

**IN THE INCOME TAX APPELLATE TRIBUNAL
"G" BENCH, MUMBAI**

**SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER
SHRI OMKARESHWAR CHIDARA, ACCOUNTANT MEMBER**

**ITA No. 3862/MUM/2023
(Assessment Year: 2016-2017)**

Deputy Commissioner of Income Tax, Mumbai

Room No.1923, 19th Floor, Air India Building,
Nariman Point, Mumbai – 400021,
Maharashtra.

..... **Appellant**

Welspun Steel Limited

Survey No.650&652, Village Versamedi,
Distt – Kutch Anjar, Gujarat
[PAN:AAACW6515B]

Vs

..... **Respondent**

Appearance

For the Respondent/Department : Dr.Kishor Dhule
For the Appellant/Assessee : Shri Ajay Nagpal

Date

Conclusion of hearing : 24.12.2024
Pronouncement of order : 31.12.2024

ORDER

Per Rahul Chaudhary, Judicial Member:

1. The present appeal preferred by the Revenue is directed against the order, dated 08/08/2023 passed by the Commissioner of Income Tax (Appeals) - 51, Mumbai, [hereinafter referred to as 'the **CIT(A)**'] under Section 250 of the Income Tax Act, 1961 [hereinafter referred to as 'the **Act**'] whereby the Ld. CIT(A) had partly allowed the appeal against the Assessment Order, dated 31/12/2019, passed under Section 153A read with Section 143(3) of the Act for the Assessment Year 2015-2016.
2. The Revenue has raised following grounds of appeal :
 - "i. *On facts and in the circumstances of the case, the Ld. CIT(A) erred in deleting the disallowance made under section 14A of the Income Tax Act, 1961 on the ground that no exempt*

income was earned during the year by overlooking the clarification of legislative intent provided by the CBDT vide Circular No.5/2014 dated 11/02/2014 and to this effect even an amendment was made by Finance Act, 2022 by way of insertion of Explanation to Section 14A?.

ii. On the facts and in the circumstances of the case, the Ld. CIT(A) erred in directing to delete the disallowance made u/s.14A of the Income Tax Act, 1961 to the book profit of the assessee without appreciating the provisions of clause (f) of explanation 1 to section 115JB(2) of the Income Tax Act, 1961 and the decision of the Hon'ble ITAT Mumbai 'F' Bench in the case of Deputy Commissioner of Income tax, Central Circle-18 & 19 Mumbai Vs. Viraj Profiles Ltd. in ITA No.4439/(Mum) of 2013."

3. The relevant facts in brief are that Assessment was framed on the Assessee under Section 153A read with Section 143(3) of the Act vide Assessment Order, dated 31/12/2019, at the assessed income of INR.1,62,32,96,815/- after making addition of INR.7,98,56,915/- under Section 14A read with Rule 8D of the Income Tax Rules, 1961 (for short 'IT Rules') to the returned income of INR.154,34,39,900/- [as per return filed under Section 153A of the Act]. The Assessee was assessed under normal provisions of the Act. However, the Assessing Officer also computed the Book Profits under Section 115JB of the Act by increasing the profits as per Profit and Loss Account by the aforesaid amount of INR.7,98,56,915/-.
4. Being aggrieved, the Assessee preferred appeal against the Assessment Order which was disposed off as partly allowed by the CIT(A) vide order, dated 08/08/2023. Taking note of the fact that the Assessee did not erred any exempt income during the relevant previous year, the CIT(A) deleted the disallowance made under Section 14A read with Rule 8D of the IT Rules while computing income under the normal provisions of the Act. The CIT(A) also granted relief to the Assessee by deleting the upward adjustment of INR.7,98,56,915/- for the purpose of computing Book Profits under Section 115JB of the Act by following the decision of the Special

Bench of the Tribunal in the case of ACIT Vs. Vireet Investments Private Limited 58 ITR(T) 313 (Delhi-Trib)(SB)/[2017]82.

5. Being aggrieved, the Revenue has now preferred the present appeal before the Tribunal.

Ground No.1

6. Ground No.1 raised by the Revenue is directed against the order of CIT(A) deleting disallowance of INR.7,98,56,915/- made under Section 14A read with Rule 8D of the IT Rules by computing income under normal provisions of the Act.
7. We have heard both the sides and perused the material on record in relation to this issue. The contention raised by the Revenue stand decided against the Revenue and in favour of the Assessee by decision of the Tribunal in the case of Deputy Commissioner of Income Tax Vs. M/s. Welspun Steel Ltd. [ITA No.2137/Mum/2021, Assessment Year 2015-2016 dated 03/08/2022] The relevant extract of which reads as under:

"Ground No. 1

3. *Ground No. 1 raised by the Revenue is directed against the order of CIT(A) restricting the disallowance of INR 3,02,08,627/- made by the Assessing Officer under Section 14A of the Act read with Rule 8D of the Income Tax Rules, 1962 (hereinafter referred to as 'the Rules') to INR 7,43,185/- being the amount of exempt income earned by the Assessee during the relevant previous year.*
4. *The Learned Department Representative appearing before us submitted that the CIT(A) had granted relief to the Assessee by following the decision of Hon'ble Bombay High Court in the Case of Nirved Traders Pvt. Ltd. [ITA No. 149 of 2017, decided on 23.04.2019]. However, in view of the amendments introduced by the Finance Act 2022, the aforesaid judgment no longer hold good as the law stands amended retrospectively. While laying emphasis on the expression "shall be deemed to have always applied" used in the Explanation to Section 14A of the Act inserted by the Finance Act 2022, the Learned Departmental Representative submitted that the use of the aforesaid expression clearly brings out the intention of the legislature to give retrospective effect to the provisions contained in Section*

14A of the Act which are now to be interpreted taking into account the Explanation inserted by the Finance Act 2022. Referring to the clarification provided under the sub-heading "The clarification in respect of disallowance under Section 14A in absence of any exempt income during an assessment year" contained in the Memorandum to the Finance Bill, 2022, the Learned Departmental Representative submitted that Memorandum clearly provides that the insertion of Explanation to Section 14A of the Act shall have effect from 01.04.2022 and would have effect retrospectively, whereas insertion of non-obstante clause in sub-section 1 of Section 14A will take effect from 01.04.2022 and shall apply in relation to the Assessment Year 2022-23, and subsequent assessment years. In support of the aforesaid submissions, the Learned Departmental Representative placed reliance on the judgment of the Hon'ble Supreme Court in the case of Commissioner of income tax Vs. Poddar Cement P Ltd : (1997) 226 ITR 625 (SC) [laying emphasis on paragraph 42], Commissioner of Income Tax, Ahmedabad Vs. Gold Coin Health Foods P Ltd: (2008) 304 ITR 308 (SC) and Prakash Nath Khanna Vs. Commissioner of Income-Tax: (2004) 266 ITR 1 (SC). On the basis of the aforesaid, the Ld. Departmental Representative submitted that the order passed by the CIT(A) be set aside and addition made by the Assessing Officer be restored as the provisions contained in Section 14A of the Act do not provide that the disallowance under Section 14A of the Act is to be restricted to the amount of exempt income earned by an assessee during the relevant previous year.

5. *Per contra*, the Ld. Authorised Representative for the Assessee submitted that the amendments to Section 14A introduced by the Finance Act 2022 have prospective application. He submitted that the Hon'ble Bombay High Court and the Hon'ble Supreme Court have a number of cases held that the disallowance under Section 14A of the Act cannot exceed the amount of exempt income earned during the relevant previous year. In this regard, he placed reliance upon the following judgments: DCIT Vs. Caraf Builders and Constructions Ltd: 112 Taxmann.com 322 SC, DCIT Vs State Bank of Patiala: 99 Taxmann.com 286 SC, and DCIT Vs. Reliance Ports and Terminals Ltd: 114 Taxmann.com 529 Bombay. Further, relying upon paragraph 7 of the clarification in respect of disallowance under Section 14A of the Act contained in Memorandum to Finance Bill 2022, Ld. Authorised Representative for the Assessee submitted that it has been specifically provided that the amendment shall apply in relation to Assessment Years 2022-23 and subsequent assessment years. He further submitted that the aforesaid amendments to Section 14A were applicable only in a case where no exempt income was earned by the Assessee during the relevant previous year and did not apply in cases where exempt income was earned by the Assessee. He submitted that the judgments on which reliance has been placed by the Learned Departmental Representative were distinguishable on facts and

could not be applied to interpret the amendments introduced in Section 14A by the Finance Act 2022. Relying upon the judgment of Hon'ble Supreme Court in the case of M.M. Aqua Technologies Vs CIT, Delhi-III: 436 ITR 582 (SC) and CIT(Central), New Delhi Vs Vatika Township (P.) Ltd: 367 ITR 466 (SC), the Ld. Authorised Representative for the Assessee submitted that merely the use of expression 'for the removal of doubts' or 'shall be deemed never to have applied' does not lead to a conclusion that the amendments are to applied to be applied retrospectively. He submitted that the CIT(A) has correctly granted relief to the Assessee by following the judgment of the jurisdictional High Court.

6. *We have considered the rival submissions and perused the material on record. It is admitted position that the Hon'ble Bombay High Court and the Hon'ble Supreme Court have clearly held that disallowance under Section 14A of the Act cannot exceed the amount of exempt income earned by the Assessee during the relevant previous year. The stand of the Revenue is that amendments to Section 14A introduced by the Finance Act 2022 apply retrospectively and therefore, the aforesaid judgments no longer hold good. Whereas the contention of the Assessee is that the said amendments to Section 14A of the Act are prospective in nature and therefore, the order of CIT(A), passed by following the binding judgments of the Hon'ble Jurisdictional High Court, cannot be set aside by the applying the amended provisions of Section 14A of the Act.*
7. *We note that the Mumbai Bench of the Tribunal has, in the case of Assistant Commissioner of Income Tax- Circle 3(1)(1) Vs Bajaj Capital Ventures (P.) Ltd.: [2022] 140 taxmann.com 1 (Mumbai - Trib.)[29-06-2022] and also in the case of Assistant Commissioner Of Income Tax Vs. K Raheja Corporate Services Private Limited [ITA No. 2521 to 2527], held that the amendments to Section 14A introduced by the Finance Act 2022 shall apply from Assessment Year 2022-23 and onwards. Further, Hon'ble Delhi High Court in the case of Principal Commissioner of Income-Tax (Central) -2 Vs. M/s Era Infrastructure India Ltd: [ITA No. 204 of 2022, decided on 20.07.2022] has rejected the contention of the Revenue that amendments to Section 14A introduced by the Finance Act 2022 shall have retrospective effect. Accordingly, Ground No.1 raised by the Revenue is dismissed."*
8. In view of above, we do not find any infirmity in the order passed by CIT(A) deleting disallowance of INR.7,98,56,915/- made under Section 14A read with Rule 8D of the IT Rules by computing income under normal provisions of the Act. Accordingly, we decline to interfere with the order passed by the CIT(A) on this issue. Ground No.1 raised by the Revenue is, therefore, dismissed.

Ground No.2

9. As regards Ground No.2 raised by the Revenue is concerned, we find that the Assessee was assessed under normal provisions of the Act. Even after deletion of disallowance made under Section 14A of the Act the tax liability computed under the normal provisions of the Act would be much more than liability under Section 115JB of the Act, and the Assessee would be assessed under normal provisions of the Act. Therefore, Ground No.2 raised by the Revenue has been rendered academic in nature. In any case we find that the CIT(A) had granted relief to the Assessee by following the decision of the Special Bench of the Tribunal in the case of Vireet Investments Private Limited (supra). Accordingly, we decline to interfere with the order passed by the CIT(A) on this issue. Ground No.2 raised by the Revenue is, therefore, dismissed.
10. In result, the present appeal by the Revenue is dismissed.

Order pronounced on 31.12.2024.

Sd/-
(Omkareshwar Chidara)
Accountant Member

Sd/-
(Rahul Chaudhary)
Judicial Member

मुंबई Mumbai; दिनांक Dated : 31.12.2024
Milan,LDC

आदेश की प्रतिलिपि अग्रेषित/ Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त/ The CIT
4. प्रधान आयकर आयुक्त / Pr.CIT
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण , मुंबई / DR,
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार / (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai