| आयकर अपीलीय अधिकरण न्यायपीठ, मुंबई |
IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH, MUMBAI

BEFORE SHRI SAKTIJIT DEY, HON'BLE VICE PRESIDENT
&
SHRI NARENDRA KUMAR BILLAIYA, HON'BLE ACCOUNTANT MEMBER

I.T.A. No. 2169/Mum/2024
Assessment Year: 2017-18

Bennett Coleman & Co. Ltd. The Times of India Bldg. Dr. D.N. Road Fort Maharashtra - 400001 **[PAN: AAACB4373Q]**	Vs	**DCIT, 1(1)(1), Mumbai**
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)

Assessee by :	Shri Madhur Agarwal & Shri Kshitij Kasi, A/Rs
Revenue by :	Shri Satyaprakash R. Singh, CIT D/R

सुनवाई की तारीख/**Date of Hearing : 18/09/2025**
घोषणा की तारीख /**Date of Pronouncement: 22/09/2025**

आदेश/**O R D E R**

PER NARENDRA KUMAR BILLAIYA, AM:

This appeal by the assessee is preferred against the order of the ld. dated 27/03/2024 by NFAC, Delhi [hereinafter the 'ld. CIT(A)'] pertaining to AY 2017-18.

2. The grievance of the assessee reads as under:-

"1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in passing the order on non-existing entity/merger entity's PAN, even though the event of merger was already being intimated during the appeal proceedings. 1.2. The Appellant prays that the order passed by the Ld. CIT(A) be quashed.

2. On facts and in circumstances of case and in law, Ld CIT(A) erred in upholding disallowance u/s 14A of the Act read with Rule 8D of Income Tax Rules, 1962. 2.2 Ld CIT(A) failed to appreciate that Rule 8D cannot be invoked without recording objective satisfaction qua Appellant's claim that no expense is relatable to earning exempt income except suo-moto disallowance of 14A offered by Appellant having regard to its books of account. 2.3 Without prejudice to above, Ld CIT(A) erred in rejecting suo-moto disallowance offered by Appellant since such disallowance cannot exceed actual expenses debited to Profit and Loss A/c and claimed in computation of income(COI). 2.4 Without prejudice to above, disallowance be restricted in the manner determined by CIT(A) for AY 2010-11 and 2011-12 and upheld by Hon

Tribunal for said years. 2.5 The Appellant prays that disallowance of Rs6,26,01,721 u/s 14A rwr 8D be deleted and /or appropriately reduced.

3. On facts and in circumstances of the case and in law and without prejudice to above, Ld AO failed to reduce Securities Transaction Tax expenses of Rs13,01,397 while computing disallowance u/s 14A rwr 8D which has been added back suo- moto by Appellant in COI.

4. On facts and in circumstances of the case and in law and without prejudice to above, the Ld. CIT(A) failed to appreciate that the insertion of Explanation to first proviso of S. 14A of the Act vide Finance Act 2022, is prospective in nature and therefore ought to have directed the Id. AO to consider only those investments which have actually yielded tax free income during the year.

5. On the facts and in the circumstances of the case and in law, Ld. CIT(A) erred in upholding addition of Rs. 15,18,85,891/- being the disallowance u/s 14A r.w.r. 8D, while computing. the book profit u/s 115JB of the Act. 5.2 The Appellant prays that the addition made in book profit u/s 115JB of the act be deleted.

6. On the facts and in the circumstances of the case and in law, Ld. CIT(A) erred in confirming the action of the Id. AO in not allowing the deduction of Rs. 20,02,35,339/- being difference between book profits and capital gains with indexation benefit arising on transfer of STT paid securities while computing the book profits u/s. 115JB of the Act. 6.2 The Appellant prays that the deduction of Rs. 20,02,35,339/- being difference between the book gains and indexed capital gain arising on transfer of STT paid securities be allowed while computing the book profit u/s 115JB."

3. Ground No. 1 was not pressed and the same is dismissed as not pressed.

4. Ground Nos. 2 to 4 relate to the disallowance made u/s 14A r.w.r. 8D. Briefly stated the facts of the case are that the assessee is engaged in the business of buying and selling of media properties. It purchases advertisement spaces from Bennett Coleman & Co. Ltd. on a bulk bases and sells the same to various customers. The assessee filed its return of income on 28/09/2017 declaring total income of Rs. 3,63,82,570/-. However, the tax liability was computed under the provisions of Section 115JB of the Act amounting to Rs. 5,02,14,705/- on book profit of Rs. 23,52,90,254/-. The return was selected for scrutiny assessment

and accordingly, statutory notices were issued and served upon the assessee.

5. During the course of scrutiny assessment proceedings, the AO noticed that the assessee has derived exempt dividend of Rs. 2,16,68,557/- from investment in mutual funds/shares. The assessee has submitted the working of disallowance u/s 14A of the Act. The AO simply mentioned that he is not satisfied with the correctness of the claim and went on to compute the disallowance u/s 14A r.w.r. 8D and computed the disallowance at Rs. 15,18,95,891/- since the assessee has *suo-moto* disallowed Rs. 8,92,94,170/-, the AO added the balance amount of Rs. 6,26,01,721/-.

6. The assessee agitated the matter before the ld. CIT(A) but without any success.

7. Before us, the ld. Counsel for the assessee fairly conceded that the suo-moto disallowance of Rs. 8.92 Crores is far in excess to the exempt dividend income of Rs. 2.16 Crores and, therefore, there is no need for any further disallowance without pointing out any specific defect or error in the working of the suo-moto disallowance made by the assessee.

7.1. The ld. D/R strongly supported the findings of the AO.

8. We have given a thoughtful consideration to the underlying facts in the assessment. The undisputed facts are that the exempt dividend is only Rs.2.16 Crores whereas the suo-moto disallowance is Rs. 8.92 Crores. Therefore, we do not find any merit in the further disallowance made by the AO keeping in mind that the AO has not pointed out any error in the working of the suo-moto disallowance made by the assessee. Since the assessee is satisfied with this suo-moto disallowance

and not praying any relief from that amount, we direct the AO to delete the additional disallowance of Rs. 6,26,01,721/-. Accordingly, Ground Nos. 2 to 4 are allowed.

9. Ground No. 5 relates to the addition of Rs. 15,18,95,891/- being the disallowance u/s 14A r.w.r 8D while computing the book profit u/s 115JB of the Act. The quarrel relating to the disallowance u/s 14A r.w.r. 8D while computing the book profit u/s 115JB of the Act has been settled by the Special Bench of the Tribunal in the case of *ACIT v/s Vireet Investments Pvt. Ltd. (2017) 58 ITR (T.) 313* wherein the Tribunal has held as under:-

> *"■ The question is, whether the amount or amounts of expenditure relatable to exempt income as contemplated in clause (f) to Explanation 1 to section 115JB(2) could be arrived at by resorting to provisions of section 14A or not. The department, contention, is that the object of section 14A and clause (f) to Explanation 1 to section 115JB(2) is same and, therefore, it cannot be disputed that section 14A can be resorted to for finding out the expenditure relatable to any income which is exempt. [Para 6.2]*
>
> *■ When the question arises as to the applicability of similar provisions in different parts of the statute, then it is not only legitimate but proper to read both the provisions in their context. If context is same, different meaning cannot be assigned. It is to be found out that what mischief was intended to be remedied by inserting a particular section. The intention of the legislature once is manifested in a particular section in the statute then said intention cannot be given a different meaning, if a similar provision has been incorporated in a different section in the statute. The intention of the Legislature must be found out by reading the statute as a whole. [Para 6.3]*
>
> *■ Literal meaning cannot always be followed logically, because sometimes it tends to defect the obvious intention of the Legislature and results in producing a wholly unreasonable result. [Para 6.4]*
>
> *■ Thus, the submission of Department is that when basic object and purpose of section 14A and clause (f) to Explanation 1 to section 115JB(2) is same, then it cannot be said that merely because section 14A has not been mentioned in clause (f), it has no application. The mode of computation with same purpose cannot be differently made merely because section 115JB creates a deeming section. The object of deeming provisions is to substitute the total income computed under normal provisions by that computed under MAT provisions. Submission of department is that this cannot be extended to computation for same items under normal as well as MAT provisions. Under the provisions of section 14A, both direct and indirect expenses in relation to earning of exempt income are to be reduced. Therefore, different meaning cannot be ascribed in clause (f) and, therefore, the submission of the assessee that only directly relatable expenditure is to be reduced, cannot be accepted. [Para 6.10]*
>
> *■ 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."*

10. Consistent with the view taken by the Tribunal *(supra)*, the AO is directed to delete the impugned addition. Accordingly, Ground No. 5 is allowed.

10. Ground No. 6 relates to the denial of deduction of Rs. 20,02,35,339/- being difference between book profits and capital gains with indexation benefit arising on transfer of STT paid securities while computing the book profit u/s 115JB of the Act.

10.1. While scrutinizing the return of income, the AO noticed from the computation of total income that the assessee has carried forward indexed loss on sale of STT paid securities at Rs. 5,95,90,874/-. It was further noticed that during the year, the assessee has sold some shares and earned net surplus of Rs. 84,62,19,567/- and claimed as exempt u/s 10(38) of the Act and gain after indexation was calculated at Rs. 68,95,09,349/-. The AO was of the firm belief that the indexed benefit cannot be allowed to the assessee for computing book profit for the tax liability u/s 115JB of the Act and instead of Rs. 68,95,09,349/-, considered the amount of Rs. 85,57,69,292/- and added the difference of Rs. 20,02,35,339/- to the book profit.

10.1. Assessee carried the matter before the ld. CIT(A) but without any success.

11. Before us, the ld. Counsel placed strongly reliance on the decision of the Hon'ble High Court of Karnataka in the case of *Best Trading and Agencies Ltd. vs. CIT [2020]119 taxmann.com 129 (Karnataka)* and also relied on the decision of the Co-ordinate Bench in the case of *Karnataka State Industrial Infrastructure Development Corporation Ltd. vs. Deputy Commissioner of Income-tax, Circle-11(5), Bengaluru [2016] 76 taxmann.com 360 (Bangalore - Trib.)* and *Thomas Cook India Ltd. in ITA No. 1218/Mum/2021, ITA No. 752/Mum/2022 and ITA No. 2541/Mum/2022.*

11.1. Per contra, the ld. D/R supported the findings of the AO and the ld. CIT(A) and placed strong reliance on the decision of the Co-ordinate Bench in the case of *Chheda Electricals and Electronics (P) Ltd. [2022] 138 taxmann.com 221 (Pune – Trib.).*

12. We have carefully considered the orders of the authorities below and the underlying facts in the issue. At the very outset, we make it clear that the quarrel is not in respect of the inclusion of capital gains for computing the tax liability u/s 115JB of the Act. The only quarrel is in respect of the denial of the benefit of indexation for computing the capital gains. This quarrel came up for consideration before the Hon'ble High Court of Karnataka *(supra)*, where, the Hon'ble Court was seized *interalia* with the following substantial question of law:-

> *"(iv) Whether the Tribunal was justified in law in holding that indexed cost of acquisition cannot be reduced for the purpose of computing book profits under section 115JB of the Act on the facts and circumstances of the case?"*

12.1. And the Hon'ble High Court, answered the question as under:-

> *"**13.** section 115JB(5) of the Act reads as under:*
>
> *"(5) Save as otherwise provided in this section, all other provisions of this Act shall apply to every assessee being a company, mentioned in this Section."*
>
> *Thus, by virtue of sub-section (5) of section 115JB, the application of other provisions of the Act are open, except if specifically barred by the section itself. The indexed cost of acquisition is a claim allowed by section 48 of the Act to arrive at the income taxable under the income from capital gains. The difference between the sale consideration and indexed cost of acquisition represents the actual cost of the assessee, which is taxable as per section 45 of the Act at the rates provided under section 112 of the Act. There is no provision in the Act to prevent the assessee from claiming indexed cost of acquisition on the sale of asset in case, where the assessee is subjected to section 115JB of the Act. In any case, since, the indexed cost of acquisition is subjected to tax under a specific provision viz., section 112 of the Act, therefore, the provisions of section 115JB of the Act, which is a general provision cannot be made applicable to the case of the assessee. For yet another reason, the assessee has to be given the benefit of indexed cost of acquisition as considering the profits on sale of land without giving the benefit of indexed cost of acquisition results*

in taxing the income other than actual/real income. In other words, a mere book keeping entry cannot be treated as income.

14. *It is pertinent to mention here that Central Board of Direct Taxes has issued a Circular No.762 dated 11-2-1998, the relevant extract of which reds as under:*

> *"46.1 In recent times, the number of zero-tax companies and companies paying marginal tax has grown. Studies have shown that inspite of the fact companies have earned substantial book profits and have paid handsome dividends, no tax has been paid by them to the exchequer.*
>
> *46.2 The Finance Act has inserted a new section 115JA of the Income-tax Act, so as to levy a minimum tax on companies who are having book profits and paying dividends but are not paying any taxes."*

15. *It is pertinent to note that provisions of section 115JB of the Act are not applicable as the assessee has not declared any dividend. It is also noteworthy that the Tribunal has failed to appreciate the decision of this court in case of MSR & Sons Investment Ltd. supra where the order of the Tribunal was upheld by which the Tribunal has held that if dividends are not paid by the company the provisions of book profit are not attracted. The assessee had not paid the dividends. The profit itself was not attracted and the question of applicability of section 115JB did not arise. However, the Tribunal failed to consider the decision of this court while passing the impugned order.*

16. *The submission made by learned counsel for the revenue in the light of decision rendered in the case of Apollo Tyres (supra) does not deserve acceptance as section 115J with which the aforesaid decision deals does not contain a provision like sub-section (4) of section 115JA or Sub-Section (5) of section 115JB. Similarly, the submission made on behalf of the revenue that in the absence of the scheme, it cannot be held that the assessee was holding the funds as conduit and therefore, the matter deserves to be remitted to the Income-tax Appellate Tribunal for decision afresh also does not deserve acceptance as in paragraph 10 of this order, this court has noticed that the Assessing Officer as well as the Commissioner of Income-tax (Appeals) has taken note of the scheme and has held that assessee was utilized as a special purpose vehicle for purposes of distribution of surplus, if any, after clearance of debts of Kirloskar Electric Company.*

In view of preceding analysis, the substantial questions of law framed in both the appeals are answered in favour of the assessee and against the revenue. In the result, the orders passed by the Income-tax Appellate Tribunal to the extent it is against the assessee are hereby quashed. In the result, the appeals are disposed of."

13. Though this decision has been referred by the Co-ordinate Bench in the case of *Chheda Electricals and Electronics (P) Ltd. (supra)* but the Co-ordinate bench has nowhere distinguished this decision of the Hon'ble High Court of Karnataka nor there is any specific mention. Therefore, we are of the considered view that since no distinguishing decision of any Hon'ble High Court has been brought to our notice, respectfully

following the decision of the Hon'ble Karnataka High Court *(supra)*, we direct the AO to allow the benefit of indexation in the computation of long term capital gains. Accordingly, Ground No. 6 is allowed.

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

Order pronounced in the Court on 22nd September, 2025 at Mumbai.

Sd/-	*Sd/-*
(SAKTIJIT DEY)	**(NARENDRA KUMAR BILLAIYA)**
VICE PRESIDENT	**ACCOUNTANT MEMBER**

Mumbai, Dated 22/09/2025
SC SAP

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि ,आयकर अपीलीय अधिकरण, मुंबई /DR,ITAT, Mumbai,
6. गार्ड फाई/ Guard file.

आदेशानुसार/ **BY ORDER**
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Assistant Registrar
आयकर अपीलीय अधिकरण
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