IN THE INCOME TAX APPELLATE TRIBUNAL, 'E' BENCH MUMBAI

BEFORE: SHRI M.BALAGANESH, ACCOUNTANT MEMBER
&
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER

ITA No.217/Mum/2020
(**Assessment Year :2016-17**)

M/s. Tata Industries Limited Bombay House, 24, Homi Mody Street Fort, Mumbai – 400 001	Vs.	The Dy. Commissioner of Income Tax, Circle 2(3)(1) Mumbai
PAN/GIR No.AAACT4058L		
(Appellant)	..	**(Respondent)**

ITA No.421/Mum/2020
(**Assessment Year :2016-17**)

The Jt. CIT (OSD)-2(3)(1) Broom No.552, 5th Floor Aayakar Bhavan M.K.Road, Mumbai- 400 020	Vs.	M/s. Tata Industries Limited Bombay House, 24, Homi Mody Street Fort, Mumbai – 400 001
PAN/GIR No.AAACT4058L		
(Appellant)	..	**(Respondent)**

Assessee by	Shri Percy Pardiwala, Ms. Aarti Vissanji & Ms. Aastha Shah
Revenue by	Shri Amol Kirtane
Date of Hearing	**23/09/2022**
Date of Pronouncement	**29/11/2022**

आदेश / O R D E R

***PER M. BALAGANESH (A.M)*:**

These cross appeals in ITA No.217/Mum/2020 & 421/Mum/2020 for A.Y.2016-17 arise out of the order by the ld. Commissioner of Income Tax (Appeals)-6, Mumbai in appeal No.CIT(A)-6/IT-18/2018-19 dated 25/11/2019 (ld. CIT(A) in short) against the order of assessment passed u/s.143(3) of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 30/12/2018 by the ld. Dy. Commissioner of Income Tax-2(3)(1), Mumbai (hereinafter referred to as ld. AO).

ITA No. 217/Mum/2020 – Assessee Appeal – Asst Year 2016-17

2. The first issue to be decided in this appeal is as to whether the ld. CIT(A) was justified in not granting set off of current year business loss against foreign dividend income and upholding the levy of tax u/s 115BBD of the Act on gross foreign dividend income. The interconnected second issue to be decided in this appeal is as to whether the assessee would be entitled for deduction u/s 80G of the Act from the foreign dividend income forming part of Gross Total Income. The assessee has also raised additional ground vide its letter dated 24/06/2021 wherein it had challenged the action of the revenue in not allowing the brought forward business losses of earlier years against the foreign dividend income referred to in section 115BBD of the Act, earned from investments which are made with a view to exercise control and accordingly constituting business activity of the assessee.

2.1. We have heard the rival submissions and perused the materials available on record. At the outset, we deem it fit to admit the additional ground raised by the assessee vide letter dated 24/06/2021 as it is purely

a legal issue not requiring any verification of facts and all the facts necessary for adjudicating the said additional ground are already on record of the lower authorities.

2.2. The assessee company is engaged in the business of providing business investment and finance and promotion of new companies in various fields to their customers. The ld. AO noted that the assessee company had received an amount of Rs 132,40,04,883/- as dividend from M/s Apex Investments (Mauritius) Holding Private Ltd (a 100% foreign subsidiary of assessee company herein). The ld. AO further noted that in the computation of income, the assessee had set off current year business loss amounting to Rs 51,74,40,547/- against the aforesaid foreign dividend income . The assessee company claimed deduction under Chapter VIA of the Act amounting to Rs 1,27,24,300/- against the foreign dividend income. The ld. AO issued a show cause notice as to why the foreign dividend income should not be taxed on gross basis in view of provisions of section 115BBD of the Act, without allowing any deduction or set off of any loss. The assessee filed its written submissions in response to the said show cause notice stating that the section 115BBD of the Act starts with the expression 'total income' which has to be determined after considering all other provisions of the Act including set off of brought forward and current year losses and deductions under Chapter VIA of the Act. The ld. AO however found the explanation of the assessee to be not tenable due to following reasons;-

