

The Principal Commissioner Of Income ... vs M/S Nirma Chemicals Works Pvt Ltd on 24 June, 2019

Author: J.B.Pardiwala

Bench: J.B.Pardiwala, A.C. Rao

C/TAXAP/128/2019

ORDER

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/TAX APPEAL NO. 128 of 2019

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THE PRINCIPAL COMMISSIONER OF INCOME TAX 3
Versus
M/S NIRMA CHEMICALS WORKS PVT LTD

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Appearance:

MRS MAUNA M BHATT(174) for the Appellant(s) No. 1
for the Opponent(s) No. 1

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CORAM: HONOURABLE MR.JUSTICE J.B.PARDIWALA
and
HONOURABLE MR.JUSTICE A.C. RAO

Date : 24/06/2019

ORAL ORDER

(PER : HONOURABLE MR.JUSTICE J.B.PARDIWALA)

1. This Appeal under Section 260-A of the Income Tax Act, 1961 (for short, 'the Act, 1961') is at the instance of the Revenue and is directed against the order passed by the Appellate Tribunal dated 07.09.2018 for the Assessment Year 2010-11 passed by the Appellate Tribunal in ITA No. 791/Ahd/2016 for the Assessment Year 2010-11.

2. The assessee filed its return of income declaring total loss at Rs. 2,53,93,280/-. The order u/s. 143(3) of the Act was passed dated 20.03.2013 assessing the total loss at Rs.70,18,352/- after making disallowance u/s. 14A of C/TAXAP/128/2019 ORDER Rs.1,83,74,928/-.

3. The assessee, being aggrieved and dissatisfied preferred an appeal before the CIT(A). The CIT(A) deleted the disallowance.

4. In further appeal by the Revenue, the Appellate Tribunal dismissed the appeal and confirmed the order of CIT(A). The Appellate Tribunal while dismissing the appeal filed by the Revenue took the view that the assessee's own fund exceeded the amount of investment. While dismissing the appeal preferred by the Revenue, the Appellate Tribunal placed reliance on the decision of this Court in the case of Commissioner of Income-Tax (I) vs. UTI Bank Ltd, [2013] 32 taxmann.com 370 (Gujarat). The Appellate Tribunal on the issue of addition of Rs.1,83,74,928/-

(disallowance under Section 14A) while computing the book profit provided u/s. 115JB proposed to limit the disallowance on an adhoc basis of Rs.5 lakh as per the clause (f) to Explanation

-1 of Section 115JB independently.

5. The Revenue being dissatisfied with the order passed by the Tribunal is here before this court with the present appeal.

C/TAXAP/128/2019 ORDER The Revenue has proposed the following substantial questions of law.

[A] "Whether the Appellate Tribunal has erred in law and on facts in deleting the disallowances made u/s. 14A r.w.r 8D while computing income under normal provisions of Act, 1961, in respect of interest expenses, when assessee had earned exempt income, incurred interest expenses and due to mixed use of funds, rule 8D was correctly applied by Assessing Officer ?"

[B] "Whether the Appellate Tribunal has erred in law and on facts in not upholding the entire disallowance made u/s 14A r.w.r. 8D while computing the book profit u/s 115JB of the Act?"

6. We may quote the relevant observations made by the Tribunal while dismissing the appeal filed by the Revenue.

"25. We have heard the rival contentions and perused the material available on record. In the instant case, the Assessing Officer made the addition of disallowance made u/s 14A read r.w.r. 8D of the Income-tax Rules while determining the book profit under Section 115JB of the Act. It is settled law that the amount of disallowance made by the AO u/s 14A of the Act cannot be imported while determining the book profit u/s 115JB of the Act. In this regard, we rely on the judgment Hon'ble Gujarat High Court in the case of Alembic Ltd. in Tax Appeal No.1249/2014 where the following question was raised:

"(iii) Whether on the facts and in the circumstances of the case and in law, the ITAT was justified in holding that adjustment made on account of disallowance u/s 14A of the Act in computation of book profit u/s 115JB of the Act is not as per law without appreciating that the amount disallowable under C/TAXAP/128/2019 ORDER section 14A is covered under clause (f) of Explanation to section 115JB (2) and, thus said amount has to be added back while computing amount of book profits ?"

25.1 The above question raised before the Hon'ble Gujarat High Court was answered as below:

"8. Taking into consideration the evidence on record and considering the decision of this court in the case of Commissioner of Income Tax -I vs. Gujarat State Fertilizers & Chemicals Ltd. (supra), we are of the opinion that issue Nos. (iii) and (iv) required to be answered in favour of the assessee and against the revenue. In that view of the matter, we answer questions (iii) and (iv) referred to us in favour of the assessee and against the revenue. The appeal of revenue is dismissed."

25.2 We also note that in the recent judgment of Special Bench of Hon'ble Delhi Tribunal in the case of ACIT vs. Vireet Investment Pvt. Ltd. reported in 82 Taxmann.com 415 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."

25.3 The ratio laid down by the Hon'ble Tribunal is squarely applicable to the facts of the case. Thus it can be concluded that the provisions of section 14A r.w.r. 8D cannot be resorted while determining the expenses as mentioned under clause (f) to explanation 1 to section 115JB of the Act.

25.4 However, in our considered view the

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ORDER

disallowance needs to be made as per Clause (f) to Section 115JB of the Act independently on account of dividend/exempted income as specified. The judgment of Hon'ble Gujarat High Court relied in the case of Alembic Ltd. (supra), does not deny for making the disallowance as per clause (f) u/s 115JB of the Act for the expenses incurred in relation to dividend income.

25.5 Thus it is clear that the disallowance needs to be made in terms of the provisions of clause (f) to section 115JB of the Act while determining the book profit. In holding so, we draw our 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 about 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."

25.6 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 provision 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).

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 independently 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.115JB 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."

7. Having heard Ms. Bhatt, the learned Senior Standing Counsel appearing for the Revenue and having gone through the materials on record, we are of the view that no error, not to speak of any error of law, could be said to have been committed by the Tribunal in dismissing the appeal filed by the Revenue. The Tribunal in our opinion is justified in applying the C/TAXAP/128/2019 ORDER ratio of the decision of this court in the case of UTI Bank Ltd.

(supra).

8. In view of the above, this appeal fails and is hereby dismissed.

(J. B. PARDIWALA, J) (A. C. RAO, J) MAYA