

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ
**IN THE INCOME TAX APPELLATE TRIBUNAL,
" D " BENCH, AHMEDABAD**

**BEFORE Ms SUCHITRA KAMBLE, JUDICIAL MEMBER
And
SHRI WASEEM AHMED, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.730/AHD/2023

निर्धारण वर्ष/Asstt. Year: 2014-2015

Atlanta Electricals Pvt. Ltd., Plot No.1503-04 Phase IV, Anand Vithal Udyognagar, Anand-388121. PAN: AABCA6647B	Vs.	Income Tax Officer, Ward(1)(1)(1), Vadodara. (Now Circle 1(1)(1), Vadodara.
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(Applicant)		(Respondent)
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Assessee by	:	Ms Amrin Pathan, AR
Revenue by	:	Shri Prateek Sharma, Sr.DR

सुनवाई की तारीख/**Date of Hearing** : **05/03/2024**

घोषणा की तारीख /**Date of Pronouncement**: **15/03/2024**

आदेश/ORDER

PER WASEEM AHMED, ACCOUNTANT MEMBER:

The captioned appeal has been filed at the instance of the Assessee against the order of the Learned Commissioner of Income Tax (Appeals), Vadodara, arising in the matter of assessment order passed under s. 143(3) of the Income Tax Act, 1961 (here-in-after referred to as "the Act") relevant to the Assessment Year 2014-15.

2. The interconnected issue raised by the assessee in ground numbers 1 to 6 is that the Ld. CIT(A) erred in confirming the order of the AO by sustaining the

addition of Rs. 99,34,511/- under the provisions of section 14A r.w. Rule 8D of Income Tax Rules.

3. The AO during the assessment proceedings found that the assessee has shown exempted income of Rs. 1,08,650/- only but no disallowance against such exempted income was made under the provision of section 14A r.w. Rule 8D of Income tax Rules. Therefore, the AO made the disallowance u/s 14A r.w. rule 8D of Income Tax Rules for Rs. 88,01,957/- and Rs. 11,32,554/- on account of interest and administrative expenses aggregating to Rs. 99,34,511/- only and added to the total income of the assessee.

4 Aggrieved assessee preferred an appeal to the Ld. CIT(A) who confirmed the order of the AO.

5. Being aggrieved by the order of the Ld. CIT(A), the assessee is in appeal before us.

6. The Ld.AR before us filed a paper book running from pages 1 to 74 and inter-alia contended that the disallowance u/s 14A r.w. Rule 8D of Income Tax Rules cannot exceed the exempted income i.e. Rs.1,08,650/- only.

7. On the other hand, the Ld. DR vehemently supported the order of the authorities below.

8. We have heard the rival contentions of both the parties and perused the materials available on record. The Hon'ble Gujarat High Court in the case of **Principal Commissioner of Income-tax v. Gujarat Flurochemicals Ltd** reported in 155 taxmann.com 135 has held that the disallowance u/s 14A r.w. Rule 8D of Income Tax Rules cannot exceed the amount of exempted income. The relevant extract/ head-note is reproduced as under:

Section 14A of the Income-tax Act, 1961 read with rule 8D of the Income-tax rules, 1961 - Expenditure incurred in relation to income not includible in total income (Illustrations) - Assessment year 2014-15 - Assessing Officer made disallowance under section 14A read with rule 8D - Tribunal held that disallowance made under section 14A read with rule 8D could not exceed exempt income - Whether order of Tribunal was justified - Held, yes [Para 4.2] [In favour of assessee]

8.1 Likewise, the Hon'ble SC in the case of Craft Builder Construction private limited reported in 112 taxmann.com 322 has held as under:

SLP dismissed against High Court ruling that disallowance under section 14A cannot exceed exempt income of relevant year.

8.2 Now coming to the facts of the case on hand, admittedly the exempted income is of Rs. 1,08,650/- only and therefore, respectfully following the judgments as discussed above, the disallowance cannot exceed the amount of exempted income. Hence, the ground of appeal of the assessee is partly allowed.

9. The next issue by the assessee in ground No. 7 is that the Ld. CIT(A) erred in confirming the order of the AO by making addition to the book profit u/s 115JB of the Act for the amount disallowed u/s 14A r.w. Rule 8D of Income tax Rules.

