

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "C": NEW DELHI
BEFORE SHRI M. BALAGANESH, ACCOUNTANT MEMBER
AND
SHRI VIMAL KUMAR, JUDICIAL MEMBER**

**ITA No.1484/Del/2023
(Assessment Year: 2014-15)**

Jaypee Infra Ventures Pvt. Ltd, Sector-128, Noida	Vs. DCIT, Circle-13(2), New Delhi
(Appellant)	(Respondent)
PAN: AACCCJ5628G	

Assessee by :	Shri V. K. Garg, Adv Shri Parveen Kumar, CA
Revenue by:	Shri Sandeep Kr. Mishra, Sr. DR
Date of Hearing	13/05/2024
Date of pronouncement	22/05/2024

ORDER

PER M. BALAGANESH, A. M.:

1. The appeal in ITA No.1484/Del/2023 for AY 2014-15, arises out of the order of the National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as 'Id. CIT(A)', in short] in Appeal No. ITBA/NFAC/S/250/2022-23/1050866246(1) dated 16.03.2023 against the order of assessment passed u/s 143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 28.12.2016 by the Assessing Officer, DCIT, circle-13(2), New Delhi (hereinafter referred to as 'Id. AO').
2. Though the assessee has raised several grounds of appeal before us, the only effective issue to be decided is with regard to disallowance made u/s 14A of the Act read with Rule 8D(2) of the Income Tax Rules, 1962 (in short the rules) both under the normal provisions of the Act as well as in the computation of book profits u/s 115JB of the Act.

3. We have heard the rival submissions and perused the material available on record. The assessee company is engaged in the business of designing and technical consultancy services to various infrastructural projects. The assessee had made various strategic investments in group concerns which were acquired mainly on amalgamation of group concern, Jaypee Ventures Pvt Ltd in the year 2011-12. 98% of the entire investments were old investments in group concerns and during the year there were only 2 to 3 instances of sale/ purchase transactions which was also made in the existing group concerns of the assessee. The assessee earned exempt income in the form of dividend amounting to Rs. 36,46,67,524/-. The assessee made suo moto disallowance of expenditure u/s 14A of the Act in the sum of Rs. 1,22,30,414/- both under normal provisions of the Act as well as in the computation of book profits u/s 115JB of the Act. The basis of the said disallowance is as under:-

Depository expense	Rs. 568
50% of salary of Directors	Rs.1,06,14,101
50% of salary of Accountant and	Rs. 4,15,745
Company Secretary	Rs. 12,00,000
Administration expenses (Rs.1,00,000/- per month	
Total	Rs.1,22,30,414

4. The Id AO in page 2 of his order observes that substantial part of interest expenditure has been incurred for the purpose of earning exempt income by the assessee. Apart from that, he also stated that it cannot be denied that a portion of administrative and other expenses were incurred for maintenance of those investments in the form of man hours, use of common facilities like telephone, electricity and other stationery etc. Accordingly, he ignored the suo moto disallowance made by the assessee and proceeded to

make disallowance u/s 14A of the Act by directly applying the computation mechanism provided in 2nd and 3rd limb of Rule 8D(2) of the Rules and made net disallowance of Rs. 6,05,91,233/- in the assessment. This action of the Id AO was upheld by the Id CIT(A).

5. At the outset, we find that the very basis of alleged satisfaction recorded by the Id AO, that the assessee had incurred substantial interest expenditure for the purpose of earning exempt income, *per se* is factually incorrect as is evident from the perusal of the financial statement that the assessee had incurred interest expenditure only to the extent of Rs 18,436/-. Hence, the very basis of Id AO shifting to adoption of computation mechanism provided under Rule 8D(2) of the Rules ignoring the suo moto disallowance made by the assessee is flawed. We find that the assessee had taken the direct expenditure as well as indirect expenditure incurred which has linkage with the investment activity and made suo moto disallowance. If any mistake or deficiency is found thereon having regard to the books of account of the assessee, the Id AO is entitled to ignore the same and proceed with Rule 8D(2) of the Rules. In the instant case, it was not done by the Id AO. Moreover, as per the provisions of section 14A(2) of the Act read with Rule 8D(1) of the Rules, the Id AO is duty bound to record an objective satisfaction as to why the suo moto disallowance made by the assessee is incorrect having regard to the accounts of the assessee. No such satisfaction in the manner acceptable to law had been recorded in the instant case by the Id AO. This view of ours is further fortified by the decision of Hon'ble Supreme Court in the case of Maxopp Investments reported in 402 ITR 640 (SC). Hence, we have no hesitation to delete the disallowance made u/s 14A of the Act both under normal provisions of the Act as well as in the computation of book profits u/s 115JB of the Act. Accordingly, the grounds raised by the assessee are allowed.

6. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 22/05/2024.

-Sd/-
(VIMAL KUMAR)
JUDICIAL MEMBER

-Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Dated:22/05/2024
A K Keot

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1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi