

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'B', NEW DELHI**

Before Sh. C. N. Prasad, Judicial Member

Dr. B. R. R. Kumar, Accountant Member

ITA No. 1006/Del/2024 : Asstt. Year : 2016-17

ACIT(OSD), Range-10, New Delhi-110002	Vs.	G S Pharmbutor Pvt. Ltd., Plot No. 58, 59, 66 & 67, Sector-3, Integrated Industrial Estate, Pantnagar, Rudrapur, Uttarakhand
(APPELLANT)		(RESPONDENT)
PAN No. AAACG2925P		

Assessee by : Sh. P. S. Kashyap, FCA

Revenue by : Sh. Vivek Kumar Upadhyay, Sr. DR

Date of Hearing: 01.08.2024

Date of Pronouncement: 28.08.2024

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the Revenue against the order of National Faceless Appeal Centre (NFAC), Delhi dated 11.01.2024.

2. Following grounds have been raised by the Revenue:

"(1) Whether on the facts and in the circumstances of the case and in law the Ld. CIT(A) has erred, in deleting the addition of Rs. 2,48,70,011/- on account of the disallowance made u/s 14A r.w. Rule 8D, not appreciating the fact that the borrowed funds were utilized by the assessee for purposes other than its business activity, having been invested in the form of zero percent debentures in a sister concern.?"

(2) Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred, in deleting the addition of Rs. 2,48,70,011/- on account of the disallowance made u/s 14A r.w. Rule 8D for purpose of calculation of book profit u/s 115JB(MAT), not appreciating the fact that the borrowed funds were utilized by the assessee for purposes other than its

business activity, having been invested in the form of zero percent debentures in a sister concern?

(3) "Whether Id. CIT(A) was erred in law by ignoring the amendment in section 144 introduced by Finance Act, 2022 as per which disallowance u/s 14A r.w. Rule 6D is applicable retrospectively being clarificatory in nature, even if no exempted income was earned by the assessee."

Ground No. 1: Disallowance u/s 14A:

3. This issue stands adjudicated in assessee's own case for A.Y. 2013-14, A.Y. 2014-15 and A.Y. 2015-16 by the Coordinate Bench of ITAT in ITA Nos. 1541/Del/2019, 4136/Del/2018, & 6716/Del/2018 respectively wherein a categorical finding has been given that the assessee company has not diverted its interest bearing fund in making investments in debentures.

4. Since, there has been no change in the facts of the case as the investment was made on 30.04.2021 and they were converted into equity on 25.03.2014 and no dividend has been issued on the equity shares. Hence, we hold that the provisions of Section 14A r.w. Rule 8D are not applicable.

Ground No. 3: Section 14A retrospective amendment:

5. With respect to applicability of amendment brought out by Finance Act, 2022, it has been held by Hon'ble Jurisdictional Delhi High Court in the case of ACIT Vs. Era Infrastructure (India) Ltd. In its order dated 20.07.2022 has upheld the view that the amendments to Section 14A, inserted vide the Finance Act, 2022 are prospective in nature. This finding has been given by Id. CIT(A) in para no. 5.3.2. and para 5.4 on internal page no. 6 of Id. CIT(A) order.

6. Since, the order of the Id. CIT(A) is in consonance with the judgment of Hon'ble Jurisdictional High Court, we decline to interfere with the order of the Id. CIT(A) on this issue.

Ground No. 2: Book Profit u/s 115JB (MAT):

7. Since, there was no disallowance u/s 14A, the ground of appeal on this issue is hereby allowed.

8. In the result, the appeal of the Revenue is dismissed.
Order Pronounced in the Open Court on 28/08/2024.

Sd/-

(C. N. Prasad)
Judicial Member

Dated: 28/08/2024

Subodh Kumar, Sr. PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

ASSISTANT REGISTRAR