10. The AO under normal computation of income has made disallowance under section 14A r.w. rule 8D of the IT rule for Rs. 99,34,511/- only. However, no disallowance was made by the assessee while computing the book profit as per the provisions of clause (f) of explanation to section 115JB(2) of the Act. Accordingly, the AO made addition of Rs. 99,34,511/- to the book profit. On appeal by the assessee, the learned CIT(A) confirmed the same.

11. Being aggrieved by the order of the learned CIT(A), the assessee is in appeal before us.

12. The learned AR before us submitted that the amount disallowed under section 14A r.w. rule 8D of the IT rule for Rs. 99,34,511/- only cannot be made subject to the adjustment while computing the book profit as per the provisions of clause (f) of explanation to section 115JB(2) of the Act.

13. On the other hand, the learned DR supported the order of the authorities below.

14. We have heard the rival contentions of both the parties and perused the materials available on record. The facts of the issue on hand are elaborated in preceding paragraph which are not in dispute. Therefore, we are not inclined to repeat the same. At the outset, we note that the Special Bench of Hon'ble Delhi Tribunal in the case of ACIT vs. Vireet Investment Pvt. Ltd. reported in 82 Taxmann.com 415 has held that the disallowance made u/s 14A r.w.r. 8D cannot be the subject matter of disallowance while determining the net profit u/s 115JB of the Act. The relevant portion of the said order is reproduced below:

"In view of above discussion, the 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."

14.1 The ratio laid down by the Hon'ble Tribunal is squarely applicable to the facts of the case on hand. Thus, it can be concluded that the disallowance made under section 14A r.w.r. 8D cannot be resorted while determining the expense as mentioned under clause (f) to explanation 1 to section 115JB of the Act.

14.2 However, it is pertinent to note that the disallowance needs to be made with respect to the exempted income in terms of the provisions of clause (f) to section 115JB of the Act while determining the book profit. In holding so, we draw support from the judgment of Hon'ble Calcutta High Court in the case of CIT Vs. Jayshree Tea Industries Ltd. in GO No.1501 of 2014 (ITAT No.47 of 2014) dated 19.11.14 wherein it was held that the disallowance regarding the exempted

income needs to be made as per the clause (f) to Explanation-1 of Sec. 115JB of the Act independently. The relevant extract of the judgment is reproduced below:-

"We find computation of the amount of expenditure relatable to exempted income of the assessee must be made since the assessee has not claimed such expenditure to be Nil. Such computation must be made by applying clause (f) of Explanation 1 under section 115JB of the Act. We remand the matter for such computation to be made by the learned Tribunal.

We accept the submission of Mr. Khaitan, learned Senior Advocate that the provision of section 115JB in the matter of computation is a complete code in itself and resort need not and cannot be made to section 14A of the Act."

14.3 Given above, we hold that the disallowances made under the provisions of Sec. 14A r.w.r. 8D of the IT Rules, cannot be applied to the provision of Sec. 115JB of the Act as per the direction of the Hon'ble Calcutta High Court in the case of CIT Vs. Jayshree Tea Industries Ltd. (Supra).

14.4 Now the question arises to determine the disallowance as per the clause (f) to Explanation-1 of Sec. 115JB of the Act independently. In this regard, we note that there is no mechanism/ manner given under clause (f) to Explanation-1 of Sec. 115JB of the Act to workout/ determine the expenses with respect to the exempted income. Therefore, in the given facts & circumstances, we feel that an ad-hoc disallowance will serve the justice to the Revenue and assessee to avoid the multiplicity of the proceedings and unnecessary litigation. Thus, we direct the AO to make the disallowance of 1% of the exempted income as discussed above under clause (f) to Explanation-1 of Sec. 115JB of the Act. We also feel to bring this fact on record that we have restored other cases involving identical issues to the file of AO for making the disallowance as per the clause (f) to Explanation-1 of Sec. 115JB of the Act independently. But now we note that there is no mechanism provided under clause (f) to Explanation-1 of Sec. 115JB of the Act to make the disallowance independently. Therefore, our action for restoring back the issue to the file of AO would unnecessarily cause further litigation. Thus, we limit the disallowance on an ad-hoc basis @ 1 % of the exempted income as per clause (f)

to Explanation-1 of Sec. 115JB of the Act. Thus, the ground of appeal of the Revenue is partly allowed.

15. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the Court on 15/03/2024 at Ahmedabad.

**Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

**Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER**

Ahmedabad; Dated
Manish

(True Copy)
15/03/2024