"a. Section 115 BBD was inserted with a view to provide tax incentive to the tax payers. Earlier the dividend received from foreign companies was taxed at normal corporate tax rate. By inserting special section an incentive has been given to the tax payers so that more and more foreign dividend will come to India.
b. The section is introduced in Chapter XII, which deals with "Determination of Taxes in Certain Special Cases". The heading of the

chapter clearly reveals that it is for tax in special cases and one of such special case in of taxability is dividend received from foreign company.

c. To clarify the exclusion in the case of dividend received from foreign companies the subsection (2) of section 115BBD starts with "Notwithstanding anything contained in this Act..." It means irrespective of any other provision of this Act, the tax on dividend received from foreign companies are taxed at the rate of 15%. Therefore the contention of the assessee that set off of losses from business income can be set off from dividend received from foreign companies is ruled out by the "Non-obstante" clause of section 115BBD.

d. The argument of taking help from section 115BBDA, which provides taxability of dividend received from domestic companies is irrelevant, because every section is independent of each other in Chapter XII which deals with "Determination of Taxes in Certain Special Cases".

e. The assessee stated that "Generalia Specialibus Non Derogant and general! Bus specialia derogant" i.e. if a special provision is made on a certain subject matter, that matter is excluded from the general provision.

f. Using the same maxim, it can be inferred that a special provision has been inserted by way of section 115BBD due to which resort cannot be made to provisions of set off of losses as per I. T. Act, 1961 because set off of losses are general provisions.

g. With regard to claim of deduction Chapter VI-A, i.e. u/sec 80G, the section itself expressly provides in sub section (2) of section 115BBD that "Notwithstanding anything contained in this Act, no deduction in respect of any expenditure or allowance shall be allowed to the assessee under any provision of this Act in computing its income by way of dividends referred to in sub-section (1)". Therefore No deduction is available under this section by way of any expenditure or allowance."

2.3. By making the aforesaid observations, the ld. AO concluded that the foreign dividend income is to be taxed at the rate of 15% on gross basis u/s 115BBD of the Act without allowing any set off of losses and deduction u/s 80G of the Act. Accordingly, the set off of current year business loss amounting to Rs 51,70,40,547/- and deduction u/s 80G of the Act amounting to Rs 1,27,24,300/- against the foreign dividend income was denied by the ld. AO.

2.4. The assessee reiterated its submissions before the ld. CIT(A) and also stated that the claim of the assessee was accepted by the revenue

for A.Ys. 2014-15 and 2015-16 which was also in line with the CBDT Circular No. 11 of 2019 dated 19/06/2019. The assessee pleaded that the provisions of section 115BBD of the Act uses the expression 'total income'. Hence the total income has to be computed after making adjustment for the following:-

a) making deductions under the appropriate computation provisions;

b) adjusting the intra-head and inter- head losses and

c) setting off brought forward unabsorbed losses and unabsorbed depreciation .

The remaining total income comprising of foreign dividend income shall be brought to tax at the rate of 15% in terms of section 115BBD of the Act.

2.5. The ld. CIT(A) however disregarded the entire contentions of the assessee and upheld the observations of the ld. AO as reproduced supra. Aggrieved, the assessee is in appeal before us.

2.6. The ld. DR argued that foreign dividend income is the major source of income for the assessee during the year under consideration and that no expenses would be allowed as deduction for earning such foreign dividend income in view of express prohibition provided in section 115BBD(2) of the Act. Similar would be the case for allowability of set off of brought forward losses and current year losses against such foreign dividend income. Per contra, the ld. AR by placing the audited financial statements of the assessee company for the year ended 31/03/2016 relevant to Asst Year 2016-17 submitted that there are other business activities for the assessee company which is also conceded by the ld. AO in para 3 of his order itself. We have gone through the said financial statements for the year ended 31/03/2016 and find that the assessee company apart from foreign dividend income , had also earned income

from sale of services and sale of products as is evident from Schedule 18 (Revenue from Operations) of financial statements. Hence the assessee would be entitled for allowability of expenses and set off of brought forward business losses and unabsorbed depreciation of earlier years.

