.2014. The assessment u/s 143(3) of the Act was finalised on 30.03.2016 after making various addition and disallowance and total income was assessed at Rs.10,96,66,920/-. Further facts of the case are discussed while adjudicating the ground of appeal filed by the assessee.

Ground No.1:

3. This general ground of appeal was not pressed therefore the same stand dismissed.

Ground No.2: Rejecting the claim of the assessee that only 80% of rental income should be taxed instead of 100% of rental income received from ICICI Bank:

4. During the course of assessment the assessee submitted that assessee company was joint owner of the property developed at MIDC Andheri (E), Mumbai along with Mr. Mahendra Mehta & Mr. Girdharilal V. Mehta and leased out the property to M/s ICICI Bank Limited for a monthly rent of Rs.34,76,003/- for initial 3 years. However, the entire rental income was offered to tax though only 80% of the property was

owned by the assessee company. In this regard the assessee has also submitted agreement showing that 20% of the property leased out to M/s ICICI Bank Ltd. was belonged to the Mehta's as stated above. The assessee has also filed revised computation of income under the head income from house property on the basis of 80% of gross rental of Rs.539,58,010/- which comes to Rs.320,17,214/-. Therefore, the assessing officer was requested to restrict the rental income accordingly, as per the revised computation of income. The assessing officer has rejected the claim of the assessee after referring the decision of Hon'ble Supreme Court in the case of Goetze India Ltd. Vs. CIT 157 taxman.com 1 on the ground that claim made by the assessee other than by way of return or revised return cannot be entertained by the assessing officer.

5. The assessee filed the appeal before the ld. CIT(A). The ld. CIT(A) has dismissed the appeal of the assessee.

6. During the course of appellate proceedings before us the ld. Counsel submitted that identical issue on similar fact have been adjudicated by the ITAT, Mumbai in the case of the assessee itself for the year 2014-15 vide ITA No. 1940/Mum/2023 and the issue was set aside to the file of the assessing officer.

7. Heard both the sides and perused the material on record. With the assistance of the ld. representative we have perused the decision of ITAT on this issue as referred above by the ld. Counsel. The relevant extract of the decision is reproduced as under:

“44 In the light of this legal position, when we look at the assessee's case, as per the order of the Hon'ble High Court the assessee is held to the owner of only 80% of the property and that legally the assessee is entitled to receive only 80% of the rental income. As already stated, the reason for making the addition by the revenue is that the assessee has not submitted the documentary evidences regarding the payment of 20% rent to ICICI Bank. Further in our view it is important to examine the terms of the lease agreement entered by the assessee with ICICI Bank Ltd. in order to understand that as per the terms of the

agreement though the assessee receives 100% of the income, 20% is received on behalf of Mehta's. This is relevant in order to decide that the payment of 20% of rent towards arrears to Mehta's by the assessee as per the order of the court is application income in the hands of the assessee or is an income overriding the title. Therefore, we remit the issue back to the assessing officer with a direction to verify the terms of the lease agreement between the assessee and ICICI Bank Ltd and decide the issue in accordance with law. This ground is allowed for statistical purposes."

Following the decision of ITAT in the case of the assessee itself on the similar issue and identical facts as referred above we restore this issue to the file of the assessing officer for deciding afresh after verification of the terms of the lease agreement between the assessee and ICICI Bank as directed by the ITAT in accordance with law. Therefore, this ground of appeal of the assessee is allowed for statistical purposes.

Ground No. 3: Rejection of the assessee's claim regarding deduction u/s 80IB(10) in respect of the project blue mountain:

8. The assessee company was engaged in the business of builder and developer. During the course of assessment the assessee company has developed a building in SRA Project named 'Blue Mountain'. The profit of project was offered to tax in the F.Y. 2011-12 and continue to offer income from the said project upto assessment year 2014-15 on the basis of sale of flats in various F.Ys. The assessee after referring the Notification No. 67 issued by the CBDT on 03.08.2010 submitted that project developed under the SRA scheme was also be eligible for deduction u/s 80IB(10) as per first proviso to clause (b) of the section. However, AO has rejected this ground of appeal.

9. The assessee filed the appeal before the ld. CIT(A). The ld. CIT(A) has dismissed the appeal of the assessee.

10. During the course of appellate proceeding before us, the ld. Counsel submitted that similar issue on identical facts in the case of the assessee itself has been adjudicated by the ITAT, Mumbai vide ITA

No. 1940/Mum/2023 and the matter was set aside to the assessing officer for deciding afresh after verification on the basis of evidence to the called from the assessee.

