

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "F", MUMBAI
BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER AND
SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER**

ITA NO.299/MUM/2024

Assessment Year : 2010-11

DCIT CENTRAL CIRCLE 5 4,MUMBAI

Room No.1927, 19th Floor,

Air India Building, Nariman Point,

Mumbai – 400 021

---- Appellant

Vs.

Saphire Land Development Pvt. Ltd.

R.No.5, Capri, 3rd Floor,

Anant Kanekar Marg, Bandra East,

Mumbai – 400 051

PAN: AAACS-7785-H

--- Respondent

Assessee by : None

Revenue by : Shri Surendra Meena

Date of Hearing : 12/06/2024

Date of Pronouncement : 18/06/2024

ORDER

PER B.R. BASKARAN, ACCOUNTANT MEMBER :

The revenue has filed this appeal challenging the order dated passed by Ld CIT(A), NFAC, Delhi and it relates to the assessment year 2010-11. The issue urged by the revenue relates to the disallowance made u/s 14A of the Act and also the addition of expenses relating to exempt income made u/s 115JB of the Act.

2. None appeared on behalf of the assessee. Since the issues urged by the revenue are decided in favour of the assessee by the decisions of High Courts and Special Bench of ITAT, we proceed to dispose of the appeal ex-parte, without the presence of the assessee.

3. The assessee is engaged in the business of real estate development. The impugned assessment order has been passed in pursuance of reopening of assessment u/s 148 of the Act. The assessee had earned exempt dividend

income of Rs.60.35 lakhs + Rs.1.72 lakhs totaling to Rs.62.07 lakhs, but did not make any disallowance u/s 14A of the Act. Hence the AO computed the disallowance u/s 14A of the Act under Rule 8D at Rs.2.70 crores, which consisted of direct expenses (Rule 8D(2)(i)) – Rs.6,57,738/-; interest expenses (Rule 8D(2)(ii)) – Rs.2,09,64,774/- and General expenses (Rule 8D(2)(iii)) – Rs.54,37,789/- aggregating to Rs.2,70,60,301/-. The AO added the above said amount while computing total income under normal provisions of the Act and also while computing book profit u/s 115JB of the Act.

4. In the appellate proceedings, the Ld CIT(A) noticed that identical disallowances had been made by the AO in the original assessment proceedings also. In the appeal filed by the assessee, his predecessor had restricted the disallowance to the amount of exempt income in the appeal filed against the original assessment order. In this regard, his predecessor had followed the decision rendered by Hon'ble Delhi High Court in the case of Era Infrastructure (India) Ltd (ITA No.204/2022 & CM APPL. 31445/2022 dated 20-07-2022). Accordingly, the Ld CIT(A) directed the AO to restrict the disallowance u/s 14A of the Act to the extent of exempt income of Rs.62.07 lakhs.

5. Since the Ld CIT(A) has followed the decision rendered by Hon'ble Delhi High Court, we do not find any infirmity in the decision rendered by him on this issue.

6. With regard to the addition made while computing book profit u/s 115JB of the Act, the Ld CIT(A) noticed that his predecessor had issued enhancement notice to the assessee in the appellate proceedings against the original assessment order for adding the expenses relating to exempt income u/s 115JB of the Act. However, ultimately, he did not make any addition following the decision rendered by the Tribunal. Accordingly, following the decision of the predecessor rendered in the appeal filed against the original

assessment proceedings, the Ld CIT(A) directed the AO to delete the addition made u/s 115JB of the Act.

7. With regard to this issue, it was not shown to us that the decision rendered by the predecessor has been changed/modified by the ITAT. In the absence of any change in the facts between the original assessment proceedings and the present reassessment proceedings, we are of the view that the Ld CIT(A) was justified in following his predecessor's order passed on this issue. Accordingly, we uphold the same.

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

Order pronounced in the open court on 18th June, 2024.

Sd/-

(SANDEEP SINGH KARHAIL)

JUDICIAL MEMBER

Mumbai, Date : 18th June, 2024

Vm

Copy to :

- 1) The Applicant
- 2) The Respondent
- 3) The PCIT/CIT concerned
- 4) The D.R, " F" Bench, Mumbai
- 5) Guard file

Sd/-

(B.R. BASKARAN)

ACCOUNTANT MEMBER

By Order

Dy./Asstt. Registrar

I.T.A.T, Mumbai