

**IN THE INCOME-TAX APPELLATE TRIBUNAL “B” BENCH,  
MUMBAI**

**BEFORE SMT. BEENA PILLAI, JUDICIAL MEMBER  
&  
SMT. RENU JAUHRI, ACCOUNTANT MEMBER**

**ITA No. 3289/MUM/2013  
(A.Y. 2009-10)**

M/s. Millennium Appliances India Ltd. 171-C, Mittal Court, Nariman Point, Mumbai-400021	v/s. बनाम	ITO, Range 3(2)(4), Mumbai Aayakar Bhavan, Mumbai-400020
<b>स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AACCM7838D</b>		
<b>Appellant/अपीलार्थी</b>	..	<b>Respondent/प्रतिवादी</b>

Appellant by :	Shri Madhur Agarwal & Shri Yash Prakash
Respondent by :	Shri Kailash C. Kanojiya

Date of Hearing	17.10.2024
Date of Pronouncement	29.11 .2024

**आदेश / ORDER**

**PER RENU JAUHRI [A.M.] :-**

This appeal is filed by the assessee against the order of the Learned Commissioner of Income-tax (Appeals), Mumbai-4 [hereinafter referred to as “CIT(A)”] dated 12.02.2013 passed u/s. 250 of the Income-tax Act, 1961 [hereinafter referred to as “Act”] for Assessment Year [A.Y.] 2009-10.

2. The assessee has raised following grounds of appeal:

*“1. (a) On the facts and in the circumstances of the case and in law, the Commissioner of Income Tax (Appeals) erred in upholding the disallowance made by the learned Assessing Officer by invoking the provisions of section 14A of the Income Tax Act, 1961 read with Rule 8D of the Income Tax Rules, 1962 by rejecting the explanation given by the appellant which is wrong and contrary to the provisions of Income Tax Act, 1961, and the Rules made thereunder.*

*1. (b) On the facts and in the circumstances of the case and in law, the learned Commissioner of Income Tax (Appeals) erred in not appreciating that the investments have been made out of own funds, reserves and internal accruals which are much more than the investments yielding exempt income and hence no disallowance of proportionate interest can be made u/s. 14A of the Income Tax Act, 1961.*

*1. (c) Without prejudice to the ground of appeal no. 1(a) and 1(b) above, and on the facts and in the circumstances of the case and in law, the learned Commissioner of Income Tax (Appeals) erred in not appreciating that for the purpose of computing the disallowance of proportionate interest expenditure u/r. 8D(2)(ii), interest expenditure net of interest income should be considered, and not doing so is wrong and contrary to the provisions of Income Tax Act, 1961, and the Rules made thereunder.*

*2 (a) On the facts and in the circumstances of the case and in law, the lower authorities erred in adding the sum of Rs.1,13,63,071/- being the amount disallowed by invoking the provisions of Section 14A read with rule 8D, to the book profit for the purpose of Section 115JB of the Income Tax Act, 1961 which is wrong and contrary to the provisions of the Income Tax Act, 1961, and the Rules made thereunder.*

*2(b) On the facts and in the circumstances of the case and in law the lower authorities failed to appreciate that the provisions of section 14A(2), 14(A)(3) and Rule 8D are deeming provisions and the same can not be extended to provisions of section 115JB of the Act.*

*3. On the facts and in the circumstances of the case and in law, the Commissioner of Income Tax (Appeals) erred in confirming the addition of Rs.14,43,877/- being the amount of provision for warranty and maintenance expenses to the book profit for the purpose of Section 115JB of the Income Tax Act, 1961, by treating the said provision as unascertained liability, and the reasons assigned by him for doing so are wrong and contrary to the provisions of the Income Tax Act, 1961, and the Rules made thereunder.”*



3. The brief facts of the case are that the assessee filed return declaring nil income on 30.09.2009 which was processed u/s 143(1) of the Act on 24.11.2010 determining the tax liability u/s 115JB of the Act. The case was selected for scrutiny and during the course of assessment proceeding the AO noted that interest of Rs. 10,72,33,176/- has been debited to the P&L account while assessee was also having tax free income from investment of Rs. 37,74,96,787/- as on 31.03.2009. In response to the show cause notice issued by the AO, asking the assessee to explain as to why disallowance u/s 14A should not be made out of interest income, the assessee submitted that it had not received any income which was exempt. However, the AO proceeded to calculate disallowance u/s 14A r.w. Rule 8D and added an amount of Rs. 1,38,88,701/- on this account to the assessee's total income. Besides, the Provision of Warranty and Maintenance amounting to Rs. 14,43,877/- was also treated as unascertained liability and, therefore, added to the book profit calculated u/s 115JB to arrive at the adjusted book profit u/s 115JB at Rs. 1,38,88,701/-. Accordingly, assessment was finalized at an income of Rs. 3,81,83,004/- vide order u/s 143(3) dated 31.03.2011.

4. Aggrieved with the assessment order, the assessee filed an appeal before the Ld. CIT(A). However, Ld. CIT(A) upheld the order of the AO on the issue of disallowance of Rs. 1,13,88,701/- u/s 14A r.w. Rule 8D as also on the



disallowance of provision for warranty and maintenance. Ld. CIT(A) observed that a liability is ascertained if it has become due or is provided on a scientific basis such as actuarial basis in this case. Since the assessee had not made the provision on actuarial basis but on the basis of experience, therefore, action of the AO is treating as unascertained liability was correct.

5. We have heard the rival submissions. Ground No. 1 and 2 relate to disallowance u/s 14A r.w. Rule 8D and adjustment to the book profits u/s 115JB on that account. Ld. AR has submitted that there was no exempt income earned by the assessee during the year under consideration. Accordingly, there was no basis for making any disallowance u/s 14A r.w. Rule 8D of the Act. In this regard, it is seen that this aspect of the issue has neither been examined nor discussed in the assessment order. There are several judicial pronouncements of various Hon'ble High courts including the jurisdictional High Court on this issue. It is now settled legal position that the disallowance u/s 14A cannot be in excess of the exempt income earned during the assessment year. Some of the relevant decisions in this regard are as under:

- i. *M/s. Nirvad Traders Pvt. Ltd. v/s DCIT ITA No. 149 of 2017 dt. 23.04.2019 (Bom.)*
- ii. *Cheminvest Ltd. v/s CIT-1 ITA No. 749 of 2014 dt. 02.09.2015 (Del)*
- iii. *CIT-1 v/s Corrttech Engergy ITA No. 239 of 2014 dt. 24.03.2014 (Guj)*

Thus, in case there is no exempt income, disallowance u/s 14A r.w. Rule 8D cannot be made.



Accordingly, we deem it proper to restore the matter to the AO for the limited purpose of verification of the assessee's claim that there was no exempt income earned during the year under consideration in which case no disallowance u/s 14A r.w. Rule 8D should be made.

6. With regard to the addition of disallowance u/s 14A while calculating book profit for the purpose of section 115JB, we observe that the issue is no longer resintegra by virtue of the decision of Hon'ble Special Bench of Delhi ITAT in case of *ACIT v/s Vireet Investments Pvt. Ltd. repointed in (2017) 82 taxmann.com 415* wherein the matter stands decided in favour of the assessee.

7. With regard to the issue relating to adding back of Rs. 14,43,877/- being unascertained provision for warranty and maintenance expenses, it is seen that the assessee had itself added back this amount in the computation of income. However, the same was not adjusted while computing the book profit u/s 115JB. Accordingly, the AO held that provision for warranty and maintenance was not an ascertained liability. Ld. CIT(A) also held that since the provision was not made on any scientific basis, therefore, it was a provision for unascertained liability.

8. In view of above facts, we deem it proper to remand this issue to the AO for the limited purpose of verification in order to ascertain whether the provision was made on any scientific basis. In case the provision is found to be



made on a scientific basis, the issue regarding adjustment of the same in book profit calculated u/s 115JB should be considered in the light of Hon'ble Supreme Court's decision in the case of *M/s Rotork Controla India Pvt. Ltd. v/s CIT (2009) 13 SCC 283*.

9. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on 29.11.2024.

**Sd/-**

**BEENA PILLAI**

**(न्यायिक सदस्य/JUDICIAL MEMBER)**

**Sd/-**

**RENU JAUHRI**

**(लेखाकार सदस्य/ACCOUNTANT MEMBER)**

Place: मुंबई/Mumbai

दिनांक /Date 29.11.2024

अनिकेत सिंह राजपूत/ स्टेनो

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

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

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आदेशानुसार/ BY ORDER,

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