2.7. We have gone through the provisions of section 115BBD of the Act. From the bare reading of the said section, we find that the starting point of the applicability of the said section is determination of 'total income'. The plain and unambiguous reading of the provisions of section 115BBD of the Act makes it clear that only after determination of total income as per the provisions of the Act, the remaining foreign dividend income included in the said total income would be taxed at the rate of 15% and remaining income (other than foreign dividend income) would be taxed at normal rate of tax. This could be better understood by the following examples:-

If the total income is Rs 100, out of which foreign dividend income is Rs 30, then the tax payable by the assessee would be as under:-

Tax @ 15% on Rs 30 being foreign dividend income	*– 4.50*
Tax @ 30% on remaining total income of Rs 70	
Other than foreign dividend income	*- 21.00*
Total Tax Payable	***25.50***

On the contrary, if there is a business loss of Rs 100 after considering foreign dividend income of Rs 30, then the total income would be Rs Nil. In this case, foreign dividend cannot be taxed on gross basis at the rate of 15% u/s 115BBD of the Act as the total income itself was Rs Nil.

In our considered opinion, this is how the provisions of section 115BBD of the Act, need to be understood.

2.8. We find that the assessee company is in the business of making investment in various companies and promotion of companies in various fields. Hence it could be construed as an investment company. Accordingly the resultant income in the form of dividend would partake the character of business receipts, though it is taxed under the head 'income from other sources' pursuant to specific provision contained in section 56(2)(i) of the Act. We find that the investments made by the assessee company to exercise control over the other investee companies constitute business activity of the assessee as has been held in the following cases:-

a) *Mumbai Tribunal in assessee's own case for A.Y. 2004-05 reported in 82 taxmann.com 227 dated 20/07/2016.* In this case, it was held-

> ***19.*** *Though, in the case in hand, issue is not regarding the interest free advance to the sister concerns, yet, the proposition of law laid down by the Hon'ble Supreme court can be very well applied in this case as the assessee being an investment & finance company and a promoter of new companies and having interest in the business of these companies has made the investments for business purposes for having control over these subsidiary and associated companies. In the light of the proposition of law laid down by the Hon'ble Bombay High court in the case of Phil Corpn. Ltd. (supra), Hon'ble Delhi High Court in the case of Eicher Goodearth Ltd. (supra) and the Hon'ble Supreme Court in S.A. Builders Ltd. (supra); it is held that no disallowance in this case is attracted u/s. 36(iii) of the Act.*

b) *Mumbai Tribunal in the case of Tata Sons Ltd for A.Y. 2003-04 in ITA No. 3664/Mum/2017 dated 23/03/2021.* In this case, it was held-

> *The assessee's activity of holding such investment, in our opinion, constitute business activity and therefore, the interest would be fully deductible u/s 36(1)(iii) notwithstanding the fact that the assessee earned various streams of income out of these investments, one of which was assessable under the head 'income from other sources'.*

c) *Decision of Hon'ble Madras High Court in the case of CIT vs Amalgamations P Ltd reported in 108 ITR 895 (Mad) affirmed by Hon'ble Supreme Court in 92 Taxman 132 (SC)*. In this case it was held –

> *The question before us is whether the principle, which is applicable to the managing agency companies, can be applied to a company, which is carrying on the business of holding investments. As we have already seen, the decisions of the Supreme Court required a nexus between the business of the assessee and the expenditure that has been incurred. The business of the assessee is the holding of investments. If with reference to this business of the holding of investments any expenditure had been incurred, that would have been allowed as deduction. The business of holding investment and the businesses of the subsidiary companies are wholly separate and distinct. The expenditure that has been incurred in the present case cannot be said to be in carrying on the assessee's business of holding its investment. It could hold its investments and earn its dividends without incurring this expenditure. Before the introduction of the restrictive provision in the Companies Act of 1956, the respective companies were paying the directors for services rendered to them and they are now remunerated by the assessee. There was no change in the rendering of services. Merely because the law had changed and the managed company was not in a position to pay the same remuneration because of the restrictive statutory provision, it does not mean that what was prior to 1956 Act expenditure of the subsidiary could, after it, become the expenditure of the assessee. It was argued that, but for this expenditure, the services of the respective directors would not have been available. There is some reference to this aspect in the resolution passed by the assessee-company. Even on the basis that the services of the respective directors would not have been available, it does not, in our opinion, follow that the assessee was obliged to take over the expenditure as part of, or incidental to, its own business. The entities, viz., the assessee and the subsidiary companies, are independent for all relevant purposes. Though it was argued before the Tribunal that the assessee-company was carrying on its own business through the agency of the subsidiaries, the learned counsel did not put forward such a contention before us. The income of the assessee could only consist of the dividends from the subsidiary companies as and when declared. Even under the Act of 1922 as a result of the amendments made the dividend income has been specifically brought within the head "other sources". There are decisions of the highest authority which hold that notwithstanding the statutory requirement that the computation of the dividend income had to be under the head "other sources", still the income could be treated as business income for all other purposes. See Commissioner of Income-tax v. Cocanada Radhaswami Bank Ltd. [1965] 57 ITR 306 (SC) and Commissioner of Income-tax v. Chugandas & Co. [1965] 55 ITR 17 (SC). Even bearing in mind this principle and assuming that*

we have to treat the dividend income as business income for our present purpose, still it cannot be held that there is such a nexus between the expenditure and the business or the income of the assessee so as to justify the deduction of the expenditure incurred in remunerating the directors who rendered services to the subsidiary companies and not to the assessee.

(Underlining provided by us)

d) Decision of *Hon'ble Supreme Court in the case of CIT vs Cocanada Radhaswami Bank Ltd reported in 57 ITR 306 (SC)* . In this case, it was held –

While section 24(1) of the 1922 Act, provides for setting off of the loss in a particular year under one of the heads mentioned in section 6 of the 1922 Act against the profits under a different head in the same year, sub-section (2) provides for the carrying forward of the loss of one year and setting off of the same against the profits or gains of the assessee from the same business in the subsequent year or years. The crucial words, therefore, are 'profits and gains of the assessee from the same business', i.e., *the business in regard to which he sustained loss in the previous year. The question, therefore, was whether the securities formed part of the trading assets of the business and the income there from was income from the business. The answer to this question depended upon the scope of section 6 of the 1922 Act. The scheme of the Act is that income-tax is one tax. Section 6 of the 1922 Act only classifies the taxable income under different heads for the purpose of computation of the net income of the assessee.* ***Though for the purpose of computation of the income, interest on securities is separately classified, income by way of interest from securities does not cease to be part of the income from business if the securities are part of the trading assets. Whether a particular income is part of the income from a business falls to be decided not on the basis of the provisions of section 6 but on commercial principles. To put it in other words, did the securities in the instant case which yielded the income formed part of the trading assets of the assessee? The Tribunal and the High Court found that they were the assessee's trading assets and the income there from was, therefore, the income of the business. If it was the income of the business, section 24(2) of the 1922 Act was immediately attracted. If the income from the securities was the income from its business, the loss could, in terms of that section, be set off against that income.***

A comparative study of sub-sections (1) and (2) of section 24 of the 1922 Act yields the same result. While in sub-section (1) the expression 'head' is used, in sub-section (2) the said expression is conspicuously omitted. This designed distinction brings out the intention of the legislature. Be it noted that clause (2) of section 24; in contradistinction to clause (1) thereof, is concerned only with the business and not with its heads under Section 24, of the 1922 Act is enacted to give further relief to an assessee carrying on a business and incurring loss in the business though the

> *income there from falls under different heads under section 6 of the 1922 Act.*
>
> ***It was, therefore, held that under section 24(2) of the 1922 Act the income from the securities which formed part of the assessee's trading assets was part of its income in the business and, therefore, the loss incurred in the business in the earlier year could be set off against that income also in the succeeding years.***

(Emphasis supplied by us)

e) *Chennai Tribunal in the case of M/s Tamilnadu Industrial Development Corporation Ltd (TIDCO) vs ACIT in ITA No. 1181/Chny/2008 for A.Y. 2003-04 dated 28/02/2020*. In this case, Chennai Tribunal placed reliance on the *Third Member decision in the case of TIDCO Ltd reported in 124 ITD 117.* The Third Member held -

> *6. The situation, however, changes when the income , though per se, is dividend income but has a different complexion on account of the activity carried out by the assessee. If the assessee is not an investor, but a trader in shares or is one like the assessee before us, then the dividend income changes its complexion to business income. In other words, the dividend income received by such person is in reality his business income.*

Chennai Tribunal had given a finding that the assessee is engaged in promotion and development of new undertaking in the State and for the purpose, held shares in a number of joint undertakings for which the dividend income was received. Accordingly it held that the dividend income would form part of business of the assessee and accordingly taxable under the head 'income from business', although the same is assessable under the head 'income from other sources' by virtue of specific provision contained in section 56(2)(i) of the Act. . Accordingly, it had held that assessee would be entitled to set-off of brought forward business loss and unabsorbed depreciation of earlier years against the said dividend income.

f) *Mumbai Tribunal in the case of Tata Motors Ltd vs DCIT in ITA No. 3424/Mum/2019 for A.Y. 2013-14 dated 06/03/2020*. In this case, it was held-

"7. Considered the rival contentions and the material placed on record, we notice from the record that the assessment was completed u/s 143(3) r.w.s. 144C of the Act and assessee has submitted all the information relating to the computation of income. Further, AO asked the information relating to receipt of dividend income in his notice and assessee has provided all the relevant information. Assessee in its reply to the notice u/s 263 of the Act submitted before Ld. CIT that AO has already verified the information relating to dividend receipt and rational of applying section 71 before him and further assessee submitted that the order passed by the AO is not erroneous and also not prejudicial to the interest of revenue for the reasons that if the assessee asked to carry forward loss without adjusting the dividend income, erstwhile profit earned by the assessee is chargeable @ 30%, whereas the department will tax the dividend only @ 15%. He further brought to our notice that income has to be determined chapter wise i.e. from 4 to 7 and only after determining the taxable income rates of tax will be applied subsequently. Since assessee has incurred huge loss, the provision of section 71 has to be applied before application of section 115BBD. He further submitted that the provision of section 115BBD does not contain restriction to exclude the dividend received from specified foreign company in order to determine the taxable income and further it is submitted that 115BBD talks only to expenditure relating to earning of dividend income from specified foreign company. Even though assessee has made such detail submission before Ld. CIT, how the assessee's case not falling under provisions of section 263 of the Act either on erroneous nor prejudicial to the interest of revenue. We observed that Ld. CIT instead of addressing the issue raised by the assessee, he rejected the submission of the assessee and observed and accepted that all the relevant documents were available before the AO and it cannot be the reason to provide immunity to the taxpayer. But, Ld. CIT has not separately brought on record how the order passed by AO is erroneous and also it is prejudicial to the interest of revenue.

8. After careful reading of section 115BBD, we agree with the submission of Ld. AR that there is no provision in that section to eliminate the dividend income from specified foreign company before setting off of loss and similar to the provisions and specific direction present in section 115BBE. In our considered view that taxable income has to be determined as per the provisions of Income Tax Act i.e. first to compute the total income based on the Chapter-IV and then apply the Chapter-VI and VIA in order to compare the aggregation and set off of losses. After determining the taxable income by applying the above Chapters and if still there is profit, then such taxable profit has to be taxed according to the prevailing rates as per the various applicable provisions of the Act. Since assessee is having substantial loss and as per the provision of Chapter-VI, the taxable income has to be adjusted first before applying any other provisions contained in the Act particularly when there is no specific provision contained in section 115BBD wherein to impose restriction on carrying forward any loss similar

to provision contained in section 115BBE and section 115BBDA. Therefore, we do not see any reason to treat this assessment as erroneous nor it is passed by erroneous interpretation of facts or law. Accordingly, the order passed u/s 263 of the Act by Ld. CIT is not as per provisions contained therein or as per the jurisdictional precedence. Hence, it is set aside. Resultantly, the grounds raised by the assessee are allowed."

2.9. We find that the non-obstante clause is provided in section 115BBD(1) of the Act itself. Hence it would be cover both current year loss as well as brought forward business loss. In view of the aforesaid observations and respectfully following the aforesaid judicial precedents, we hold that the assessee would be entitled for set off of brought forward business losses against foreign dividend income. Hence the assessee would also be eligible for set off of current year loss against foreign dividend income.

2.10. Moreover, we find that the same issue in dispute was adjudicated by the *Co-ordinate Bench of this Tribunal in the recent case of DCIT vs Essar Shipping Limited in ITA No. 821/Mum/2022 for A.Y. 2015-16 dated 14/11/2022* wherein it was held as under:-

33. We have heard both the parties at length on the issue, whether the foreign dividend income can be set off against the current year loss or not. The contention of Ld. DR was that the foreign dividend income is taxable u/s 115BBD and no adjustment against the current year losses is allowable in view of sub-section (2) of section 115BBD. On the other hand, Ld. Counsel strong relied on the order of Tribunal in the case of ***Tata Motors Ltd. vs. DCIT (supra).*** *In so far as Ld. CIT (A) admitted the additional ground, we find that it was purely a legal claim made before Ld. CIT (A) based on the provision of law that, foreign dividend income has to be set off against the current year loss. In support of, Ld. CIT (A) has relied on the judgment of Hon'ble Bombay High Court in the case of* ***Pruthvi Brokeers & Shareholders Pvt. Ltd. 349 ITR 336*** *and held that there is no fetters on the powers of CIT (A) to entertain the claim which has not been claimed in the return of income.*

34. It is an undisputed fact that assessee had declared loss of Rs. 103,44,94,701/- in the return of income. It has also shown foreign dividend income of Rs. 10,98,56,941/- u/s 115BBD, which relates to taxing of dividend income received from specified foreign companies at a lower rate of 15%. Section 115BBD reads as under:-

"115BBD. (1) Where the total income of an assessee, being an Indian company, includes any income by way of dividends declared, distributed or paid by a specified foreign company, the income-tax payable shall be the aggregate of—

(a) the amount of income-tax calculated on the income by way of such dividends, at the rate of fifteen per cent; *and*

(b) the amount of income-tax with which the assessee, would have been chargeable had its total income been reduced by the aforesaid income by way of dividends.

(2) Notwithstanding anything contained in this Act, no deduction in respect of any expenditure or allowance, shall be allowed to the assessee under any provision of this Act in computing its income by way of dividends referred to in sub-section (1).

(3) In this section,—

(i) "dividends" shall have the same meaning as is given to "dividend" in clause (22) of section 2 but shall not include sub clause (e) thereof;

(ii) "specified foreign company" means a foreign company in which the Indian company holds twenty-six per cent or more in nominal value of the equity share capital of the company."

*35. The above section clearly provides that where the '**total income'** of the assessee includes income by way of dividend declared, distributed or paid by a specified foreign company, then **such dividend income shall be subject to tax at 15%** (plus applicable surcharge, and cess) and balance part of the total income, that is, as reduced by foreign dividend income would be subjected to tax at the prevailing rate of taxes.*

36. The 'total income' is defined in section 2(25) of the Act, which reads as under:-

"Total income" means the total amount of income referred to in section 5, computed in the manner laid down in this Act"

Thus, the total income encompasses income of the assessee which is received or deemed to be received, accrued or arises or is deemed to accrue or arise or accrues outside India as provided in section 5 of the Act. The total income is required to be computed in the manner laid down in the Act and it is to be computed independently, as per the provisions guiding the same as per Chapter IV of the Act. The set off and carry forward of losses are required to be computed as provided under Chapter VI of the Act before setting off any deductions from the total income as provided under Chapter VIA of the Act.

