

**IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH, BANGALORE**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER AND
SHRI KESHAV DUBEY, JUDICIAL MEMBER**

ITA No.1340/Bang/2024
Assessment Year: 2017-18

Coforge Business Process Solutions Pvt. Ltd., Building No.2, 7 th Floor, Commerzone, S.No.144/14 Samrat Ashok Path, Yerwada, Pune, Maharashtra – 411 006. PAN – AABCC 5793 L	Vs.	The Dy. Commissioner of Income Tax, Circle – 2(1)(1), Bengaluru
APPELLANT		RESPONDENT

Assessee by	:	Shri Sharath Rao - CA, Ms. Vaidehi - CA and Shri Dhiraj - Advocate
Revenue by	:	Ms. Neera Malhotra, CIT (DR)

Date of hearing	:	21.10.2024
Date of Pronouncement	:	13.11.2024

ORDER

PER WASEEM AHMED, ACCOUNTANT MEMBER:

This is an appeal filed by the assessee against the order passed by the Addl/JCIT (A) - 2, Noida dated 30/03/2024 in DIN No. ITBA/APL/S /250/2023-24/1063723262(1) for the assessment year 2017-18.

2. At the outset, we note that there was delay in filing the appeal by the assessee of 47 days only. The assessee has filed condonation

petition stating that the Id. CIT(A) order was passed and received on 30/03/2024 and, therefore, the assessee was supposed to file the appeal before the ITAT within 60 days i.e. on or before 30-05-2024, but it has filed the appeal belatedly dated 15/7/2024 after a delay of 47 days. In the petition, it was stated that the assessee was engaged in preparing the annual compliance and audit during the relevant time and, therefore, the assessee missed to file the appeal in the stipulated item.

3. At the time of hearing, the Id. AR further submitted that the assessee has a strong prima facie case on merit, which should not be thrown away on account of technical lapses.

4. On the other hand, the Id. DR did not raise any objections if the delay in filing the appeal by the assessee is condoned.

5. We have heard the rival submissions of both the parties and perused the materials available on record. undeniably, it is the onus on the assessee to file the appeal within the stipulated time. Furthermore, the assessee has declared total income of Rs. 6,64,09,56,190/- for the year under consideration, which strongly suggest that it shall be assessed by the tax professionals therefore, apparently, there should not have been a delay in filing the appeal irrespective of the fact that the assessee was engaged in annual compliance being the end of financial year. Nevertheless, considering the length of delay and no objection by the Id. DR and in the interest of justice and fair play, we are inclined to condone the delay in filing the appeal by the assessee. Accordingly, we do so and proceed to adjudicate the issue raised by the assessee on merit.

6. The only issue raised by the assessee is that the Id. CIT(A) erred in confirming the disallowance made by the AO for Rs. 28,75,422/- under the provisions of sec. 14A r.w. Rule 8D of Income-Tax Rules.

7. The assessee in the year under consideration has earned exempt income in the form of dividend income amounting to Rs. 16,61,126/- only. The assessee against such income has made suo-moto disallowance of Rs. 60,367/- under the provisions of sec. 14A of the Act. The AO during the assessment proceedings found that the assessee has made substantial investment amounting to Rs. 48.34 crores, which requires expert advice and dedicated work force to manage such a huge portfolio. Thus, the AO was of the view that the expenses disallowed by the assessee for Rs. 60,367 u/s 14A of the Act is miniscule in comparison to the magnitude of the investment. Accordingly, the AO invoked the provisions of sec. 14A r.w. Rule 8D of Income Tax Rules and worked out the amount of disallowance of Rs. 29,35,789/-, which was reduced by the amount already disallowed by the assessee of Rs. 60,367/- only. Thus, the balance sum of Rs. 28,75,422/- was added to the total income of the assessee.

8. Aggrieved, assessee preferred an appeal to the Id. CIT(A) who confirmed the order of the AO.

9. Being aggrieved by the order of the Id. CIT(A), the assessee is in appeal before us.

10. The Id. AR before us filed a paper book running from pages 1 to 257 and drawn our attention on the working of suo-moto disallowance of Rs. 60,367/- under the provisions of sec. 14A of the Act placed on page 259 of the paper book. According to the Id. AR, the revenue has not pointed out any defect in the working of the amount disallowed by the assessee suo moto and directly invoked the provisions of sec. 14A r.w. Rule 8D of Income-tax Rules. As such, it was mandatory for the revenue before invoking the provisions of Rule 8D to record the dissatisfaction qua the amount disallowed by the assessee. But the revenue has not done so. Thus, as per the Id. AR there cannot be any disallowance under the provisions of sec. 14A r.w. Rule 8D of the Income-tax Rules without recording the satisfaction in an objective manner. Thus, the Id. AR prayed to delete the addition made by the revenue.

11. On the other hand, the Id. DR vehemently supported the order of the authorities below.

12. We have heard the rival submissions of both the parties and perused the materials available on record. There is no ambiguity to the fact that the expenses incurred by the assessee in relation to exempt income needs to be disallowed which, the assessee has done so in the present case. But the controversy arises regarding computation of such disallowance. Therefore, the revenue generally for working out the amount of disallowance in relation to exempt income invoked the provisions Rule 8D of Income-tax Act, wherein the matter of calculating the amount of disallowance has been prescribed.

