

IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH" KOLKATA

**SHRI SONJOY SARMA, JUDICIAL MEMBER
SHRI SANJAY AWASTHI, ACCOUNTANT MEMBER**

**I.T.A. No. 1024/Kol/2023
Assessment Year: 2016-17**

**Deputy Commissioner of Income Tax,
Circle V(1), Kolkata**

Aayakar Bhawan, 8th Floor,
P-7 Chowringhee Square,
Kolkata - 700069

..... **Appellant**

vs.

Birla Corporation Limited,

9/1 R.N. Mukherjee Road,
Birla Building, 3rd Floor,
Kolkata - 700001
[PAN: AABCB2075J]

..... **Respondent**

**C.O. No. 04/Kol/2024
(Arising out of ITA No. 1024/Kol/2023)
Assessment Year: 2016-17**

Birla Corporation Limited,

9/1 R.N. Mukherjee Road,
Birla Building, 3rd Floor,
Kolkata - 700001
[PAN: AABCB2076J]

..... **Appellant**

vs.

**Deputy Commissioner of Income Tax,
Circle V(1), Kolkata**

Aayakar Bhawan, 8th Floor,
P-7 Chowringhee Square,
Kolkata - 700069

..... **Respondent**

Appearances by:

Assessee represented by : J.P. Khaitan, Sr. Counsel
Sanjay Bhawmik, AR

Department represented by : A. Kundu, CIT DR

Date of concluding the hearing : 12.12.2024

Date of pronouncing the order : 24.12.2024

ORDER

PER SANJAY AWASTHI, ACCOUNTANT MEMBER:

1. This appeal has been preferred by the Revenue and Cross Objection preferred by the assessee emanates from the order of the Ld. Commissioner of Income Tax (Appeals), Kolkata-22 (in short 'the Ld. CIT(A)], dated 21.03.2023, passed u/s 250 of the Income Tax Act, 1961 (hereinafter referred to as the "Act") for Assessment Year 2016-17.

2. In this case, vide order dated 26.12.2019, the Ld. AO/TPO made additions on account of the following which have been agitated in appeal by the Revenue and also raised as issues in cross objection:

(i) Regarding the deduction u/s 80IA there was a downward adjustment of Rs. 2,50,55,12,743/-, on the basis of TPO's report.

(ii) An amount of Rs. 69,53,754/- was added back as capital expenditure, instead of Revenue expenditure claimed, on account of rent/compensation paid in connection with mining activity.

(iii) The Ld. AO disallowed an amount of Rs. 6,82,71,486/- in addition to Rs. 11,11,114/- already disallowed by the assessee for earning exempt income. This addition was made u/s 14A of the Act read with rule 8D of the Income Tax Rules, 1962.

(iv) In addition to the addition u/s 14A read with rule 8D of the Rules, the Ld. AO added the enhanced amount of Rs. 6,82,71,486/- for the purposes of computing book profit u/s 115JB of the Act.

(v) The Ld. CIT(A) allowed claiming of TCS to the assessee even when the same was not claimed in the return of income.

2.1 The CO filed by the assessee challenges the action of the Ld. CIT(A) in terms of upholding the invocation of section 14A (2) read with Rule 8D of the Rules in the absence of any satisfaction recorded by the AO. Certain

other aspects of the claim u/s 14A have also been sought to be addressed through the CO. The Ld. CIT(A) has given relief on account of section 80IA of the Act claimed on the basis of a finding that the claim in earlier years has been adjudicated in favour of the assessee not only by his predecessor, the Ld. CIT(A), but also the Hon'ble ITAT. Regarding the disallowance by the Ld. AO of the assessee's claim for deduction of Rs. 69,53,754/- in relation to the compensation paid in connection with mining activity, the Ld. CIT(A) has followed his predecessor and also the order of Hon'ble ITAT in assessee's own case to grant relief by treating the impugned amount as revenue expenditure. Furthermore, the Ld. CIT(A) has allowed claim of TCS to the tune of Rs. 70,16,761/-. Lastly, the Ld. CIT(A) has granted relief to the assessee with respect to disallowance u/s 14A of the Act and the consequence of such disallowance on the computation of "book profit" u/s 115JB of the Act. Since the matter pertaining to disallowance u/s 14A of the Act is subject matter of the Department's appeal as also the cross objections by the assessee, hence, the findings of the Ld. CIT(A) deserve to be extracted on this point:

"I have examined the entire issue carefully including the AO's order, the appellant's submissions and the various judicial pronouncements in this regard.

The appellant's contention that the AO has erroneously included the investments in properties, bonds, certificates of deposits and mutual funds for the purposes of computing disallowance u/s 14A read with Rule 8D is found to be tenable. All these investments are in fact capable of only yielding income which is taxable under the provisions of the Act and therefore provisions of Section 14A do not apply to the same. Accordingly, the appellant's agitation on this count is accepted.

Coming to the substantive merits of the impugned addition, I find that identical issue had come up in several earlier years in which the appellant has been granted relief by the CIT(A)s and Hon'ble ITAT Kolkata. It is noted that the facts are identical to those of the earlier mentioned assessment years in appellant's own case and accordingly the AO is directed to re-compute the disallowance under Rule 8D(2)(iii) by considering only those investments which actually yielded dividend income, as held by the Hon'ble ITAT Kolkata in appellant's own case for AYs 2008-09 to 2010-11 in ITA Nos. 971/Kol/2012, 942/Kol/2012 & 329/Kol/2013. As in the cases precedent, in case the disallowance so worked out in this manner turns out to be lower than Rs.11,11,114/- as already disallowed by the appellant suo moto, then the AO shall restrict the disallowance to Rs.11,11,114/- and if it works out to be more than the amount of Rs.11,11,114/-, then such further amount shall be the disallowance.

These grounds are therefore partly allowed for statistical purposes, subject to the above exercise.

I have carefully examined the entire issue including the AO's order and the appellant's submission in this regard. During the year under review, the AO had made a disallowance of Rs.6,82,71,486/- u/s 14A of the Act. The appellant's agitation that provisions of Rule 8D cannot be invoked while computing the book profit in terms of provisions of Section 115JB, has once again been discussed by the Ld. CIT(A) in the appellant's case for AYs 2011-12 to 2014-15 at length and he has agreed with the appellant that since there is no enabling provision in Explanation 1 to Section 115JB for making any adjustment in respect of expenditure disallowed as per Rule 8D, the disallowance so computed by the AQ cannot be added to the book profit. I am inclined to agree with him as it is well settled in law that deeming provisions need to be strictly construed. Clause (1) of the said Explanation to Section 115JB requires adjustment of expenditure relatable to exempt income. This expression used in Clause (f) is similar to the expression used in Section 14A(1). Accordingly, only provisions of Section 14A(1) can be imported into clause (1) of Section 115JB. Being a deeming provision, the scope of clause (f) in Section 115JB cannot be enlarged to bring within its ambit sub-section (2) and (3) of Section 14A and consequent Rule 8D. In tandem with the reasons enumerated in the above mentioned orders, in appellant's own case, for AYs 2011-12 to 2014-15, it is held that only Rs 11,11,114/- could have been disallowed u/s 14A(1) of the Act and thus added back under clause (f) of Explanation to Section 115JB of the Act. The AO's action of adding back the disallowance computed under Rule 8D is also held to be unjustified in view of the decision of the Special Bench of Delhi ITAT in the case of ACIT vs Vireet Industries Ltd. (165 ITD 27) and that of Bombay High Court in CIT vs JSW Energy Ltd. (60 taxmann.com 303). The addition as discussed in terms of Clause (f) of Explanation 1 to Section 115JB would thus be restricted to the amount of expenditure relatable to the earning of exempt income as discussed earlier in Grounds 10 to 12 in this order.

These grounds are therefore partly allowed subject to the above adjustment.”

3. Aggrieved with the action of the Ld. CIT(A) the department is in appeal before us on the following grounds:

“1. Whether on the facts and circumstances of the case, the CIT(A) has erred in law in holding that deduction u/s 801A of the Act will be allowed as claimed by the assessee ignoring the downward adjustment made by the Transfer Pricing Officer.

2. Whether on the facts and circumstances of the case, the CIT(A) has erred in holding that compensation paid to obtain mining lease is revenue expenditure and not capital expenditure.

3. Whether on the facts and circumstances of the case, the CIT(A) has erred in law by deleting the addition made by the AO u/s 14A read with Rule 8D without appreciating the CBDT Circular no. 5/2014.

4. Whether on the facts and circumstances of the case, the CTT(A) has erred in law by restricting the upward adjustment made to book profit for disallowance computed u/s 14A read with Rule 8D.

5. Whether on the facts and circumstances of the case, the CIT(A) has erred in law by accepting new issues of claim of TCS and directing the A.O. to verify and allow credit of TCS which was not made in the return.

6. The appellant craves leave to make any amend, addition, alternation, modification etc. of the grounds either before the appellate proceedings, or in the course of appellate proceedings.”

3.1 In support of its claim the assessee has filed cross objections as under:

“(A) For That the Commissioner of Income Tax (Appeals) was not justified in law in upholding the invocation of sub-section (2) of section 14A of the Income Tax Act, 1961 and rule 8D (2) (iii) of the Income Tax Rules, 1962, in the absence of any satisfaction recorded by the Assessing Officer that having regard to the accounts of Respondent, the Respondent's claim that expenditure of Rs.11,11,114/ was incurred in relation to the exempt income was not correct.

(B) For that further and in any event and without prejudice to the aforesaid, the Commissioner (Appeals) failed to consider that in a case where employees perform multiple functions, one of which is handling investments, the apportioned salary and expenses offered for disallowance under section 14A of the Income Tax Act, 1961 cannot be given a go by and rule 8D of the Income Tax Rules, 1962, cannot be invoked.

(C) For that the Commissioner of Income Tax (Appeals) was not justified in law in rejecting the Respondent's working and explanation for disallowance under section 14A of the Income Tax Act, 1961 and in invoking sub-section (2) of section 14A and rule 8D(2)(iii) of the Income Tax Rules, 1962 for the assessment year 2016-17 and his purported findings in that behalf are arbitrary, unreasonable and perverse.”

3.2 Before us, the Ld. DR read out portions from the Ld. AO's order in support of the ground of appeals. Per contra, the Ld. AR pointed out with the help of a detailed paper book that all the issues raised by the department were covered in favour of the assessee by orders of ITAT in assessee's own case for earlier years. The Ld. AR took us through the relevant paragraphs of the said orders in support of his claim.

4. Regarding the TP adjustment with respect to the claim u/s 80IA of the Act, it is seen that during the assessment year 2006-07, the assessee had set up a thermal power plant which was eligible for benefit u/s 80IA of the Act. Also, during the AY 2011-12, the company had set up a heat recovery system, which was eligible for benefit u/s 80IA of the Act. Both these units generate power which is sold to the assessee's existing 7 plants

at Satna and Chanderia. Since, the company was engaged in a domestic transaction with an associated enterprises the matter was referred to the Transfer Pricing Officer (TPO) for determination of Arm's Length Price (ALP). The Ld. TPO proposed a downward adjustment of Rs. 2,50,55,12,743/- in computing the price of sale of power. It is seen that this issue is covered in favour of the assessee by ITAT's orders for AY 2013-14, 2014-15 and 2015-16. For the sake of reference, the findings in ITA No. 1964/Kol/2019 and CO No. 39/Kol/2019 are referred to (pages 3 to 16) and the gist of detailed finding recorded on page 16 of this order deserves to be extracted for reference:

"4. Both the Ld. representatives have submitted that the issue is squarely covered in favour of the assessee by the above decision of the Tribunal in the own case (sic) of the assessee for earlier assessment years. Therefore, respectfully following the same, for the sake of consistency, this issue is decided in favour of the assessee and against the revenue. Ground Nos. 1 to 5 of Revenue's appeal are hereby dismissed."

4.1. Both the ld. Representatives and Ld. DR have submitted that the issue is squarely covered in favour of the assessee by the above decision of the Tribunal in own case of the assessee for earlier assessment years. Therefore, respectfully following the same for the sake of consistency, this issue is decided in favour of the assessee and against the revenue. Ground Nos. 1 to 5 of Revenue's appeal are hereby dismissed.

4.2 Regarding the issue of compensation paid for mining activities also it is seen that the issue is not only covered by the decision of ITAT in assessee's own case for AYs 2013-14, 2014-15 and 2015-16 but also by the Hon'ble Calcutta High Court for AY 2006-07 vide order reported in 159 taxmann.com 651 (Cal). It would be sufficient to reproduce the relevant extract from this judgment for reference as under:

"8. It is undisputed that the assessee acquired a mining lease of 9.99 kilometres situated in village-Chittorgarh for obtaining lime stone used as raw material for manufacture of cement. To carry out the mining operation/business activity, the assessee has paid the amount in question to land owners for damage caused to

the surface of the land or for infringement of rights of land owner by conducting mining operations and the business operations. The amount paid by the assessee was determined by the Collector in terms of the statutory provision of Rajasthan Revenue Act read with the Rajasthan Land Acquisition Act. The event to pay compensation arose to the assessee only on account of damage caused to the surface of the land falling in mining lease area during mining operation/business operation. There was no requirement to pay had there been no damage caused to the surface of the land by mining/business operation. Thus, the payment in question made by the respondent/assessee was in the nature of expenditure for carrying out business operations. No interest in land has been acquired by the respondent/assessee by payment of such compensation. Thus, the payments are in the nature of incidental expenditure to conduct the mining and business operation. Therefore, the expenditure so incurred by the respondent/assessee is revenue in nature. Consequently, the CIT(A) and the Income-tax appellate Tribunal have not committed any error of law to hold the aforesaid expenditure of Rs. 19,38,232/- as revenue in nature and accordingly allowed the deduction.

Respectfully following the order of the Hon'ble jurisdictional High Court in assessee's own case, dated 16.01.2024, the ground taken by the Revenue is dismissed on this point.

4.3 Regarding the issue of disallowance u/s 14A read with Rule 8D and its consequent impact on computation of book profits u/s 115JB of the Act, it is seen that this issue has been decided against the assessee in his own case for AY 2015-16 (ITA No. 964/Kol/2019) and CO No. 39/Kol/2019) as under:

"20. Ground No.10 – Vide Ground No.10, the revenue has agitated against the action of the CIT(A) in deleting the addition made by the Assessing Officer u/s 14A of the Income Tax Act read with Rule 8D of the Income Tax Rules, in respect of proportional disallowance of expenditure incurred for earning of tax-exempt income. It is to be pointed out here that the assessee has also raised this issue in its cross-objections has also assailed the order of the CIT(A) on the ground that Rule 8D cannot be invoked unless the Assessing Officer finds any defect or infirmity in the suo moto calculation made by the assessee in respect of proportionate disallowance of expenditure incurred for earning of tax-exempt income. 20.1. The ld. counsel for the assessee has submitted that the assessee was in receipt of exempt income of Rs.3,86,49,083/- by way of dividend on its investment in shares and units of mutual funds. The assessee offered a disallowance of Rs.9,77,888/- as expenditure incurred in relation to the exempt income. The disallowance offered by the assessee comprised salary and other employee related costs on proportionate basis as also establishment expenses. The Assessing Officer, however, invoked rule 8D and worked out the disallowance @0.5% of the average of the opening and closing values of investment amounting to Rs.6,62,97,455/-. After deducting the disallowance of Rs.9,77,888/- made by the assessee, the Assessing Officer further disallowed Rs.6,53,19,567/-.

20.2. On appeal, the Commissioner of Income Tax (Appeals) following the decisions of the Tribunal in the assessee's own case for the assessment years 2008-09 to 2010-11 directed the Assessing Officer to consider only those investments which yielded dividend income but excluding investments in subsidiary companies, for computing the disallowance under section 14A read with rule 8D(2)(iii).

21. Before us, the ld. DR has made the following submissions:

"1. On this issue reliance is placed on *Maxopp Investment Ltd. v. CIT, New Delhi* [2018] 91 taxmann.com 154 (SC), wherein Hon'ble Supreme Court held inter alia in para 35 that "The aforesaid reasoning would be applicable in cases where shares are held as investment in the investee company, may be for the purpose of having controlling interest therein. On that reasoning, appeals of Maxopp Investment Limited as well as similar cases where shares were purchased by the assesseees to have controlling interest in the investee companies have to fail and are, therefore, dismissed. I may be mentioned that in *Maxopp Investment Ltd.* [2011] 15 taxmann.com 390 (Delhi) [affirmed by SC as above] the Hon'ble High Court inter alia held in Para 31 of the judgement as under: If one examines sub-rule (2) of Rule 8D, we find that the method for determining the expenditure in relation to exempt income has three components. The first component being the amount of expenditure directly relating to income which does not form part of the total income. The second component being computed on the basis of the formula given therein in a case where the assessee incurs expenditure by way of interest which is not directly attributable to any particular income or receipt. The formula essentially apportions the amount of expenditure by way of interest [other than the amount of interest included in clause (i)] incurred during the previous year in the ratio of the average value of investment, income from which does not or shall not form part of the total income, to the average of the total assets of the assessee. The third component is an artificial figure - one half percent of the average value of the investment, income from which does not or shall not form part of the total income, as appearing in the balance sheets of the assessee, on the first day and the last day of the previous year. It is the aggregate of these three components which would constitute the expenditure in relation to exempt income and it is this amount of expenditure which would be disallowed under Section 14A of the said Act. It is, therefore, clear that in terms of the said Rule, the amount of expenditure in relation to exempt income has two aspects - (a) direct and (b) indirect. The direct expenditure is straightaway taken into account by virtue of clause (i) of sub-rule (2) of Rule 8D. The indirect expenditure, where it is by way of interest, is computed through the principle of apportionment, as indicated above. And, in cases where the indirect expenditure is not by way of interest, a rule of thumb figure of one-half percent of the average value of the investment, income from which does not or shall not form part of the total income, is taken.

The Hon'ble Court, thus made it clear that in cases where the applicability of Section 14A, which is based on the theory of apportionment of expenditure between taxable and non-taxable income, read with Rule 8D is triggered, a rule of thumb amount would have to be calculated at the prescribed percentage of the investment, income from which does not or shall not form a part of the total income, to arrive at the quantum of disallowance.

Therefore, it is clear from a conjoint reading of the two judgements quoted above that the Ld.CIT(A) was not justified in directing the AO to compute the disallowance u/r 8D(2)(iii) by considering only the dividend bearing investments and by excluding the strategic investments. This decision deserves to be reversed and the lower authorities may, therefore, be directed accordingly.”

22. The ld. counsel for the assessee, however, has submitted that the assessee had made investments out of its own funds in shares of companies and mutual funds. That the mutual fund investments of the assessee were not in equity-oriented funds and hence, the proceeds at maturity/redemption of the same were not exempt from taxation but would attract capital gains tax. That substantial amount was invested in mutual fund investments for which there was no provision of providing any dividend. That, some of the mutual fund schemes, however, have yielded dividend income, however, the said dividend was reinvested by the assessee without being actually receiving the same. He has further submitted that the assessee has made calculation of the suo moto disallowance of expenditure after consulting the accounts and after consideration of the aforesaid facts, but the Assessing Officer has not recorded any dissatisfaction regarding the suo moto disallowance of expenditure made by the assessee u/s 14A after consulting the accounts of the assessee. He, therefore, has submitted that the Assessing Officer was not justified in applying Rule 8D of Income Tax Rules without pointing out any defect or infirmity in the correctness of the assessee’s claim of expenditure. He, in this respect, has relied upon the decision of the Hon’ble Supreme Court in the case of Maxopp Investment Ltd. vs. CIT reported in (2018) 402 ITR 640(SC). 23. We have considered the rival submissions and gone through the record. Both the parties have fairly admitted that the issue has already been dealt with by the Tribunal in the assessee’s own case for earlier assessment year. This issue was also racked up in assessee’s own case in the latest decision of the Tribunal 07.02.2023 passed in ITA Nos.2142&2143/Kol/2018 in relation to Assessment Years 2013-14 & 2014-15, wherein, the identical ground raised by the department has been dismissed by the Tribunal relying upon the earlier decision of the Tribunal in the own case of the assessee. The relevant part of the order of the Tribunal dated 07.02.2023 (supra) is reproduced as under:

“Revenue’s common Ground no. 6 for AY 2013-14 & 2014-15 relating to the disallowance u/s 14A of the Act read with Rule 8D of the Rules and assessee’s additional ground stating that ld. AO should have accepted the disallowance offered by the assessee u/s 14A of the Act and he erred in invoking and applying Rule 8D:

13. We have heard rival contentions and perused the records placed before us. We find that this Tribunal in assessee’s own case for AY 2011- 12 & 2012-13 dealt with this issue of disallowance u/s 14A of the Act and decided in assessee’s favour observing as follows:

“15. We have heard rival contentions and perused the records placed before us. The sixth common ground of the department’s appeal relates to disallowance under section 14A read with rule 8D.”

24. It has to be noted that the Hon’ble Supreme Court as pointed out by the ld. DR in the case of Maxopp Investment Ltd. (supra) has held that the exempt

income earned by the assessee from the strategic investments made in the sister concern/subsidiaries are also subjected to disallowance u/s 14A of the Act. In view of this, the impugned order of the CIT(A) is modified and it is directed that the Assessing Officer would recompute the disallowance u/s 14A r.w.r 8D(2)(iii) by considering all investments including investments in subsidiary companies which yielded dividend income. This Ground of the revenue's appeal is partly allowed, whereas, the cross-objection of the assessee on this issue is hereby dismissed."

4.3 In this regard one of the points in the cross objection is regarding absence of any satisfaction, which is pertinent for invoking section 14A of the Act. The Ld. AR has relied on the case of West Bengal Infrastructure Development Finance Corporation Ltd. reported in 149 taxman.com 181 (Kol). It is seen that the case relied on is based on the facts peculiar to the issue under consideration before the Hon'ble Bench. However, regarding the issue of the kind of "satisfaction" that is acceptable for triggering this section, the same has been elaborately explained in the case of *FL Smidth (P) Ltd.* reported in 118 taxman.com 272 (Mad), Hon'ble Justice T.S. Sivagnanam (as he then was) of the Hon'ble Madras High Court has explained the duties and responsibilities of AO in the following terms:

"22. The Assessing Officer noted the details, which obviously have been culled out from the books of accounts and other records placed by the assessee namely that (i) the assessee was not in the business of investment in shares; (ii) more than 1/3rd assets of the assessee were in the form of investments, and (iii) the total value of assets was Rs. 514,25,32,150/-, from which, the investments were to the tune of Rs. 132,39,84,480/- Thus, taking note of the volume of investments held by the assessee and the amount of exempt income earned, the Assessing Officer came to the conclusion that managerial skill is required to maintain such investment portfolio and that the quantum of expenditure computed by the assessee was not acceptable. Further, the Assessing Officer examined the materials placed before him and pointed out that the assessee incurred routine expenditure to maintain its establishment and towards administration, a portion of which could be attributed towards the activity of earning of dividend.

23. The Assessing Officer noted that the assessee also incurred managerial remuneration and claimed whole of the same as an expenditure. Therefore, he concluded that a portion of the managerial remuneration and directors' remuneration should also be attributed towards dividend earning activity by the assessee. Thus, in our considered view, the Assessing Officer recorded his satisfaction having regard to the accounts of the assessee.

24. Obviously, we cannot expect the Assessing Officer to write a judgment. The correctness of the findings of the Assessing Officer was tested by the CII(A). The assessee argued that the mutual funds were entirely managed by the fund managers, that only a minimum management was required by the investor and

that the assessee made a rational estimate of time spent and other related administration cost in the management of the investments and accordingly made a voluntary disallowance of Rs. 1,44,000/-. The CIT(A), after pointing out that as per the working given by the assessee, the time spent in a year was 3 days, 9 days and 17 days for senior, manager and subordinates respectively. But, the assessee did not even enclose the profit and loss account to verify the salary cost was correctly taken. Further, the CIT(A) noted that the disallowance of Rs. 1,44,000/- was meagre when compared to dividend income earned by the assessee on the investment.

29. As mentioned above, in the preceding paragraph, we held that the Assessing Officer considered the explanation offered by the assessee vide letter dated 18-12-2012 and recorded his satisfaction as to how the disallowance voluntarily made by the assessee was not acceptable. Hence, we find that the Assessing Officer had rightly followed the procedure under section 14A(2) of the Act and only thereafter, recorded his dis-satisfaction on the correctness of the claim made by the assessee and having regard to the accounts of the assessee, proceeded to follow the procedure under Rule 8D of the Rules. Hence, we find that there is full compliance of what is required to be done by the Assessing Officer as pointed out by the Hon'ble Supreme Court in the case of Maxopp Investment Ltd. For the above reasons, we hold that the assessee has not made out a case for interference in the order passed by the Tribunal.”

4.4 In the present case, we find that the Ld. AO is seen to have recorded a clear finding in para 8.07 of his order at page 24 that the contention of the assessee is not fully acceptable on the basis of reasoning given from paras 8.01 to 8.06. Thus, it deserves to be held that “satisfaction” has been recorded by the Ld. Assessing Officer and therefore, this ground taken in the CO of the assessee fails. Furthermore, regarding the detailed findings of the Hon'ble ITAT in assessee's own case for A.Y. 2015-16, as per the portion extracted (supra), it deserves to be held that the action of Ld. CIT(A) is justified in as much as the findings on pages 43 and 44 of the impugned order, on this issue, deserves to be supported. Accordingly, the grounds of revenue in this regard are dismissed and the ground (a), (b) and (c) of the CO are also dismissed.

4.5 Before parting with this issue it deserves to be mentioned that in case the direction of Ld. CIT(A), in the impugned order are to be followed then the Ld. AR fairly mentioned that the disallowable amount will be below the amount already disallowed by the assessee. However, we find that once the principle has been decided through this adjudication and

the action of Ld. CIT(A) has been upheld, then this fact would not matter as far as the outcome of adjudication on this issue is concerned.

5. Regarding the upward adjustment of disallowance computed under Section 14A of the Act for computing “book profit” under Section 115JB of the Act. It is seen that for A.Y. 2015-16 the matter has been decided against the assessee by the Hon'ble ITAT vide its order in ITA No. 1965/Kol/2019 (supra) as under:

“32. The ld. counsel for the assessee, in this respect, has submitted that the provisions of section 115JB are complete code in itself and therefore, the Assessing Officer cannot tinker with the book profits. However, we do not find force in the aforesaid contention of the ld. counsel for the assessee in this respect. It is to be pointed out that as per Explanation 1(f), the book profit means the profit shown in the statement of profit and loss account as increased by the amount of expenditure relatable to the exempt income. The said amount of expenditure has already been ordered to be determined as per our observations made above while adjudicating the issue relating to the disallowance u/s 14A vide Ground No.10 of the revenue’s appeal. It has to be further noted that section 115JB in itself does not prescribe any procedure to calculate the expenditure relatable to exempt income earned by the assessee. The said provision has been separately and specifically placed in the Act u/s 14A of the Act. Therefore, the book profits of the assessee are liable to be increased by the expenditure as Clause (f) of section 115JB of the Act. In view of this, it is directed that the book profits will be increased u/s 115JB of the Act by the disallowance calculated as per our directions given while adjudicating Ground No.10 of the revenue’s appeal. This ground of the revenue’s appeal is hereby allowed.”

5.1 It is seen that while coming to the conclusion as extracted above, the Hon'ble Bench was presumably not made aware of the ITAT Special Bench decision in the case of *ACIT Vs. Vireet Investments Pvt. Ltd.* reported in 82 taxmann.com 415 (Delhi-Trib-SB). In this case it has been held that the computation u/s 115JB of the Act is to be made without resorting to computation as contemplated under Section 14A read with Rule 8D of the Rules. Furthermore, a review of literature on this issue reveals that the Hon'ble Karnataka High Court in the case of *PCIT Vs. J.J. Glastronics Pvt. Ltd.* reported in 446 ITR 712 (Kar) has specifically directed that the amount disallowed under Section 14A could not be added to net profit while computing book profit under Section 115JB of the Act. Similarly, the Hon'ble Delhi High Court in the case of *PCIT (Central)-1, Vs. Moon Star*

Securities Trade and Finance Co. (P) Ltd. reported in 161 taxmann.com 158 as also directed that disallowance made under Section 14A of the Act could not be considered while computing MAT under Section 115JB of the Act. These authorities are merely cited as illustrations since there are other judicial pronouncements also on the subject, including an unreported judgement of the Hon'ble Calcutta High Court: *CIT vs Jayshree Tea Limited* [ITAT 47 of 2014 and GA 1501 of 2014, order dated 19.11.2014]. Respectfully following these judgements, and differing from the order of ITAT for AY 2015-16 (supra), the issue of computing for book profits after including additions made under Section 14A read with Rule 8D, cannot be supported and thus, the action of Ld. CIT(A) as per his findings on page 45 of the impugned order is upheld and the specific ground of the revenue is dismissed.

5.2 Regarding the claim of allowing benefit of TCS amounting to Rs. 70,16,761/- as bearing in Form No. 26AS for A.Y. 2016-17. It is felt the Ld. CIT(A) has adjudicated correctly (pages 46-47 of the impugned order), since it is a settled position that taxes paid by any assessee or deducted on his behalf deserve to be given credit for. Accordingly, this ground of revenue also fails.

6. In conclusion, the findings of the Ld. CIT(A) are also upheld on all issues presented by the revenue through its grounds of appeal. Furthermore, for the reasons discussed in the body of this order, all the grounds of cross objection are dismissed.

7. In the result, both the appeals of the revenue is dismissed, as also the cross objection filed by the assessee for both the years.

Order pronounced in the court on 24.12.2024

Sd/-
[Sonjoy Sarma]
Judicial Member

Sd/-
[Sanjay Awasthi]
Accountant Member

Dated: 24.12.2024.

AK, PS

Copy of the order forwarded to:

1. Birla Corporation Ltd.
2. Deputy Commissioner of Income Tax, Circle V(1), Kolkata
3. CIT(A)-
4. CIT-
5. CIT(DR)

//True copy//

By order

Assistant Registrar, Kolkata Benches