

**IN THE INCOME TAX APPELLATE TRIBUNAL "D" BENCH, MUMBAI**

BEFORE SHRI PRASHANT MAHARISHI, AM

AND

SHRI RAHUL CHAUDHARY, JM

ITA No. 3043/Mum/2023 & ITA No 3424/M/2023

[A Y: 2015-16]

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ITA no 3044/Mum/2023 & ITA No 3423/Mum/2023

[AY 2018-19]

Reliance Power Ltd H Block, first floor Dhirubhai Ambani knowledge city, Koparkhairane, Navi Mumbai 7	Vs.	The Deputy Commissioner of income tax - 15 (3) (1), Mumbai  Room number 483, fourth floor, Aaykar Bhavan, Mumbai 400020
<b>(Appellant)</b>		<b>(Respondent)</b>
<b>PAN No. AAACR2365L</b>		

The Deputy Commissioner of income tax - 15 (3) (1), Mumbai  Room number 483, fourth floor, Aaykar Bhavan, Mumbai 400020	Vs.	Reliance Power Ltd H Block, first floor Dhirubhai Ambani knowledge city, Koparkhairane, Navi Mumbai 7
<b>(Appellant)</b>		<b>(Respondent)</b>
<b>PAN No. AAACR2365L</b>		

**Assessee by** : Mr. Jitendra Sanghavi C A ,  
AR

**Revenue by** : Ms Sanyogita Nagpal CIT DR

Date of hearing: 08.01.2024

Date of pronouncement : 22.01.2024

**ORDER**

## Per bench :-

- 1) For assessment year 2015 – 16 , ITA number 3043/M/2022 is filed by Reliance Power Ltd (the assessee appellant) and ITA number 3424/M/2023 is filed by the Deputy Commissioner Of Income Tax – 15 (3) (1), Mumbai (the learned assessing officer/AO) against the appellate order passed by National faceless appeal Centre (NFAC), Delhi (the learned CIT – A) dated 31/7/2023 wherein the disallowance made by the learned assessing officer under section 14 A of The Income Tax Act [ The Act] was partly sustained. Therefore, these cross appeals.
- 2) Assessee is a company engaged in the business of development, construction, and operation of power generation projects. It filed its return of income on 26/11/2015 at the business loss of Rs. 600,614,160/- under the normal provisions of the income tax act and book profit was computed at Rs 263,066,118/-. The return of income was picked up for scrutiny and the notices were issued.
- 3) The assessment order under section 143 (3) of the act was passed on 22/12/2017 wherein disallowance under section 14 A read with rule 8D of the act was made of Rs. 705,409,746/- as per the normal computation of total income and further the identical amount was also added under the book profit computed under section 115JB of the act. Accordingly, the total income of the assessee as per normal computation was assessed at Rs. 104,795,586/- and it was computed at Rs. 96,84,75,864/-.
- 4) Assessee aggrieved with that has preferred an appeal before the learned CIT – A. The learned and CIT – A passed an appellate order on 31/7/2023 wherein the disallowance under section 14 A was restricted disallowance to the extent of exempt income while computing income as per normal computation and further while computing the book profit he restricted the addition to Rs. 112,000/- as same was offered by the assessee and agreed.
- 5) Therefore, the assessee is aggrieved seeking a relief that only those investments which have yielded exempt income during the year should be considered for the purpose of disallowance and further when the assessee has own funds which are more than the value of the investment the disallowance of interest under rule 8D (2) (ii) cannot be made.
- 6) The learned AO is aggrieved by the order of the learned CIT – A wherein he has restricted the disallowance under section 14 A to the extent of exempt income as per normal computation of total income and restricting the addition in the computation of book profit under section 115 JB of The Income Tax Act to the extent of Rs. 112,000.
- 7) The fact of the case show that the assessee has earned exempt income during the year of Rs. 24,800,670/-. The assessee on its own offered disallowance u/s 14A of the Act of Rs. 4,368,868/-. The learned assessing officer computed interest disallowance under rule 8D (2) (ii) of the act of Rs. 198,245,193 and further the administrative expenses are disallowed under rule 8D (2) (iii) of Rs. 511,533,421/- and therefore the total disallowance was computed of Rs. 709,778,614/-.

- 8) Coming to the appeal of the learned assessing officer wherein the learned Departmental representative submitted that the learned CIT – A has grossly erred in restricting the disallowance under section 14 A of the income tax act to the extent of Rs. 24,800,617/- to the extent of exempt income claimed by the assessee rather than the amount of disallowance by the assessing officer applying the rule 8D relying on circular number 5/2014/- dated 11/2/2014. The learned departmental representative further stated that disallowance of the expenditure should be made even in the year in which there is no exempt income earned by the assessee. It was further stated that the amendment made by The Finance Act 2022 makes it absolutely clear that even when no exempt income is earned during the year, the disallowance is required to be made.
- 9) With respect to the issue of making an addition to the book profit under section 115 JB of the income tax act, the learned departmental representative vehemently submitted that the learned CIT – A has incorrectly restricted the addition to the extent of Rs. 112,000/- instead of the complete disallowance made by the learned assessing officer.
- 10) The learned authorised representative submitted that there is no error in the order of the learned CIT – A in restricting the disallowance under section 14 A of the act to the extent of the exempt income earned by the assessee relying on the decision of the State Bank of Patiala and Maxopp investment Ltd. He therefore submitted that when the learned CIT – A has followed binding judicial precedents, the order cannot be challenged. With respect to the adjustment made under the computation of book profit under section 115 JB of the act and submitted that issue is squarely covered in favour of the assessee by the decision of the special bench in case of Vireet investments private limited 82 taxmann.com 415.
- 11) Coming back to the issue in assessee's appeal he submitted that while working out disallowance under section 14 A [i] only those investments which have yielded exempt income during the year should only be considered and further [ii] when the own funds are more than the value of investments the disallowance of interest under rule 8D (2) (ii) cannot be made. For this proposition the learned authorised representative referred to the order of the coordinate bench in assessee's own case for assessment year 2014 – 15 wherein it is specifically held that if the own funds available with the assessee exceeds the value of the investments no disallowance of interest expenditure is called for under rule 8D (2) (ii) of the rules. With respect to the second issue he submitted that the issue is squarely covered in favour of the assessee by the decision of the honourable Delhi High Court in case of cargo motors private limited versus DCIT 145 taxmann.com 641 wherein it has been held that for making disallowance of expenses under section 14 A as per rule 8D only those investments were to be considered for computing average value of investments which yield exempt income during the year.
- 12) With respect to the argument of the learned departmental representative that the amendment made by The Finance Act 2022 is prospective in nature, it was submitted that the issue is squarely

covered in favour of the assessee by the decision of the honourable Delhi High Court in case of Era infrastructure Ltd wherein it has been held that such amendment is applicable prospectively. Therefore, the argument of the learned departmental representative that even if there is no exempt income, the disallowance under section 14 A required to be made is not correct for at least this year.

- 13) We have carefully considered the rival contention and perused the orders of the lower authorities. The brief fact shows that the assessee has earned exempt income during the year of Rs. 24,800,670/-. The assessee on its own has made the disallowance under section 14 A in the return of income amounting to Rs. 4,368,868/- in normal computation of total income . While working book Profit Income , assessee made addition of Rs 1,12,000/-. Such disallowance was based on the salary of certain executives along with certain conveyance expenses, telephone printing and stationery expenses along with the business support services based on the man hours in relation to the portfolio management for earning the exempt income. The learned assessing officer on scrutiny of the disallowance offered by the assessee, rejected the same and computed the disallowance under section 14 A by making the computation under rule 8D (2) of the act. For the indirect interest expenditure under rule 8D (2) (ii) the total disallowance of Rs. 198,245,193/- was made. Before us , it was explained that the assessee has share capital and reserves and surplus amounting to Rs. 16,891 crores where the total value of the investment is only Rs. 14,892 crores which included the average of investment in equity and preference shares of the domestic company along with the value of dividend on mutual funds. On appraisal of above figures, it is clear that the assessee has more interest free funds available with it in the form of share capital and reserves and surplus then the amount of investment made which yielded tax free income during the year. Therefore, the presumption would be available in favour of the assessee that amount of investment made in such exempt income yielding investments are made of interest free funds available. Therefore, there could not have been any disallowance under rule 8D (2) (ii) of the income tax rules 1962 under section 14 A of the Act. Such a finding was given in the case of the assessee for assessment year 2014 - 15 by the coordinate bench vide order dated 25/10/2023. The same is also covered by the decision of honourable Supreme Court in case of South Indian bank Ltd versus CIT 130 taxmann.com 178. Accordingly, we hold that such disallowance made of Rs. 198,245,193/- by the learned assessing officer is not correct. The learned assessing officer is directed to delete the same. Further the second issue on the assessee's appeal is that while working out disallowance under section 14 A of administrative expenses under rule 8D (2) (iii) of the act made by the learned assessing officer of Rs. 511,533,421/- could have been made only after taking only those investments which have yielded exempt income during the year. This is also supported by the decision of the honourable High Court in cargo motors private limited versus deputy Commissioner of income tax (145 taxmann.com 641) wherein it has been held that for the purpose of making disallowance

of expenses under section 14 A as per rule 8D only those investments were to be considered for computing average value of investments which yielded exempt income during the year. Therefore, both the grounds in the appeal of the assessee are allowed.

- 14) With respect to the grounds of appeal of the assessing officer challenging that the CIT – A has wrongly restricted the disallowance under section 14 A to the extent of exempt income, is also covered against the learned assessing officer by the decision of coordinate bench in assessee's own case for assessment year 2014 – 15 in ITA number 1952/M/2023 and cross objection number 70/M/2023 dated 25/10/2023. Further regarding the retrospective applicability of the amendment made by The Finance Act 2022, the honourable Delhi High Court in [2022] 141 taxmann.com 289 (Delhi)/[2022] 288 Taxman 384 has held that Amendment made by Finance Act, 2022 to section 14A by inserting a non-obstante clause and Explanation will take effect from 1-4-2022 and cannot be presumed to have retrospective effects. Therefore, it is now clear that the disallowance under section 14 A of the act cannot be applied more than exempt income earned during the year for the impugned assessment year.
- 15) Coming to the computation of the book profit that whether the disallowance made by the learned assessing officer under section 14 A by invoking the provisions of rule 8D of the act could also be imputed under the computation of book profit under section 115JB of the act has already been decided by special bench in case of Vireet Investments P Ltd 82 taxmann.com 415. Same is now also covered in favour of the assessee by the decision of the honourable Gujarat High Court in case of Gujarat Fluorochemicals Ltd [2023] 155 taxmann.com 135 (Gujarat). accordingly we do not find any merit in the appeal of the learned assessing officer.
- 16) In result , for assessment year 2015 – 16 ITA number 3424/M/2023 filed by the learned assessing officer is dismissed and appeal number 3043/M/2023 of the assessee is allowed.
- 17) Now coming to the appeal of the assessee for assessment year 2018 – 19 in ITA number 3044/M/2023 and the cross appeal of the learned assessing officer in ITA number 3423/M/2023 against the order of the learned CIT – A. The issue involved in this appeal is also disallowance under section 14 A of the act.
- 18) The facts clearly the assessee did not any exempt income during the year and therefore while filing the return of income did not make any disallowance under section 14 A return of income. The learned assessing officer invoke the provisions of section 14 A and also computed the disallowance under rule 8D (2) (ii) of the act computed such disallowance at Rs. 1,682,398,967/-while computing taxable income of the assessee as per normal computation provisions. The AO also imputed the disallowance while working out taxable income to the provisions of section 115JB of the act.
- 19) Assessee aggrieved with the disallowance made by the learned AO, approaching the CIT – A who held deleted the disallowance holding that in absence of any exempt income disallowance was impermissible. Accordingly, he deleted the disallowance under section 14 A read with rule 8D in the normal computation of total

income as well as computation of book profit under section 115JB of the act. All other contentions raised by the assessee were not dealt with by the learned CIT – A. Therefore, aggrieved with the order of the learned CIT – A both the parties are in appeal before us.

- 20) In the appeal of the assessing officer the only contention is that even if there is no exempt income, the disallowance under section 14 A is required to be made placing reliance on the circular number 5 – 2014 as well and the amendment to the act subsequently.
- 21) Assessee is also aggrieved that the learned CIT – A has not made with its alternative contentions stating that only the investments which have yielded the exempt income during the year are required to be considered for working out disallowance under rule 8D (2) (iii) and further no disallowance of interest can be made under rule 8D (2) (ii) of the act also on the investments which have not yielded exempt income during the year.
- 22) We have carefully heard the rival contention and find that when the assessee does not have any exempt income during the year, assessee did not claim any exemption and therefore there cannot be any disallowance under section 14 A of the act. Further the amendment made to the income tax act is also applicable with effect from 1 April 2022 and held by the honourable Delhi High Court. In the result we do not find any merit in the appeal of the learned assessing officer. Accordingly, ITA number 3423/M/2023 is dismissed. Further the appeal of the assessee in ITA number 3044/M/2023 on principal is allowed however there is no exempt income during the year, such issue becomes academic. In the result, appeal of the assessee is allowed as indicated above.
- 23) Accordingly, for assessment year 2018 – 19 the appeal of the assessing officer is dismissed, and appeal of the assessee is allowed.

Order pronounced in the open court on 22.01.2024.

Sd/-

(RAHUL CHAUDHARY)

(JUDICIAL MEMBER)

Sd/-

(PRASHANT MAHARISHI)

(ACCOUNTANT MEMBER)

Mumbai, Dated: 22.01. 2024

*Sudip Sarkar, Sr.PS/ Dragon*

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent
3. CIT

4. DR, ITAT, Mumbai
5. Guard file.

BY ORDER,

Sr. Private Secretary/ Asst. Registrar  
Income Tax Appellate Tribunal, Mumbai