



Whether disallowance made u/s. 14A read with Rule 8D can be added to the Book Profit u/s. 115JB of the I.T. Act, 1961.

The applicability of the provision of Section 14A read with Rule 8D of the Rules to Clause (f) of Explanation to Section 115JB of the Act while computing adjusted book profit has been a matter of debate.

Issue:

When addition is made u/s. 14A read with Rule 8D to the total income, question arises whether book profit u/s. 115JB is required to be recomputed by adding the sum disallowed u/s. 14A being adjustment as per Explanation 1(f) to Section 115JB of the Act.

We must refer to provisions of Section 115JB, Explanation 1 (f) to Section 115JB, Provisions of Section 14A and Rule 8D of Income Tax Rules.

Proposition:

It is submitted that Provisions of Sub-section 2 & 3 of Section 14A cannot be imported into clause (f) of the Explanation to Section 115JB of the Act. As per Clause (f) of Explanation 1 to Section 115JB refers to amount debited to the P & L Account, which can be added back to the book profit while computing the book profit u/s. 115JB.

View against the Proposition:

1. The provision of Section 115JB of the Act read with Explanation 1(f) provides that the amount of expenditure relatable to income, to which Section 10 applies, should be added to the profit as per the P & L account.

2. There is no 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 taxpayer 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 cannot be accepted.
3. The argument that Section 115JB appears in Chapter XIIB of the Act dealing with specific provision relating to certain companies and therefore the provisions of Section 14A read with Rule 8D of the Rules cannot be applied while making an addition to the net profit u/s. 115JB of the Act cannot be accepted.
4. The argument that 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 Explanation 1 below Section 115JB of the Act, cannot be accepted.
5. There is no difference between the expression “expenditure relatable” and the expression “expenditure incurred by the assessee in relation to both the expressions means that whatever expenditures are incurred to earn income which does not form part of the total income under the Act, both direct and indirect expenditure, have to be disallowed.
6. There is no basis for the argument u/s. 115JB of the Act that it is only direct expenses that are contemplated as capable of being added to the profits as per the profit and loss account under

Controversies

clause (f) to Explanation 1 to section 115JB(2) of the Act.

7. Accordingly, the disallowance u/s. 14A will be applicable while arriving at the book profits u/s. 115JB(2) of the Act read with Explanation 1(f) thereto.

Let me now refer to the decision of Hon. ITAT Mumbai Bench in the case of DCIT vs. Viraj Profiles Ltd. the Hon. Tribunal took the view that disallowance u/s. 14A is required to be added to the book profit u/s. 115JB of the Act. The Hon. Tribunal held as under:

We have observed that Section 115JB starts with non-obstante clause “Notwithstanding anything contained in any other provision in this act...” meaning thereby that the Section 115JB shall be applicable notwithstanding anything contained in any other provision of the Act and shall have overriding effect upon other provisions of the Act. The Section 115JB stipulates payment of Minimum Alternate tax based upon the book profit computed as per provisions of Section 115JB (2). Book Profit shall be computed as per Section 115JB (2) which stipulate that Book Profit means net profit as shown in Profit and Loss Account prepared for financial year in accordance with Part II and III of Schedule VI to the Companies Act, 1956, also complying with other conditions as stipulated in Section 115JB(2). Such book profit has to be increased by item Nos. (a) to (k) of the said Explanation 1 to Section 115JB of the Act if they are debited to the Profit and Loss Account and from such profit item Nos. (i) to (viii) of the Explanation are to be reduced. The figure arrived at after the above exercise is the book profit of the assessee for the relevant previous years. The explanation 1 to clause (f) to Section 115JB (2) stipulate that amount of expenditure relatable to any exempt income, other than Section 10(38), is liable to be added back to net profit shown in Profit and Loss Account if the amount refer to therein is debited to Profit and Loss Account.

Further perusal of Section 14A of the Act provides that it mandates disallowance of expenditure ‘in relation’ to the income which does not form part of the total income under the Act while clause (f) in explanation 1 to Section 115JB (2) of the Act mandates disallowance of expenditure ‘relatable’ to the income to which Section 10 (other than Section 10(38) of the Act) or Section 11 or Section 12 of the Act applies. The close perusal of the both the above provisions reveals that more or less similar language is used in both the afore-stated provisions. The dividend income is declared on the share investment which is exempt u/s 10(33) (not Section 10(38)). We also note that the clause (f) to explanation 1 to Section 115JB (2) requires expenditure relatable to the exempt income to be disallowed provided the same is debited to Profit and Loss Account while Section 14A(2) mandates that if the AO is not satisfied with the correctness of the claim of the assessee with regard to the expenditure incurred by the assessee in relation to the income which does not form part of the total income, then disallowance shall be computed in accordance with the prescribed method. Rule 8D of Income Tax Rules, 1962 prescribes the method for computing disallowance of expenditure in relation to earning of exempt income. The said Rule 8D of Income Tax Act, 1961 is a machinery provision to compute disallowance of expenditure u/s 14 in relation to the income which does not form part of the total income and is held to be applicable w.e.f. assessment year 2008-09 as held by Hon’ble Bombay High Court in Godrej and Boyce Manufacturing Limited ITA No. 626 of 2010 & WP no. 758 of 2010(Bom.) decision. The impugned assessment year under appeal in present case is also assessment year 2008-09 and hence Section 14A read with Rule 8D of Income Tax Rules, 1962 is applicable.”

It is further submitted that Mumbai Tribunal in the case of ITO vs. RBK Share Broking (P.) Ltd. (2013) 159 TTJ 16(Mum) and in the case of Dabur India Ltd. vs. ACIT (2013) 145 ITD 175 (Mum) held

that expenditure incurred to earn exempt income will be disallowed u/s. 14A and also in-computing MAT Profit while computing MAT profits.

Recently, the Bangalore Bench of the Income Tax Appellate Tribunal (the Tribunal) in the case of Sobha Developers Vs. DCIT(ITA No. 1410/Bang/2013)(Bang)-Taxesutra.com(the taxpayer) held that disallowance u/s. 14A read with rule 8D of the Income Tax Rules, 1962 (the rules) is applicable while computing book profits u/s. 115JB of the income tax Act, 1961.

View in Favour of Proposition:

It is submitted that when no expenditure is debited to p& l Account and disallowance u/s. 14A is on account of deeming fiction i.e. by applying the formula when some expenditure is disallowed u/s 14A there is no case for making adjustment in the book profit as provided u/s. 115JB of the Act.

The Delhi Tribunal in the case of Quippo Telecom Infrastructure Ltd. has held that disallowance u/s. 14A of the Act cannot be made while computing the book profit u/s. 115JB of the Act since no actual expenditure was debited in the P & L Account relating to the earning of exempt income. The clause (f) of Explanation to Section 115JB refers to the amount debited to the P & L Account which can be added back to the book profit while computing book profit u/s. 115JB of the Act.

Further, the Delhi Tribunal in the case of Goetze (India) Ltd. has held that provisions of sub-section (2) and sub-section (3) of section 14A cannot be imported into clause (f) of Explanation to Section 115JA while computing adjusted book profit.

Recently, Ahmedabad Tribunal in the case of DCIT Vs. Alembic Ltd. in ITA No. 1928/Ahd/2010 and CO No. 204/Ahd/2010, dated 27/03/2014 for A.Y. 2007-08, relying on the Mumbai Tribunal in the case of M/s. Essar Technologies Ltd. vs. DCIT in ITA No. 3850/Mum/2010 held that provisions of sub-section 2 & 3 of section 14A cannot be

imported into clause (f) of the Explanation to Section 115JB of the Act.

Following authorities have also taken the same view.

- (a) ACIT vs. Spray Engineering Devises Ltd. 53 SOT 70 (Chan.) (A.Y. 2008-09)
- (b) Reliance Petroproducts Pvt. Ltd. vs. ACIT in ITA No. 2324/Ahd/2009, dated 13/07/2012
- (c) Atul Ltd. vs. ACIT in ITA No. 8.Ahd/2013, dated 11/10/2013

Let me now refer to the decision in the case of MindaSai Ltd. vs. ITO (2015) 167 TTJ 689 (Delhi) (Trib.), in this case the Hon. Tribunal held that the adjustment had to meet tests of law and what is considered to be Expenditure relatable to exempt income for the purpose of Section 14A cannot be subjected to adjustment of book profit u/s. 115JB of the Act. There is no provision under the law to make such adjustment. Fact that assessee may have accepted disallowance affects that disallowance only and nothing more. It dose not clothe such an adjustment in computing book profit u/s. 115JB with legality.

Summation:

At the outset let me deal with in issue of company earning dividend income and claiming exempt u/s. 14A read with Rule 8D of I.T Rules. It is submitted that in case of exempt income there is no question of invoking section 14A of the Act. In the case of DCIT vs. Viraj Profiles Ltd. ITAT Mumbai Bench with respect misdirected itself by holding that even in respect of exempt income provision of section 14A applies, in fact the Hon. ITAT held as under:

“The revenue has issued circular no. 5/2014 dated 11/02/2014 that even in case of absence of exempt income, Section 14A disallowance shall be mad in case the assessee has made investments which are capable of yielding exempt income even though

Controversies

there might not be an actual receipt of exempt income.

We are also guided by the decision of Special Bench, Delhi Tribunal in the case of Cheminvest Ltd. (2009) 121 ITD 318 (SB) in which the question, whether disallowance u/s. 14A of the Income Tax Act can be made in a year in which no exempt income has been earned or received by the assessee, is answered affirmatively against the assessee and in favour of the revenue.”

However, the Hon. ITAT has missed the bus by not referring to various judgments i.e. Shivam Motors P. Ltd. (TS-6147-HC-2014 (Allahabad)-O), CIT VsCorrtech Energy Pvt. Ltd. (TS-5307-HC-2014 (Gujarat)-O), Cheminvest Ltd. vs. CIT (TS-5471-HC-2015(Delhi)-O), CIT vs. Delite Enterprise (TS-6069-HC-2009(Bombay)-O), CIT vs. Lakhani Marketing (TS-5697-HC-2009(Punjab and Haryana)-O), CIT vs. Winsome Textiles Industries Ltd. (TS-5697-HC-2009)Punjab & Haryana)-O)- wherein it has been held that when there is no exempt income and no claim for exemption, Section 14A read with Rule 8D have no application and no disallowance can be made.

With respect to the re-computation of the book profit u/s. 115JB by adding disallowance u/s. 14A it is submitted that as observed in Apollo Tyres Ltd. vs. CIT 255 ITR 273(SC) by Apex court that where P & L account has been prepared in accordance with part II and III of schedule VI to the Companies Act, 1956 and which has been scrutinized and certified by the statutory auditors and relevant authorities, the AO has no power to scrutinize the net profit and loss account except to the extent provided in the explanation to Section 115JB. Same view has been reiterated by Ho’ble Bombay High Court in Kinetic Motor Co. Ltd. vs. DCIT wherein it has been held that there is no scope for the AO to make adjustment to Book Profits beyond what was authorized by the definition in Explanation 1 to Section 115JB.

It is submitted that the term book profit has been defined as the net profit as per P & L Account as adjusted in accordance with the statutory additions and statutory deductions as provided. The AO cannot go beyond the net profit as shown in the P & L Account except to the extent provided in the explanation to Section 115JB and hence the CIT (A) held that the AO while computing Book Profit u/s. 115JB cannot make disallowance u/s. 14A as such disallowance are not covered by the exceptions as provided in the explanation to section 115JB.

To conclude this most important controversy, let me now refer to the decision of DCIT, Circlr 1(1), Baroda vs. Alembic Ltd. ITA No. 1928/Ahd/2010. The Hon. Tribunal held as under:

“We have heard the rival contentions and perused the material on record. As this issue has been set aside to the AO for re-computation of disallowance u/s. 14A, however, for making adjustment u/s. 115JB, the ITAT, Mumbai Bench in case of M/s. EssarTeleholdings Ltd. (supra) held that Provisions of sub-section 2 & 3 of section 14A cannot be imported into Clause (f) of the Explanation to Section 115JB which refers to amount debited to the P & L Account, which can be added back to the book profit while computing the book profit u/s. 115JB. Similar views have been taken by the ITAT, Delhi Bench in case of Goetze (India) Ltd. (supra). Therefore, we hold that adjustment made by the AO is not as per law. Accordingly, we dismiss the Revenue’s appeal on this ground.”
