

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "E", MUMBAI

**BEFORE SHRI ANIKESH BANERJEE, JUDICIAL MEMBER AND
MISS PADMAVATHY S., ACCOUNTANT MEMBER**

ITA No.5283/Mum/2024 - A.Y. 2017-18
ITA No.5285/Mum/2024 - A.Y. 2020-21

ECL Finance Limited Tower 3, Wing B, Kohinoor City Mall, Kohinoor City, Klrol Road, Kurla (West), Mumbai-400 070 PAN : AABCE4916D	vs	DCIT –Central Circle-1(1), Mumbai CGO Building, New Marine Lines, Mumbai-400 020
APPELLANT		RESPONDENT

ITA No.5707/Mum/2024 - A.Y. 2017-18
ITA No.5711/Mum/2024 - A.Y. 2020-21

DCIT–CentralCircle-1(1), Mumbai CGO Building, New Marine Lines, Mumbai-400 020	vs	ECL Finance Limited Tower 3, Wing B, Kohinoor City Mall, Kohinoor City, Klrol Road, Kurla (West), Mumbai-400 070 PAN : AABCE4916D
APPELLANT		RESPONDENT

Assessee by : Shri Ravikant Pathak
Respondent by : Shri Lieder Panicker, SR DR

Date of hearing : 30/12/2024
Date of pronouncement : 31/12/2024

ORDER

PERBENCH:

The instant appeals and cross appeals were filed by both the assessee and the revenue against the order of the Learned Commissioner of Income-tax (Appeals)-47, Mumbai, [for brevity, 'the Ld.CIT(A)] order passed under section 250 of the Income-tax Act, 1961 (for brevity, 'the Act'), date of order 16/08/2024 for A.Ys. 2017-18 and 2020-21. The impugned orders were emanated from the orders of the Ld.Assistant Commissioner of Income-tax, Circle-3(1)(2), Mumbai (for brevity the "Ld. AO") order passed under section 143(3) of the Act, date of order 28/12/2019 for A.Y. 2017-18 and dated 30/09/2022 for A.Y. 2020-21.

2. All the appeals have same nature of fact and common issue. So, all the appeals are taken together, heard together and are disposed of together by this common order. **ITA No.5707/Mum/2024(revenue's appeal) and ITA No.5283/Mum/2024 (assessee's appeal)** are taken as lead case: -

ITA No.5283/Mum/2024

2.2 The assessee has taken the following grounds of appeal:-

"1. The Commissioner of Income Tax (Appeals)-47, Mumbai (hereinafter referred as CIT(A)) erred in not adjudicating the action of the Assistant Commissioner of Income Tax, Circle - 3(1)(2) [hereinafter referred "AO"] in making disallowance u/s 14A of Income Tax Act, 1961 (Act) r.w. Rule 8D of the Income Tax Rules, 1962 (Rules) without recording his dis- satisfaction having regard to its books of accounts.

2. The CIT(A) erred in confirming the action of the AO in making disallowance to the extent of Rs.2,72,50,000 /- under section 14A of the Act r.w.s Rule 8D of the Rules as against dividend of Rs.19,60,000/- earned on investments made by the Appellant.

The Appellant submits that the disallowance u/s 14A of the Act shall not exceed exempt income; hence, the disallowance in excess of Rs.19,60,000/- made by the AO shall be deleted.

The Appellant craves leave to add, amend, modify, substitute the above grounds of appeal.”

3. The key facts of the case are that the assessee company is engaged in the business of financing and corporate lending, secured by shares, stocks, bonds, and similar instruments. During the relevant assessment year, the Ld. AO disallowed an amount of Rs. 4,66,10,620/- under Section 14A of the Act read with Rule 8D of the Income Tax Rules, 1962 (the "Rules"). This was against the assessee's voluntary disallowance of Rs. 6,71,488/-. Additionally, an adjustment of Rs. 4,59,39,132/- was made under Section 115JB of the Act while computing the book profits.

Both these issues were challenged by the assessee before the Ld. CIT(A). The Ld. CIT(A) considered the submissions of the assessee, which raised both legal and factual grounds. The assessee first contested the satisfaction recorded by the Ld. AO regarding the disallowance under Section 14A of the Act, but this challenge was dismissed by the Ld. CIT(A). However, with respect to the calculation of disallowance under Section 14A, the CIT(A) adopted an annual average of Rs. 2,72,50,00,000/- based on monthly investment averages. Applying @1% of this annual average, the disallowance was computed as Rs.2,72,50,000/-. After deducting the assessee's voluntary disallowance of Rs.6,71,488/-, the net disallowance was determined to be Rs.2,65,78,512/-, which was confirmed and upheld by the Ld.CIT(A) under Section 14A read with Rule 8D.Regarding the

adjustment under Section 115JB, the Ld. CIT(A) ruled in favor of the assessee and allowed the appeal on this issue.

Both the assessee and the revenue, being aggrieved by the Ld. CIT(A)'s order, have filed appeals before this Tribunal.

4. The Ld.AR first challenged the satisfaction of the AO for invoking section 14A of the Act. The Ld.AR invited our attention to paragraph 4.1 to 4.6 of the impugned assessment order which are as under:-

"4. Disallowance u/s,14A

4.1 During the course of scrutiny assessment proceedings, it is seen that during the year, the assessee has claimed exempt income of Rs.7,26,45,091/ The assessee in its computation of income has suo-moto disallowed an amount of Rs.6.71,488/-being expenditure relating to exempt income which is not acceptable.

Since the assessee has not made disallowance as per section 14A read with Rule 8D, the assessee, vide notice u/s.142(1) of the I.T. Act was asked to submit complete details of all the exempt income earned during the year which does not or shall not form part of the total income along with the details of all the investments and also to explain with reasons and supporting documentary evidence as to why the disallowance of expenditure u/s. 14A R.W. Rule 8D should not be made in its case in relation to income not includible in total income.

In response to the said notice, the assessee, vide e-response dated 27.12.2019, has made its submission.

The submission of the assessee has been perused, however the same is not acceptable.

4,2 It is noticed from the details submitted by the assessee that the assessee has made substantial investments in equity shares and mutual funds. Therefore, the expenses attributed to these shares / securities by way of indirect and interest expenses fall within the ambit of Sec.14A r.w.r.8D, since the section 14A is

independent of the head of income under which the exempted income would be otherwise liable to tax. The intent behind enactment of section 14A is to tax the income where there is one divisible business which gives rise to taxable as well as exempt income.

4.3 The provision of Rule 8D provide for computing the disallowance to the extent of investment in respect of which the income does not or shall not form a part of total income.

4.4 On perusal of the Profit & Loss account and bifurcation of financial expenses submitted by the assessee, it has been observed that the assessee has made claim of interest on borrowed funds. However, in support of the claim the assessee has neither established that no part of interest-bearing funds as well as expenses so claimed has found its way into the investments in shares/mutual funds nor adduced any documentary evidences. In such a situation, the funds and expenses of assessee need to be considered mixed one and accordingly the expenditure relatable to activity of investments in mutual funds/shares need to be disallowed u/s.14A. Therefore, any expenditure relatable to earning of such exempt income cannot be allowed as deduction in light of the provisions of section 14A.

4.5 It is well known fact that the any investment in mutual funds/shares are subject to market risk and have potential of earning income depending on the commerce economic and external affairs and various strategies deployed time to time by the companies and the government. Therefore, the Investment decisions itself become complex in nature. They require substantial market research, day to day analysis of market trends, and decisions with regard to acquisition, retention, and sale of shares at the most appropriate time, Further, it cannot be denied that there are certain other administrative expenses like salary, wages, staff welfare, general expenses, printing stationery, motor vehicle, telephone bills, bank charges, bank commission, brokerage, service charges on share transactions and commission etc. incurred during the year and part of which could also be

attributable to earning of dividend income. Besides, investments, decisions are generally taken in the meetings of the Board of Directors for which administrative expenses are incurred. It is therefore, not correct to say that no expenditure was incurred in making the investment in the shares/mutual funds which in turn capable of earning exempt income in the future period.

4.6 This aspect of the matter has also received careful attention of Chennai Bench of Tribunal in 93 TTJ (Chennai) 161. After comprehensive consideration of all the relevant aspects of the case, including the provisions of Law, it was held that the investment decisions are very strategic decisions in which top management is involved, and therefore, proportionate management expenses are required to be deducted while computing the exempt income from dividend.”

5. Upon further review, we observed that the investments in question were carried forward from earlier years, and the assessee had sufficient funds to invest in various mutual funds. From these investments, the assessee earned a total dividend income of Rs.7,26,45,091/-, comprising Rs.19,60,000/- from securities held as investments and Rs.7,06,85,091/- from securities held as stock-in-trade. This income was claimed as exempt under Sections 10(34) and 10(35) of the Income Tax Act. While computing total income and filing its return, the assessee voluntarily made a precautionary disallowance of Rs.6,81,488/- under Section 14A, attributing it to expenses incurred for earning exempt income. This amount was calculated considering proportionate employee costs and administrative expenses. However, during the assessment proceedings, the Ld.AO did not record any satisfaction in the assessment order regarding the necessity or basis for making an additional disallowance under Section 14A.

The issue is directly covered by the decision in the assessee's own case in **ITA No. 2539/Mum/2024** for the **Assessment Year 2019–20**, pronounced on **30/09/2024**.

In this case, the co-ordinate bench of the ITAT, Mumbai Bench "E," relied on similar cases involving group companies, including Edelweiss Financial Services Ltd. vs. ACIT, CC-1(2), Mumbai (ITA No. 92 & 93/Mum/2022) and Edelweiss Securities Ltd. vs. ACIT, CC-4(1)(1), Mumbai (ITA No. 15/Mum/2022). In these cases, the Tribunal addressed the issue of recording satisfaction for disallowance under Section 14A and concluded that the absence of proper satisfaction vitiates the entire proceedings for the addition. Consequently, the Tribunal deleted the additions.

6. The Ld. DR fully relied on the orders of the revenue authorities but could not present any contrary judgments to refute the submissions of the Ld. AR.

Appeal of the Revenue, ITA No.5707/Mum/2024:

7. The following are the grounds taken by the revenue: -

"Whether on the facts and circumstances and in law the Ld. CIT(A) was justified in not considering that as per the amended provisions of the Finance Act 2022, section 144 shall apply to a case irrespective of whether exempt income has accrued or received during the previous year relevant to on assessment year and expenditure has been incurred during the said previous year in relation to such exempt income?"

2 "Whether on the facts and circumstances and in law the Ld. CIT(A) was justified in not considering that amended provisions of the Finance Act 2022 Pass nullified several judgments as relied by the assessee wherein it was held that no disallowance u/s 14A of the Act could be made in respect of any expenditure incurred in earning any exempt income, in the absence of any exempt income?"

3 "Whether on the facts and circumstance of the case and in law, the Id4 CITIA), was justified restricting the addition of Rs. 4,59,39,132/- made by Assessing Officer u/s 14A r.w.r. 80D(2)[I] to Rs.2,65,78,512/- without appreciating the facts

that there is no evidence furnished by the assessee to prove that the borrowed funds on which interest is paid by it, are directly attributed to earning of taxable income only?"

4. Whether on the facts and circumstance of the case and in law, the Ld. CITIA), was justified in deleting the addition made to Book Profit computed u/s 115JB of the Income Tax Act, 1961, disregarding the clear provisions under Explanation (1) to section 115JB of the Act, which does not prescribe any parameter for computing expenditure attributable to exempted income?"

8. The ground nos. 1& 2of revenue pertain to the amended provisions of the Finance Act, 2022, which nullify prior judgments regarding disallowances under Section 14A. Specifically, it was argued that no disallowance could be made for expenses incurred in earning exempt income if no such exempt income was earned during the relevant year. Both parties presented their arguments on this issue.The core question was whether the Finance Act, 2022, applies retrospectively or prospectively, as the assessment years in question are 2017–18 and 2020–21, both of which precede the enactment of the Finance Act, 2022. Since the assessment years predate the implementation of the amended provisions, we hold that the amended Act does not apply retrospectively but prospectively.Our view is fully supported by the judgment of the Hon’ble **Gauhati High Court** in the case of **Williamson Financial Services Ltd. vs. CIT &Ors. 301 Taxmann 10 (Gau)**, wherein the Hon’ble Court explicitly held that the amended Section 14A introduced by the Finance Act, 2022, applies prospectively. We respectfully rely on this judgment regarding the applicability of the amendment. Accordingly, **Grounds 1 and 2** raised by the Revenue fail.

9. Section 14A and AO's Satisfaction:

On the issue of satisfaction under Section 14A, we rely on the decision of the coordinate bench of the ITAT, Mumbai, in the assessee's own case and group cases. Upon review, it is evident that the Ld. AO failed to record satisfaction regarding the disallowance under Section 14A. Mere computation based on yearly averages does not suffice; the Ld. AO did not detail the nature of investments made to earn exempt income or record specific satisfaction during the assessment process.

In our considered view, the CIT(A)'s decision to uphold the disallowance against the assessee on this issue is unjustified. Consequently, the addition made under Section 14A is deleted.

10. Therefore, **ground no. 1** of the assessee's appeal is allowed.

As for **ground no. 2** of assessee's appeal, it was not pressed by the Ld. AR.

Application of section 115JB:

11. In this case, the Ld.DR vehemently argued and fully relied on the order of the Ld.AO.

12. The Ld. AR drew our attention to paragraph 5.10 of the impugned appellate order, which states as follows:

"5.10 I have carefully considered the submissions made by the appellant and addition made by the AO in the assessment order. It is found that the issue of addition of Rs. 4,59,39,132/- being expenses relatable to exempt income while computing Book Profit u/s 115JB, relying on the judgement of Hon'ble High Court, Karnataka in the case of Sobha Developers Vs. DCIT, LTU, Bangalore [2021] and CIT Vs. Gokaldas Images Pvt. Ltd. [2020]", wherein it is held that any expenditure relatable to earning of income exempt u/s. 10(2A) and 10(35) of the Act is disallowed u/s, 14A of the Act and is added back to book profit under clause (f) of section 115JB of the Act, the same would amount to doing violence with the statutory provision viz., sub-sections (1) and (5) of section 115JB of the Act. It is also pertinent to mention here that the

amounts mentioned in clauses (a) to (i) of Explanation to section 115JB(2) of the Act are debited to the statement of profit and loss account, then only the provisions of section 115JB of the Act would apply. The disallowance u/s. 14A of the Act is a notional disallowance and therefore, by taking recourse to section 14A of the Act, the amount cannot be added back to book profit under clause (f) of section 115JB of the Act. In view of the above, the AO is directed to delete the addition of Rs. 4,59,39,132/- being expenses relatable to exempt income while computing Book Profit u/s 115JB. Accordingly, ground no. 3 of appeal is allowed.”

In our considered view, we find that the order passed by the Ld. CIT(A) correctly addresses the addition under Section 115JB(2) for disallowance of expenses related exempted income under Section 14A, which is deemed to be a notional disallowance. The disallowance of expenses U/s 14A is deemed to be notional disallowance which cannot be added back U/s 115JB of the Act. The Ld. CIT(A) has relied fully on the judgments of the Hon’ble Karnataka High Court in **Sobha Developers** (supra) and **Gokaldas Images Pvt. Ltd.** (supra). We find no infirmity in the reasoning or conclusion of the CIT(A). So, the view taken by the Ld. CIT(A) in the impugned appeal is upheld.

Accordingly, the **ground nos. 3 & 4** of the revenue are dismissed.

13. In the result, the appeal filed by the assessee is allowed and the appeal filed by the revenue is dismissed.

ITA Nos 5285/Mum/2024 & 5711/Mum/2024

14. Stereotyped grounds are raised in these appeals by the parties, which are identical to appeals in ITA No.5283/Mum/2024 & 5707/Mum/2024, which we have already disposed of in foregoing paragraphs. Therefore, the decisions arrived at therein shall apply *mutatis mutandis* to ITA Nos 5285/Mum/2024 & 5711/Mum/2024 also.

15. In the result, the appeals filed by the assessee are allowed and the appeals filed by the revenue are dismissed.

Order pronounced in the open court on 31st day of December 2024.

Sd/-

(PADMAVATHY S.)
ACCOUNTANT MEMBER
Mumbai, दिनांक/Dated: 31/12/2024
Pavanan

sd/-

(ANIKESH BANERJEE)
JUDICIAL MEMBER

Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,
Mumbai
5. गार्डफाइल/Guard file.

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BY ORDER,

(Asstt. Registrar), ITAT, Mumbai