

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ
IN THE INCOME TAX APPELLATE TRIBUNAL,
" D " BENCH, AHMEDABAD
(CONDUCTED THROUGH VIRTUAL COURT AT AHMEDABAD)

BEFORE SHRI RAJPAL YADAV, VICE PRESIDENT
And
SHRI WASEEM AHMED, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No. 1660/AHD/2019
निर्धारण वर्ष/Asstt. Year: 2011-12

Cadila Healthcare Ltd., Zydus Corporate Park, Plot No.103, Nr. Nirma University, Mouje-Khoraj, S.G. Highway, Ahmedabad. PAN: AAACC6253G	Vs.	D.C.I.T., Circle-1(1)(2), Ahmedabad.
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(Applicant)		(Respondent)
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Assessee by	:	Shri Mukesh Patel, A.R
Revenue by	:	Shri Mohd. Usman, C.I.T..D.R

सुनवाई की तारीख/**Date of Hearing** : **09/12/2021**
घोषणा की तारीख /**Date of Pronouncement**: **20/12/2021**

आदेश/ORDER

PER WASEEM AHMED, ACCOUNTANT MEMBER:

The captioned appeal has been filed at the instance of the Assessee against the order of the Learned Commissioner of Income Tax(Appeals)-1, Ahmedabad, dated 10/09/2021 arising in the matter of assessment order passed under s.154 of the Income Tax Act, 1961 (here-in-after referred to as "the Act") relevant to the Assessment Year 2011-12.

2. The only issue raised by the assessee is that the learned CIT (A) erred in confirming the order of the AO by sustaining the addition of Rs. 6,27,24,263.00 while determining the book profit under the provisions of section 115JB of the Act.

3. The facts in brief are that the assessee in the present case is a limited company and filed its return of income dated 28-11-2011 for the year under consideration after making Suo-Moto disallowance of Rs. 6,27,24,263.00 under the provisions of section 14-A read with rule 8D of Income Tax Rule. However, the AO in the assessment framed under section 143(3) r.w.s. 144C(3) of the Act, inter-alia, has made the disallowance of Rs. 10,25,89,555.00 under the provisions of section 14A read with rule 8D under the normal computation of income. Thus, there was less disallowance made by the assessee while determining the income under normal computation of income by Rs. 3,98,65,292.00 (Rs. 10,25,89,555.00 minus 6,27,24,263.00). Accordingly, the AO enhanced the disallowance by Rs. 3,98,65,392.00 while determining the income under normal computation of income in the assessment framed under section 143(3) r.w.s. 144C(3) of the Act.

3.1 The AO has also made the similar addition of Rs. 3,98,65,392.00 while determining the book profit under the provisions of section 115 JB of the Act in the assessment framed under section 143(3) r.w.s. 144C(3) of the Act.

3.2 Subsequently, the AO found that total disallowance that is to be made under the provisions of section 14A read with rule 8D of Income Tax Rules stands at Rs. 10,25,89,555.00 but the assessee has Suo-Moto made the disallowance of Rs. 6,27,24,263.00 under normal computation of income which was omitted to be added to the book profit under section 115JB of the Act. Thus, addition for the amount of Rs. 6,27,24,263.00 was to be made under MAT provisions. However, the AO found that there was the need of 100% addition of Rs. 10,25,89,555.00 while

determining the book profit under the provisions of section 115 JB of the Act. But the same was not done in the assessment framed under section 143(3) r.w.s. 144C(3) of the Act. Accordingly, the AO rectified the assessment under the provisions of section 154 of the Act and made the addition of Rs. 6,27,24,263 while working out the book profit under the provisions of section 115 JB of the Act.

4. Aggrieved assessee preferred an appeal to the learned CIT (A) who confirmed the order of the AO by observing as under:

4.3. I have carefully considered the facts of the case, assessment order and submission of the appellant. The appellant has made suo-moto disallowance of Rs.6,27,24,263/- u/s. 14A of the Act in the normal computation of income but has not made any adjustment to this effect in computation u/s. 115JB of the Act. The AO in order passed u/s.143(3) has made disallowances of RS.10,25,89,555/-u/s 14A of the Act in normal computation of income and made adjustment of only Rs.3,98,65,292/- to this effect in computation of book profit. The AO accordingly rectified order u/s, 143(3) for the addition of disallowances made u/s. 14A in the computation of book profit. The appellant has contended that 14A disallowances is not to be made while computing the book profit and relied upon decision of Hon'ble ITAT special bench in the case of Vireet Investment Pvi. Ltd. (2017) 82Taxmann.com 415 (Delhi Tribunal) (SB).

4.4. It is seen that the appellant has suo-moto allocated expenditure of Rs.6,27,24,263/- to earn the exempt income and has made disallowance of the same u/s. 14A in the normal computation of income. However, appellant has not added the same in the book profit as required as per clause (f) of explanation 1 to section 115JB(2). Appellant contentions that disallowances made u/s. 14A is not to be added while computing book profit is not tenable as High Court in the case of CIT V/s. Alembic Limited lax appeal no. 1249 of 2014 has upheld the suo-moto disallowances as under: —

"94. We have considered the rival submission and we find that similar issue was raised by Revenue as per ground No.3 above in respect of regular assessment of income and while deciding that ground, we have already upheld that disallowance of Rs.5 lakh in respect of administrative expenses will meet the ends of justice and no disallowance is called for in respect of interest expenditure. Hence, for the purpose of computing book profit u/s. 115JB of the Act also, we hold accordingly and confirm the addition of Rs.5 lakh. This ground of Revenue's appeal is partly allowed.

4.5 The Hon'ble Gujarat High Court in the recent decision in the case of PCIT V/s. Nirma Chemicals Works Limited Tax appeal no. 128 of 2019 decided on 24/06/2019 has also confirmed the addition in book profit of ad-hoc disallowances as under:

25.7 Now the question arises to determine the disallowance as per the clause (f) to Explanation-1 C/TAXAP/128/2019 ORDER of Sec. 115JB of the Act in dependently on account of dividend income. However, we also note that there is no mechanism given under the clause (f) to Explanation-1 of Sec, 115JB of the Act to workout/determine the disallowance- Therefore in the given facts & circumstances, we feel that ad- hoc disallowance will service the justice to the Revenue and assessee. Therefore to put the dispute to rest in given facts & circumstances, we direct for the ad-hoc disallowance to avoid the multiplicity of the proceedings and

unnecessary litigation. Thus we direct the AO to make the disallowance of Rs.5 Lacs under clause (f) to Explanation-1 of Sec.115 JB of the Act.

25.8 We also feel to bring this fact on record that we have restored other cases involving identical issues to the file of AO for making the disallowance as per the clause (f) to Explanation of Sec. 115JB of the Act independently. But now we are of the view that as there is no mechanism provided under the clause (f) to Explanation-1 of Sec. 115JB of the Act to make the disallowance independently, therefore there would be unnecessarily further litigation, if the matter is sent back to the file of AO.

25.9 Thus, considering the peculiar circumstances of the case, we propose to limit the disallowance on an ad-hoc basis for Rs.5 Lacs as per the clause (f) to Explanation-1 of Sec. 115JB of the Act. Thus the ground of appeal of the Revenue is partly allowed."

*4.6 As the appellant itself has computed the expenditure of Rs.6,27,24,263/- to earn the exempt income the adjustment as per clause to explanation 1 of 115JB has to be made. Accordingly the grounds of appeal is **dismissed**.*

5. Being aggrieved by the order of the learned CIT (A), the assessee is in appeal before us.

6. The learned AR before us contended that the issue of making the addition under clause (f) of section 115 JB of the Act taking the amount disallowed under the provisions of section 14A read with rule 8D of Income Tax Rule is a debatable issue which cannot be rectified under the provisions of section 154 the Act.

7. On the contrary, the learned DR before us vehemently supported the order of the authorities below.

8. We have heard the rival contentions of both the parties and perused the materials available on record. The issue in the present case relates whether the AO can rectify the assessment order, framed under section 143(3) r.w.s 144C(3) of the Act for the mistakes committed by him, in the proceedings under section 154 of the Act. The scope of the provisions of section 154 of the Act is limited to the extent of rectifying any mistake apparent from the record. The provisions of section 154 of the Act reads as under: —

*"154. (1) With a view to rectifying any mistake apparent from the record an income-tax authority referred to in section 116 may—
(a) amend any order passed by it under the provisions of this Act;
(b) amend any intimation sent by it under sub-section (1) of section 143, or enhance or reduce the amount of refund granted by it under that sub-section."*

8.1 The opening words in section 154 of the Act makes it amply clear that this provision has a limited application as it can be invoked only with a view to rectifying any mistake apparent from the record. The apparent mistake refers the mistake which is patent, obvious and whose discovery does not require further investigation. Thus, it is transpired that debatable issues cannot be rectified under the provisions of section 154 of the Act. Now, we need to ascertain whether the issue on hand is debatable issue. In this connection, we find that there are series of judgments of Tribunal and Hon'ble High Courts wherein it was held that the disallowance made under section 14A r.w.r. 8D in determining the normal computation of income cannot be imported while computing the book profit under section 115 JB of the Act. For example, the Delhi tribunal in the case of ACIT vs. Vireet Investment Pvt. Ltd. reported in 82 Taxmann.com 415 has held that the disallowances made u/s 14A r.w.r. 8D cannot be the subject matter of disallowances while determining the book profit u/s 115JB of the Act. The relevant portion of the said order is reproduced below:

"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."

8.2 Likewise, the Hon'ble Gujarat High Court in the case of CIT Vs. Alembic Limited in tax appeal No. 1249 of 2014 has not confirmed the disallowance in the manner as provided under section 14A r.w.r. 8D of Income Tax Rules. The relevant extract reads as under:

"94. We have considered the rival submission and we find that similar issue was raised by Revenue as per ground No.3 above in respect of regular assessment of income and while deciding that ground, we have already upheld that disallowance of Rs.5 lakh in respect of administrative expenses will meet the ends of justice and no disallowance is called for in respect of interest expenditure. Hence, for the purpose of computing book profit u/s. 115JB of the Act also, we hold accordingly and confirm the addition of Rs.5 lakh. This ground of Revenue's appeal is partly allowed."

8.3 Moving further, we also note that the Hon'ble Gujarat High Court in the case of PCIT Vs. Nirma chemicals works Ltd. in Appeal No. 28 of 2019 vide order dated 24-06-2019 has upheld the disallowance under clause (f) of section 115JB of the Act on estimated basis and not in the manner as provided under section 14A read with rule 8D of income tax rules.

8.4 It is also pertinent to note that if the disallowance needs to be made while calculating the book profit, the same needs to be made in the manner as provided under clause (f) to Explanation-1 of Sec. 115JB of the Act independently. In holding so, we draw support from the judgment of Hon'ble Calcutta High Court in the case of *CIT Vs. Jayshree Tea Industries Ltd.* in GO No.1501 of 2014 (ITAT No.47 of 2014) dated 19.11.14 wherein it was held that the disallowance regarding the exempted income needs to be made as per the clause (f) to Explanation-1 of Sec. 115JB of the Act independently. The relevant extract of the judgment is reproduced below:-

"We find computation of the amount of expenditure relatable to exempted income of the assessee must be made since the assessee has not claimed such expenditure to be Nil. Such computation must be made by applying clause (f) of Explanation 1 under section 115JB of the Act. We remand the matter for such computation to be made by the learned Tribunal. We accept the submission of Mr. Khaitan, learned Senior Advocate that the provision of section 115JB in the matter of computation is a complete code in itself and resort need not and cannot be made to section 14A of the Act."

8.5 Given above, we hold that the disallowances made under the provisions of Sec. 14A r.w.r. 8D of the IT Rules, cannot be applied to the provisions of Sec. 115JB of the Act as per the direction of the Hon'ble Calcutta High Court in the case of *CIT Vs. Jayshree Tea Industries Ltd.* (Supra).

8.6 From the above it is revealed that there is no ambiguity to the fact that no disallowance can be made while computing the book profit under the provisions of section 115 JB of the Act in the manner as provided under section 14A read with rule 8D of income tax rules. Thus, the issue on hand cannot be rectified in the proceedings initiated under section 154 of the Act being a debatable issue. Hence, we set aside the finding of the learned CIT (A) and direct the AO to delete the

addition made by him. Thus the ground of appeal of the assessee is allowed.

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

Order pronounced in the Court on 20/12/2021 at Ahmedabad.

**Sd/-
(RAJPAL YADAV)
VICE PRESIDENT**

**Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER**

Ahmedabad; Dated
Manish

(True Copy)
20/12/2021