

**IN THE INCOME TAX APPELLATE TRIBUNAL “F” BENCH MUMBAI
BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER
AND
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No.64/MUM/2024
Assessment Year: 2017-18**

Smita Conductors Private Limited 1402/03, 1402/3, Raheja Centre, Nariman Point, Mumbai – 400021 (PAN : AAACS5379K)	Vs.	Assistant Commissioner of Income Tax-Circle 3(3)(1), Mumbai
(Appellant)		(Respondent)

Present for:

Assessee : Shri Sunil Hirawat, FCA
Revenue : Ms. Rajeshwari Menon, Sr.DR

Date of Hearing : 22.05.2024
Date of Pronouncement : 10.06.2024

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of Ld. CIT(A), National Faceless Appeal Centre (NFAC), Delhi, vide order no. ITBA/NFAC/S/250/2023-24/1058745632(1), dated 14.12.2023 passed against the assessment order by the Assistant Commissioner of Income Tax, Circle 3(3)(2), Mumbai, u/s. 143(3) of the Income-tax Act(hereinafter referred to as the “Act”), dated 22.12.2019 for Assessment Year 2017-18.

2. The only issue involved in this case is in respect of disallowance made u/s.14A under normal provisions of the Act and also in respect of addition made while computing book profit u/s.115JB of the Act.

Assessee has taken four grounds in this respect which are not reproduced for the sake of brevity.

3. Brief facts of the case as culled out from records are that Assessee is engaged in the business of manufacturing of ACSR and aluminium conductors and financing activities. Assessee filed its return of income on 27.10.2017 reporting total income at Rs.34,30,28,030/- under the normal provisions of the Act and book profit u/s.115JB at Rs.33,86,14,813/-. During the year, assessee received total exempt income of Rs.2,18,63,390/- which includes dividend income of Rs.1,87,27,719/- claimed as exempt u/s.10(34) and long term capital gains of Rs.31,35,671/- claimed as exempt u/s.10(38). In this respect, assessee has *suo-moto* disallowed u/s.14A, a sum of Rs.47,616/- in its computation of total income and tax.

4. In the course of assessment, ld. Assessing Officer noted that assessee has reported noncurrent investment and current investments for Rs.4562.67 lakhs and Rs.10,984.96 lakhs respectively as on 31.03.2017 in its financial accounts. He observed that assessee has offered a meagre amount of Rs.47,616/- as disallowance u/s.14A against these huge investments. Accordingly, assessee was asked to explain about its *suo moto* disallowance and applicability of Rule 8D of the Income Tax Rules, 1962 (The Rules). After considering the submissions made by the assessee, ld. Assessing Officer completed the assessment by computing the disallowance u/s.14A by applying Rule 8D of the Rules. He computed an amount of Rs.1,55,47,630/- as disallowance under Rule 8D (2)(ii) as applicable w.e.f. 02.06.2016 substituted by Income Tax (Fourteenth amendment) Rules, 2016, towards an amount equal to 1% of total investments as on 31.03.2017. For the purpose of making an addition of Rs.1,55,00,014/- to the total assessed income under the normal

provisions of the Act, he gave credit of *suo motto* disallowance made by the assessee. Ld. Assessing Officer also enhanced the amount to be added under clause (f) of Explanation 1 to Section 115JB by the aforesaid net disallowance of Rs.1,55,00,014/- for computing book profit u/s.115JB of the Act. Aggrieved, assessee went in appeal before the CIT(A), who confirmed the same. Aggrieved, assessee is in appeal before the Tribunal.

5. Before us, ld. Counsel for the assessee submitted that the only disallowance made by the ld. Assessing Officer is in respect of clause (ii) of Sub-Rule 2 of Rule 8D, i.e., an amount equal to 1% of the annual average of the monthly averages of the opening and closing balances of the value of investment, income from which does not or shall not form part of total income. He stated that assessee has *suo moto* computed the disallowance on a scientific basis for an amount of Rs.2,35,708/- though in the return this amount was taken at Rs.47,616/-. He further submitted that assessee had computed its disallowance in the same manner in the past also which has been held by the coordinate bench of ITAT Mumbai in assessee's own case for Assessment Year 2013-14 in ITA No.4721/Mum/2023, dated 10.05.2024, for Assessment Year 2014-15 in ITA No.5115/Mum/2019, dated 21.06.2022, for Assessment Year 2012-13 in ITA No.3678/Mum/2016, dated 26.02.2018 and Assessment Year 2008-09 in ITA No.158/Mum/2013, dated 20.01.2017. It was also submitted that assessee had made an addition of its *suo moto* disallowance by computing the book profit u/s.115JB of the Act and therefore requirement of clause (f) of Explanation 1 to Section 115JB is complied with. He placed on record the computation of *suo moto* disallowance of Rs.2,35,708/- by applying the same methodology as in the past.

6. Ld. Sr.DR placed reliance on the order of the authorities below.

7. We have heard the rival contentions and perused the material on record. We have gone through the statement showing investments, own funds and disallowance u/s.14A furnished by the assessee before us. This statement contains the details for preceding three years and the year under consideration to show its position of non-current investments, current investments, share capital and reserves as well as 19 types of units of mutual funds. It is noted that except for investment in mutual funds which have reduced from Rs.4880.15 lakhs to Rs.4339.35 lakhs when compared to the preceding year, other non-current investments have remained unchanged. The said statement is reproduced as under for ease of reference.

SMITA CONDUCTORS PRIVATE LIMITED				
Statement showing Investments, Own Funds & Disallowance u/s. 14A				
	31-03-2014	31-03-2015	31-03-2016	31-03-2017
(A) Non-Current Investments: (Rs. In Lakhs)				
Investment in property	6.47	6.47	6.47	6.47
Investment in associate concerns	219.2	219.2	219.2	219.2
Investment in other companies	3.41	3.41	3.41	3.41
Investment in mutual funds	6313.6	6132.37	4880.15	4339.35
Investment in partnership firm	0.7	0.7	0.7	0.7
(A)	6,543.38	6,362.15	5,109.93	4,569.13
(B) Current Investments (Rs. In Lakhs)				
Investment in mutual funds (B)	6,947.25	8,308.09	7,871.34	10,984.96
(C) No of funds (Items)	12	17	19	19
(D) Total of A + B (Rs. In Lakhs)	13,490.63	14,670.24	12,981.27	15,554.09
(E) Share Capital & Reserves (Rs. In Lakhs)	19,239.53	19,624.86	21,295.94	23,695.86
(F) Disallowance of expenses based on manhour working	1,84,490	1,85,296	2,20,426	2,35,708

7.1 Considering the level of investment activity undertaken by the assessee and computation of *suo moto* disallowance of Rs.2,35,708/- on a scientific basis which has been held to be acceptable by the coordinate bench in the assessee's own cases (*supra*), we hold that disallowance of Rs.2,35,708/- u/s.14A r.w.r. 8D(2)(ii) is to be taken into account while computing the total assessed income under the normal provisions of the Act. For the same reasons, we also hold that

addition of Rs.2,35,708/- be taken into account under clause (f) of Explanation 1 of section 115JB for computing book profit.

7.2. It is worth noting a fact that in the assessment order the *suo moto* disallowance computed and considered by the assessee is stated to be of Rs.47,616/- whereas before us, ld. Counsel for assessee has furnished the details of computing the *suo moto* disallowance of Rs.2,35,708/-. In this respect, ld. Assessing Officer is directed to verify this computation vis-à-vis the scientific methodology adopted by the assessee and held to be acceptable by the coordinate bench for preceding years. Accordingly, grounds taken by the assessee in this respect are allowed.

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

Order is pronounced in the open court on 10 June, 2024

Sd/-
(Pavan Kumar Gadale)
Judicial Member

Sd/-
(Girish Agrawal)
Accountant Member

Dated: 10 June, 2024

MP, Sr.P.S.

Copy to :

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

BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Mumbai