

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "G", MUMBAI**

BEFORE SHRI NARENDRA KUMAR BILLAIYA, HON'BLE ACCOUNTANT MEMBER

AND

SHRI RAHUL CHAUDHARY, HON'BLE JUDICIAL MEMBER

ITA NO. 3861/MUM/2023 (A.Y: 2015-16)

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| DEPUTY COMMISSIONER OF INCOME TAX Room No. 1923, 19 th Floor Air India Building, Nariman Point Mumbai, Maharashtra - 400021 | v. | WELSPUN STEEL LIMITED Survey No. 650 & 652 Village- Versamed Distt - Kutch Anjar, Gujarat PAN: AAACW6515B |
| (Appellant) | | (Respondent) |

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|--------------------------------------|----------|------------------------------|
| Assessee Represented by | : | Shri Ajay Nagpal |
| Department Represented by | : | Shri Dr. Kishor Dhule |
| | | |
| Date of conclusion of Hearing | : | 08.05.2024 |
| Date of Pronouncement | : | 10.05.2024 |

ORDER

PER NARENDRA KUMAR BILLAIYA (AM)

1. This appeal by the revenue is preferred against order of the Learned Commissioner of Income-Tax (Appeals), Mumbai [hereinafter in short "Ld. CIT(A)"] dated 08.08.2023 pertaining to A.Y. 2015-16.

2. The grievance of the revenue read as under: -

"1. On the facts and in the circumstances of the case, the Ld.CIT(A) erred in restricting disallowance made under section 14A of the Income Tax Act, 1961 to the extent of exempt income earned during the year by overlooking the clarification of legislative intent provided by the CBDT vide Circular No. 5/2014 dated 11.02.2014 and to this effect even an amendment was made by Finance Act, 2022 by way of insertion of Explanation to Section 14A?"

2. On the facts and in the circumstances of the case, the Ld. CIT(A) erred in directing to delete the disallowance made u/s. 14A of the Income Tax Act, 1961 to the book profit of the assessee without appreciating the provisions of clause (j) of explanation 1 to section 115JB(2) of the Income Tax Act, 1961 and the decision of the Hon'ble ITAT Mumbai 'F' Bench in the case of Deputy Commissioner of Income Tax, Central Circle-18 & 19, Mumbai vs. Viraj Profiles Ltd. in ITA No. 4439/(Mum.) of 2073."

3. Briefly stated the facts of the case are that, the assessee filed its return of income on 26.11.2015 declaring income at ₹.48,12,09,080/- under the normal provisions and offered MAT income under section 115JB of Income-tax Act, 1961 (in short "Act") at ₹.41,88,99,225/-. The assessee is engaged in the business of project development of solar energy and trading of goods required for the purpose of development of the solar projects. During the course of the scrutiny assessment proceedings, the Assessing Officer noticed that assessee has received dividend income of ₹.45,57,250/-, this was claimed as exempt income. The assessee was asked to furnish the working of disallowance under

section 14A r.w. Rule 8D of I.T. Rules. In its reply, assessee stated that it has not incurred any expenditure for earning exempt income and in alternative the assessee pleaded that the disallowance under section 14A of the Act should be restricted to the exempt income earned by the assessee during the year. The contentions of the assessee were dismissed by the Assessing Officer who proceeded to compute the disallowance under section 14A r.w. Rule 8D of I.T. Rules and disallowance was computed at ₹.5,53,54,265/-.

4. Assessee agitated the matter before Ld. CIT(A) and reiterated its contention that the disallowance should not exceed the exempt income. After considering the facts and the submissions and drawing support from several judicial decisions, the Ld. CIT(A) restricted the disallowance to the extent of the tax exempt income earned during the year and accordingly, sustained the disallowance at ₹.45,57,250/-.

5. Before us, the Ld. DR could not point out any error or infirmity in the findings of the Ld. CIT(A). On the contrary, we find that the Tribunal in assessee's own case in A.Y. 2015-16 in ITA No. 2137/MUM/2021 dated 03.08.2022 has considered a similar issue and held as under: -

"6. We have considered the rival submissions and perused the material on record. It is admitted position that the Hon'ble Bombay High Court and the Hon'ble Supreme Court have clearly held that disallowance under Section 14A of the Act cannot exceed the amount of exempt income earned by the Assessee during the relevant previous year. The stand of the Revenue is that amendments to Section 14A introduced by the Finance Act 2022 apply retrospectively and therefore, the aforesaid judgments no longer hold good. Whereas the contention of the Assessee is that the said amendments to Section 14A of the Act are prospective in nature and therefore, the order of CIT(A), passed by following the binding judgments of the Hon'ble Jurisdictional High Court, cannot be set aside by the applying the amended provisions of Section 14A of the Act.

7. We note that the Mumbai Bench of the Tribunal has, in the case of Assistant Commissioner of Income Tax- Circle 3(1)(1) Vs Bajaj Capital Ventures (P.) Ltd.: [2022] 140 taxmann.com 1 (Mumbai - Trib.) [29-06-2022] and also in the case of Assistant Commissioner Of Income Tax Vs. K Raheja Corporate Services Private Limited [ITA No. 2521 to 2527], held that the amendments to Section 14A introduced by the Finance Act 2022 shall apply from Assessment Year 2022-23 and onwards. Further, Hon'ble Delhi High Court in the case of Principal Commissioner of Income-Tax (Central) -2 Vs. M/s Era Infrastructure India Ltd: [ITA No. 204 of 2022, decided on 20.07.2022] has rejected the contention of the Revenue that amendments to Section 14A introduced by the Finance Act 2022 shall have retrospective effect. Accordingly, Ground No.1 raised by the Revenue is dismissed."

6. Since the disallowance has been accepted to the extent of the exempt income, we decline to interfere with the findings of the Ld.CIT(A). Ground No. 1 is dismissed.

7. Ground No. 2 relates to the deletion of the disallowance made under section 14A of the Act to the book profit of the assessee. An

identical issue was considered by the Coordinate Bench (supra), the relevant findings read as under: -

"8. Ground No. 2 of the appeal is directed against the order of CIT(A) whereby the Assessing Officer has been directed to not include in the book profits the amount of disallowance under section 14A of the Act computed as per the provisions of Rule 8D of the Rules for the purpose of computing book profits in terms of Section 115JB of the Act. This issue stands decided in favour of the Assessee by the decision of Special Bench of the Tribunal in the case of ACIT Vs Vireet investments Private Limited: 58 ITR(T) 313 (Delhi - Trib.) (SB)/[2017] 82. Further, the Tribunal has, in the case of the Assessee for the Assessment Year 2013-14 and 2014-15 deleted identical adjustment made by the Assessing Officer while computing Book Profits for the purpose of Section 115JB of the Act. The CIT(A) has granted relief to the Assessee by following the aforesaid decisions. It is not the contention of the Revenue that the operation of the aforesaid decisions has been stayed in appeal preferred by the Revenue. In view of the aforesaid and taking into account our findings in paragraph 7 above, we hold that there is no infirmity in the order passed by the CIT(A) on this issue. Accordingly, Ground No. 2 raised by the Revenue is dismissed."

8. Respectfully following the findings of the Coordinate Bench (supra), we decline to interfere with the findings of the Ld. CIT(A). Ground No. 2 is dismissed.

9. In the result, appeal filed by the revenue is dismissed.

Order pronounced in the open court on 10th May, 2024.

Sd/-
(RAHUL CHAUDHARY)
JUDICIAL MEMBER

Mumbai / Dated 10.05.2024
Giridhar, Sr.PS

Sd/-
(NARENDRA KUMAR BILLAIYA)
ACCOUNTANT MEMBER

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mum