12.1 However, the method for making the disallowance u/s 14A of the Act is not automatic. The AO is required to record the dissatisfaction about the claim made by the assessee in calculating the expenses in relation to the exempted income. In other words, once the assessee has given the working of the disallowance u/s 14A of the Act, which is placed on pages 252 of the paper book. The revenue before invoking the provision of sec. 14A r.w. Rule 8D of the Act has to reject the same with reasoning after recording dissatisfaction. But the AO while doing so has not made any reference to the books of accounts of the assessee so as to record the dissatisfaction but computed the disallowance under the provisions of Rule 8D of Income Tax Rules. As such, we find that there is no whisper in the order of the AO for the suo-moto disallowance made by the assessee. Thus, we are of the view that the disallowance has been made by the revenue as per the method prescribed under Rule 8D of Income-tax Rules without recording the dissatisfaction and, therefore, we hold that such disallowance made by the revenue is not sustainable in the given facts and circumstances. Accordingly, we set aside the finding of the Id. CIT(A) and direct the AO to delete the addition made by him.

12.2 Before parting, it is necessary to deal whether the disallowance made under the provisions of sec. 14A r.w. Rule 8D can also be considered while calculating the book profit u/s 115JB of the Act. In this regard we note that the Special Bench of Hon'ble Delhi Tribunal in the case of ACIT vs. Vireet Investment Pvt. Ltd. reported in 82 Taxmann.com 415 has held that the disallowance made u/s 14A r.w.r. 8D cannot be the subject matter of disallowance while determining the

net profit u/s 115JB of the Act. The relevant portion of the said order is reproduced below:

"In view of above discussion, the computation under clause (f) of Explanation 1 to section 115JB(2), is to be made without resorting to the computation as contemplated under section 14A, read with rule 8D of the Income-tax Rules, 1962."

12.3 The ratio laid down by the Hon'ble Tribunal is squarely applicable to the facts of the case on hand. Thus, it can be concluded that the disallowance made under section 14A r.w.r. 8D cannot be resorted while determining the expenses as mentioned under clause (f) to explanation 1 to section 115JB of the Act.

12.4 However, it is also clear that the disallowance needs to be made with respect to the exempted income in terms of the provisions of clause (f) to section 115JB of the Act while determining the book profit. In holding so, we draw support from the judgment of Hon'ble Calcutta High Court in the case of *CIT Vs. Jayshree Tea Industries Ltd.* in GO No.1501 of 2014 (ITAT No.47 of 2014) dated 19.11.14 wherein it was held that the disallowance regarding the exempted income needs to be made as per the clause (f) to Explanation-1 of Sec. 115JB of the Act independently. The relevant extract of the judgment is reproduced below:

"We find computation of the amount of expenditure relatable to exempted income of the assessee must be made since the assessee has not claimed such expenditure to be Nil. Such computation must be made by applying clause (f) of Explanation 1 under section 115JB of the Act. We remand the matter for such computation to be made by the learned Tribunal.

We accept the submission of Mr. Khaitan, learned Senior Advocate that the provision of section 115JB in the matter of computation is a complete code in itself and resort need not and cannot be made to section 14A of the Act."

12.5 Given above, we hold that the disallowances made under the provisions of Sec. 14A r.w.r. 8D of the IT Rules, cannot be applied to the provision of Sec. 115JB of the Act as per the direction of the Hon'ble Calcutta High Court in the case of *CIT Vs. Jayshree Tea Industries Ltd.* (Supra).

12.6 Now the question arises how to determine the disallowance as per the clause (f) to Explanation-1 of Sec. 115JB of the Act independently. In this regard, we note that there is no mechanism/ manner given under the clause (f) to Explanation-1 of Sec. 115JB of the Act to workout/ determine the expenses with respect to the exempted income. Therefore, in the given facts & circumstances, we feel that ad-hoc disallowance will serve the justice to the Revenue and assessee to avoid the multiplicity of the proceedings and unnecessary litigation. Thus we direct the AO to make the disallowance of 1% of the exempted income as discussed above under clause (f) to Explanation-1 of Sec. 115JB of the Act subject to the amount disallowed by the AO. We also feel to bring this fact on record that we have restored other cases involving identical issues to the file of AO for making the disallowance as per the clause (f) to Explanation-1 of Sec. 115JB of the Act independently. But now we note that there is no mechanism provided under the clause (f) to Explanation-1 of Sec. 115JB of the Act to make the disallowance independently. Therefore our action for restoring back the issue to the file of AO would unnecessarily cause further litigation. Thus, we limit the disallowance on an ad-hoc basis @ 1 % of the exempted income as per the clause (f) to Explanation-1 of Sec. 115JB of the Act subject to the amount disallowed by the AO. Thus, the ground of appeal of the assessee is partly allowed.

13. In the result, the appeal of the assessee is hereby partly allowed.

Order pronounced in court on 13th day of November, 2024

Sd/-

(KESHAV DUBEY)

Judicial Member
Bangalore
Dated, 13 November, 2024

Sd/-

(WASEEM AHMED)

Accountant Member

/ vms /

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore