

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

Before **Shri N.V.Vasudevan, Judicial Member** and  
**Shri Waseem Ahmed, Accountant Member**

**ITA No.2232/Kol/2013**  
Assessment Year :2008-09

M/s Knoria Chemicals & Industries Ltd., Park Plaza Building, 71 Park Street, 7 <sup>th</sup> Floor, Kolkaata-700 016 <b>[PAN No.AABCK 1291 K]</b>	V/s.	Addl. CIT Range-10, Aayakar Bhawan, P-7, Chowringhee Square, Kolkata-700 069
अपीलार्थी /Appellant	..	प्रत्यर्थी/Respondent

अपीलार्थी की ओर से/By Appellant	Shri S. Jhajharia, AR & Shri Sujoy Sen, AR
प्रत्यर्थी की ओर से/By Respondent	Shri G. Mallikerjula, CIT-DR
सुनवाई की तारीख/Date of Hearing	08-11-2016
घोषणा की तारीख/Date of Pronouncement	18-01-2017

**आदेश /ORDER**

**PER Waseem Ahmed, Accountant Member:-**

This appeal by the assessee is against the order of Commissioner of Income Tax (Appeals)-XII, Kolkata dated 12.03.2013. Assessment was framed by ACIT, Range-10, Kolkata u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') vide his order dated 27.09.2010 for assessment year 2008-09.

Shri S.Jhajharia & Shri Sujoy Sen, Ld. Authorized Representatives appeared on behalf of assessee and Shri G. Mallikerjuha, Ld. Departmental Representative appeared on behalf of Revenue.

2. Briefly, the facts are that the assessee in the present case is a Limited Company and engaged in the business of manufacturing of caustic soda, stale bleaching power, lindane, aluminium chloride, poly aluminium chloride, salt,

pentaerythritol, acetaldehyde, formaldehyde, hexamie, industrial alcohol, acetic acid, power CPW etc., The assessee for the year under consideration has filed its return of income dated 30.09.208 declaring total income of Rs.18,36,02,250/-. Thereafter case was selected under scrutiny and accordingly notice u/s 143(2) / 142(1) were issued upon the assessee. The assessment was completed u/s 143(3) of the Act at a total income of Rs.18,64,20,660/- under the Income Tax Act.

3. First issue raised by assessee in this appeal is that learned CIT(A) erred in disallowing the amount of bad debts written off in the year under consideration under the normal provisions of Income Tax Act for Rs.49,21,899.00.

4. At the outset we find that the AO has disallowed the provisions for bad & doubtful debts for Rs. 49,21,899.00 while working out the book profit for the computation of Tax under the provisions of section 115JB of the Act. The Id. CIT(A) has confirmed the same in terms of clause (i) to explanation 1 of section 115 JB of the Act which was brought to tax by the Finance Act 2009. From the perusal of the records we find that the AO has never disallowed the provision for bad and doubtful debts under the normal provisions Act. As the disallowance of bad & doubtful debts is not arising from the order of AO and the same has not been dealt by the learned CIT(A) in his appellate order. Accordingly we hold the issue raised by the assessee as infructuous. Thus the ground raised by assessee is dismissed.

5. Second issue raised by assessee in this appeal is that Ld. CIT(A) erred in confirming the order of AO by sustaining the disallowance of Rs.28,11,410/- u/s 14A of the Act r.w.s Rule 8D(ii)&(iii) of the IT Rules, 1962, ('the Rules' for short).

6. The assessee, during the year has earned dividend income of Rs. 14,34,965/- which was claimed as exempted income u/s 10(34) of the Act. On question by the AO about the expenses incurred in connection with the aforesaid income, assessee submitted that no expenditure has been incurred for the earning of aforesaid dividend income. However, AO disregarded the

claim of assessee and worked out the disallowance u/s. 14A r.w.s. Rule 8D(ii) & (iii) of the IT Rules for Rs.25,27,310/- and Rs. 2,84,100/- respectively. The aforesaid disallowance was added to the total income of assessee.

7. Aggrieved, assessee preferred an appeal before Ld. CIT(A) whereas assessee submitted that shares held as investment were acquired long back and out of own fund. There was no borrowed fund used by assessee for making such investment in shares. Therefore, the provision of Sec. 14A r.w.s. Rule 8D are not applicable to the assessee. The assessee also submitted that the AO also failed to bring anything on record to prove the expenses incurred in connection with the dividend income. However, Ld. CIT(A) after considering the submissions of assessee and the assessment order of AO disregarded the plea of assessee and confirmed the order of AO by observing as under:-

*6. Appeal on ground no. 3 is against the addition of Rs.2811410/- u/s. 14A of the IT Act, 1961 read with Rule 8D. The AR has submitted that AO's action of calculation of expenses for earning the exempted income under Rule 8D is not justified. I have considered the submission of the AR and the AO's calculation. I find that after the amendment in Sec. 14A the IT Act, 1961 the word used is "the AO shall determine the amount of expenditure incurred in relation to .....". Thus, here it is mandatory for the AO to calculate expenses under Rule 8D for earning the exempted income w.e.f. 01-04-2007. Accordingly, assessee's appeal on ground no. 3 is dismissed."*

Aggrieved by this, assessee has come up an appeal before us.

8. Before us Ld. AR for the assessee filed paper book which is running pages from 1 to 133 and reiterated same submissions as made before Ld. CIT(A). He prayed that the issue may be decided on merit. On the other hand, Ld. DR vehemently relied on the order of Authorities Below.

9. We have heard the rival contentions of both the parties and perused the materials available on record. The issue in the instant case relates to the disallowance of expenses in terms of rule 8D(ii) and (iii) of Income Tax Rules 1962 by the AO which was subsequently confirmed by the Id. CIT(A). From the perusal of the records, *admittedly*, the investment was made by the

assessee in the earlier years but the learned AR has not brought anything on record before us whether the investment in the earlier years was made out of the own funds of the assessee. In our considered view it is the duty of the assessee to justify on the basis of evidences that the investment was made out of own funds. In this connection we rely in the judgment of Hon'ble Calcutta High Court in the case of Dhunaka & Sons reported in 339 ITR 319. The relevant extract of the judgment is reproduced below :

*“In our opinion, the mere fact that those shares were old ones and not acquired recently is immaterial. It is for the assessee to show the source of acquisition of those shares by production of materials that those were acquired from the funds available in the hands of the assessee at the relevant point of time without taking benefit of any loan. If those shares were purchased from the amount taken in loan, even for instance, five or ten years ago, it is for the assessee to show by the production of documentary evidence that such loaned amount had already been paid back and for the relevant assessment year, no interest is payable by the assessee for acquiring those old shares. In the absence of any such materials placed by the assessee, in our opinion, the authorities below rightly held that proportionate amount should be disallowed having regard to the total income and the income from the exempt source. In the absence of any material disclosing the source of acquisition of shares which is within the special knowledge of the assessee, the assessing authority took a most reasonable approach in assessment.”*

Similarly the next issue arises whether the disallowance to be made under section 14A r.w.s rule 8D of Income Tax Rules shall also be added in the computation of book profit in terms of clause (f) of explanation 1 to section 115JB of the Act. From the provision of section it is clear that the expenses incurred on the earning of exempted income are liable to be added in the working of the book profit. Therefore we hold that the expenses to be disallowed by the AO in terms of rule 8D(ii) and (iii) of Income Tax Rules 1962 would be added to the book profit as specified under section 115JB of the Act. In this connection we also rely in the order of Hon'ble ITAT in the case of DCIT Vs. Sobha Developers in ITA 1410/Bang/2013 vide order dated 9.1.2015. The relevant extract of the order is reproduced below :

*“In our opinion, the question formulated by the CIT(A) whether Sec. 14A of the Act read with Rule 8D of the rules can be imported into the ITA*

No. 1410/Bang/2013 Page 23 of 25 provisions of clause (f) to Explanation (1) to section 115JB of the Act, is itself erroneous. The question to be asked is as to how to give effect to the provisions of clause (f) to Explanation (1) to section 115JB of the Act. We do not think that there is any prohibition to adopt the disallowance made by the AO u/s.14A of the Act read with Rule 8D of the rules, while computing total income under the normal provisions of the Act. The argument of the learned counsel for the Assessee that section 14A of the Act is very specific and is applicable only for the purpose of computing total income under Chapter IV of the Act and that section 115JB appears in Chapter XIIB of the Act dealing with specific provisions relating to certain companies and therefore the provisions of Sec.14A read with Rule 8D of the Rules cannot be applied while making addition to net profit as per profit and loss account u/s.115JB Expln.1 clause (f) of the Act, because the expression "expenditure relatable" is used in sub-clause (f) of Explanation (1) to section 115JB of the Act whereas expression with the expression used in 14A of the Act is "expenditure incurred by the assessee in relation to" and therefore only direct expenditure attributable to earning of income which does not form part of the total income under the Act can be added under clause(f) of Expln.1 below Sec.115JB(2) of the Act, cannot be accepted. In our view, there is no difference between the expression "expenditure relatable" and the expression "expenditure incurred by the Assessee in relation to". Both the expressions mean that whatever expenditure are incurred to earn income which does not form part of the total income under ITA No. 1410/Bang/2013 Page 24 of 25 the Act, both direct and indirect expenditure, have to be disallowed. There is no basis for the argument u/s. 115JB of the Act, it is only direct expenses that are contemplated as capable of being added to the profits as per P&L account under clause (f) to Expln.1 below Sec.115JB(2) of the Act."

As the issue of disallowance in terms of rule 8D(ii) and (iii) of Income Tax Rules 1962 has been restored to the AO for fresh adjudication, therefore we are inclined to restore this issue as well to the AO for fresh adjudication as per law with the direction to make the addition of the expenses in the book profit as to be worked out in terms of ground no. 2 of this appeal. Hence this ground of appeal of assessee is allowed for statistical purposes.

10. Third issue raised in this appeal of assessee is that Ld. CIT(A) erred in confirming the order of the AO by sustaining the addition of Rs. 10 lacs on account of excess book depreciation.

11. At the outset the learned AR has submitted that the depreciation has been disallowed for Rs. 31,86,80,0254.00 for working out the book profit under the provisions of MAT but the actual amount of depreciation debited in the P&L account was of Rs. 31,76,80,025.00. Therefore the excess amount of depreciation of Rs.10 Lacs has been added in the book profit. Accordingly the learned AR requested us to delete the same. However from the perusal of assessment order we find that the AO has added the amount of the depreciation for Rs. 31,86,80,0254.00 for working out the profit as per the provisions of section 115 JB of the Act. The learned DR raised no objection if the matter is restored to the learned CIT(A) for fresh adjudication as per law & after verification of the depreciation amount. Thus in the interest of justice and fair play we are inclined to restore this issue to the file of Id. CIT(A) for fresh adjudication as per law with the direction to ascertain the actual amount of depreciation. Hence this ground of appeal of the assessee is allowed for statistical purposes.

12. Fourth issue raised by assessee in this appeal is that Ld. CIT(A) erred in confirming the addition of Rs.49,21,899/- on account of bad debt which were actually written off in the books of account while working out the book profit u/s. 115JB of the Act.

13. At the outset we find that the learned AR has not brought anything on record to demonstrate that the provisions for the bad and doubtful debts have actually been written off in the books of accounts and in the ledgers of respective parties. As per the provisions of section 115 JB of the Act the amount of book profit will not be increased by the amount of bad debts actually written off in the books of accounts. Accordingly we in the interest of justice & fair play we are inclined to restore this issue to the file of learned CIT(A) for fresh adjudication as per law with the direction to the assessee to produce necessary documents to justify that the amount of bad and doubtful debts has actually been written off in the books of accounts of the assessee. Hence this ground of appeal of assessee is allowed for statistical purposes.

14. Fifth issue in this appeal of assessee is that Ld. CIT(A) erred in confirming the addition of Rs.14,34,965/- while computing the book profit u/s. 10(34) of the Act.

15. The AO at the time of assessment under section 143(3) of the Act has not reduced the dividend income while computing book profit under the provisions of section 115JB of the Act. The Id. CIT(A), on appeal has also upheld the order of AO.

16. We have heard the rival contentions of both the parties and perused the materials available on record. At the outset we find that the assessee is entitled for the reduction of dividend income while computing the book profit in terms clause (ii) of explanation 1 to section 115JB of the Act if such amount is credited to the profit and loss account. Hence this ground of appeal of the assessee is allowed.

17. Sixth issue raised in this appeal of assessee is that Ld. CIT(A) erred in confirming the order of AO by sustaining the disallowance of Rs.27.50 lakh on account of Fringe Benefit Tax.

The AO at the time of assessment under section 143(3) of the Act has not reduced the FBT for Rs. 27.50 lacs while computing book profit under the provisions of section 115JB of the Act. The Id. CIT(A), on appeal has also upheld the order of AO.

18. We have heard the rival contentions of both the parties and perused the material available on record. At the outset we find that the assessee is entitled for the reduction of FBT while computing the book profit in terms of circular no. 8/2005 issued on 29/8/2005 if such a amount is debited to the profit and loss account. Hence this ground of appeal of the assessee is allowed.

19. Seventh ground not pressed by Ld. AR for the assessee. Hence, same is dismissed as not pressed.

20. Eighth issue raised by assessee in this appeal is that Ld. CIT(A) erred in not adjudicating the Ground No.1 of the additional ground of appeal filed before him on 07.11.2012.

21. At the outset, we find that the additional ground was raised by assessee before Ld. CIT(A) which has not been adjudicated by the Ld. CIT(A) on merit. Accordingly, Ld. AR before us prayed for restoration of this issue back to the file of Ld. CIT(A) for fresh adjudication after providing reasonable opportunity of being heard to assessee. On the other hand, Ld. DR raised no objection if the issue restore back to the file of Ld. CIT(A). Accordingly in the interest of justice and fair play we are inclined to restore this issue back to the file of Ld. CIT(A) for fresh adjudication as per law. Hence, this ground of assessee is allowed for statistical purpose.

**22. In the result, assessee's appeal stands partly allowed for statistical purpose.**

Order pronounced in the open court 18/01/2017

Sd/-  
(न्यायिक सदस्य)  
(N.V.Vasudevan)  
(Judicial Member)  
Kolkata,

Sd/-  
(लेखा सदस्य)  
(Waseem Ahmed)  
(Accountant Member)

\*Dkp, Sr.P.S

दिनांक:- 18/01/2017 कोलकाता ।

**आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-**

1. अपीलार्थी/Appellant-M/s Kanoria Chemicals & Industries Ltd. Park Plaza Bldg., 71.  
Park Street, 7<sup>th</sup> Floor, Kolkata-700 016
2. प्रत्यर्थी/Respondent-Addl. CIT, Rang-10, Aayakar Bhawan, P-7, Chowringhee Sq.Kol-69
3. संबंधित आयकर आयुक्त / Concerned CIT Kolkata
4. आयकर आयुक्त- अपील / CIT (A) Kolkata
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

By order/आदेश से,

/True Copy/

उप/सहायक पंजीकार  
आयकर अपीलीय अधिकरण,  
कोलकाता ।