11. Heard both the sides and perused the material on record. We have perused the decision of ITAT on this issue as referred above by the Id. Counsel. The relevant extract operating part of the decision is reproduced as under:

- “60. As stated above the lower authorities have not verified the facts of the matter but simply gone by the details submitted by the assessee and assuming the extra area should be part of "Built-up area" This is not correct approach for the reason that definition of "Built-up area" in our considered view needs to be examined based on facts relevant to assessee's case Therefore we deem it fit to remit the issue back to the assessing officer for a fresh examination of the facts based on the details that may be called for from the assessee the assessee is directed to submit the relevant details to substantiate the claim that the "Built up area" does not exceed 1000 sq. ft. with respect to the flats sold during the year*
- 61. During the course of hearing the Id AR presented a without prejudice plea that deduction under section 80IB should be allowed on proportionate basis with respect to the flats sold whose "Built-up area" is less than 1000 sq. ft. We have while considering the issue of deduction under section 80IB for AY 2014-15 already issued direction to the assessing officer to allow proportionate deduction under section 80IB(10) with respect to those flats sold during the year under consideration whose built up area is less than 1000 sq. it as per the ratio laid down by the Jurisdictional High Court in the case of Kumar Builders Consortium (supra) Accordingly similar direction is issued for the year under consideration also*
- 62. The Assessing Officer has denied the benefit of section 80IB for one more reason that the common expenses are allocated disproportionately towards the project eligible for section 80IB in order to claim enhanced deduction The CIT(A) upheld the view taken by the Assessing Office for the reason that the assessee has not justified the allocation of expenses with any documentary evidence. Since we have already remitted the issue back to the assessing officer we in this regard further direct the Assessing Officer to verify the allocation based on evidences that may be called for from the assessee and decide in accordance with law.”*

Following the decision of ITAT as referred above we remit this issue back to the assessing officer for deciding afresh after verification on the basis of evidences to be called from the assessee as directed above in the

decision of ITAT. This ground of appeal of the assessee is allowed for statistical purposes.

Ground No. 4: Disallowance of Rs.8,27,330/- u/s 14A in normal computation as well as computation u/s 115JB of the Act:

12. During the course of assessment the assessing officer noticed from the balance sheet that assessee was holding investment in various shares and partnership firms and income from which was claimed as exempt from tax. The assessing officer after applying provisions of Sec. 14A r.w.Rule 8D computed an amount of Rs.8,27,330/- and same was disallowed u/s 14A of the Act and was also added to the book profit of the assessee computed u/s 115JB of the Act.

13. The assessee filed the appeal before the ld. CIT(A). The ld. CIT(A) has dismissed the appeal of the assessee.

14. During the course of appellate proceedings before the ld. Counsel submitted that assessee has only earned exempt income of Rs.375/ therefore, disallowance u/s 14A could not exceed the amount of exempt income. He further submitted that no addition should also be made to the book profit of the assessee in view of the decision of ITAT Special Bench 'Delhi' in the case ACIT Vs. Vireet Investment Pvt. Ltd. (2017) 82 taxmann.com 415 (Delhi Trib) (SB).

15. During the course of appellate proceeding before us the ld. Counsel submitted that similar issue on identical fact has been adjudicated by the ITAT vide ITA No. 1940/Mum/2023 wherein the disallowance was restricted to the extent of exempt income earned by the assessee.

16. Heard both the sides and perused the material on record. With the assistance of ld. representative we have perused the decision of ITAT

in the case of the assessee itself disallowance u/s 14A r.w.rule 8D. The relevant extract of the decision is reproduced as under:

“68. We heard the parties and perused the material on record. The assessee has made investments in equity instruments amounting to Rs.5,30,38,500/- and the assessee earned dividend income of Rs.375/- The assessee has also invested Rs.85.50,02,986/- in the partnership firm and the loss from the partnership firm for the year under consideration was Rs. 23,48,906/- the assessing officer has made a disallowance of Rs. Rs.78,32,624/. The contention of the assessee is that the assessee is having sufficient own funds and hence no disallowance is warranted. The assessee without prejudice submitted that the disallowance if any should be restricted to the amount of exempt income Earned. In this regard we notice that the Hon'ble Bombay High Court in Nirved Traders (P.) Ltd. (supra) has considered a similar issue and held that disallowance under section 14A of the Act cannot be more than exempt income. Accordingly, we hold that the disallowance under section 14A should be restricted to the exempt income Earned by the assessee. The assessing officer is directed accordingly to recompute the disallowance under section 14A r.w.r.81).”

Following the decision of ITAT as above, we direct the assessing officer to restrict the disallowance to the extent of exempt income earned by the assessee. Further following the decision of the ITAT special bench in the case of Vireet Investment Pvt. Ltd. we consider that the disallowance made u/s 14A cannot be added to the book profit computed u/s 115JB of the Act. Therefore, this ground of appeal of the assessee is allowed.

17. In the result, the ground no. 1 is dismissed, ground Nos 2 & 3 are allowed for statistical purpose and ground no. 4 is allowed.

Order pronounced in the open court on 05.01.2024

Sd/-

(Aby T Varkey)
Judicial Member

Sd/-

(Amarjit Singh)
Accountant Member

Place: Mumbai

Date 05.01.2024

Rohit: PS

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.