37. Section 71 provides set off of losses from one head against income from another head other than the capital gains. Thus, section 71 provides set-off of business loss even from 'income from other sources' including dividend income. It does not provide any restriction on set-off of business loss against any dividend income which is taxable u/s 56 of the Act. The total income of the assessee includes income by way of dividend paid by the foreign company. However, section 115BBD, then provides that income tax calculated on such

dividend shall be at a lower rate of 15% on gross basis. As per the said section, the other income forming part of the total income (i.e. other than foreign dividend) will be paid at a normal rate of tax.

38. Sub section (2) of section 115BBD begins with a non-obstante clause which provides that no deduction in respect of any expenditure or allowance shall be allowed to the assessee under any provision of this Act in computing its income by way of foreign dividend. This inter-alia means that Legislature has provided lower rate of tax @ 15% on foreign dividend and therefore, no deduction towards in respect of any expenditure will be allowed from that income. However, nowhere there is any restriction or curb provided in sub section (2) that foreign dividend income cannot be set off against the current year loss while computing the total income. As stated above, in the total income, the assessee has made computation for various streams of income separately. Out of the said total income, if there is any foreign dividend income, the same shall be taken into account while computing the total income and if there is a loss, then the same shall be set off in accordance with section 71 of the Act.

39. On the contrary, there is another section ***115BBDA,*** *which deals with dividend received from domestic companies. In this section there is a specific restriction not only for allowance of expenditure deduction in respect of any expenditure or allowance but also restriction on set off of loss. For the sake of ready reference, section 115BBDA is reproduced as under:-*

> *115BBDA. (1) Notwithstanding anything contained in this Act, where the total income of (a specified assessee) resident in India, includes any income in aggregate exceeding ten lakh rupees, by way of dividends declared, distributed or paid by a domestic company or companies (on or before the 31st day of March 2020), the income tax payable shall be the aggregate of*
>
> > *a) the amount of income tax calculated on the income by way of such dividends in aggregate exceeding ten lakh rupees, at the rate of ten per cent and*
> >
> > *b) the amount of income tax with which the assessee would have been chargeable had the total income of the assessee been reduced by the amount of income by way of dividends.*
> >
> > ***(2) No deduction in respect of any expenditure or allowance or set off of loss shall be allowed to the assessee under any provision of this Act in computing the income by way of dividends referred to in clause (a) of sub section (1). -------------***
>
> ***--------.***

40. If sub section (2) of 115BBD and sub section (2) of section 115BBDA are juxtaposed, then it is clear that in so far as dividend received from a domestic company, not only there is restriction for not allowing the deduction of any expenditure or allowance but also the set off of loss is also not allowable. On the contrary, there is no such restriction in set off of loss in sub section (2) of section 115BBD. Thus, it clearly shows the intention of the Legislature in putting restrictions in both the sections is different. One of the reasons is that, domestic dividend (before 31st March 2020) was exempted from tax, that is, domestic

dividend was not forming part of the total income. Whereas, foreign dividend income was never exempted from tax and was treated as part of the total turnover. Ostensibly, if domestic dividend does not form part of the total income or is exempted from tax, then there is no question of allowing any deduction of expenses or set off of loss while computing the total income. It is precisely for this reason that, this distinction has been made by the Legislature between the foreign dividend income and domestic dividend income.

41. Wherever Legislature has provided that no deduction or set off of loss shall be allowed then the same has been specifically provided in the statute, for instance, section 115BBE which is tax on income referred to section 68, 69, 69A, 69B, 69C or 69D, the Legislature has provided tax rate of 60% and further in sub section (2), it has provided that no deduction in respect of any expenditure allowance or set off of any loss shall be allowed to the assessee under any provision of this Act in computing the income referred to section 68 to 69D. Again this goes to show that there is a specific bar or restriction for allowing of any set off of any loss from any part of stream of income. This bar and restriction is completely absent in sub section (2) of section 115BBD. If we take this analogy of section 115BBDA and Section 115BBE, then it indicates that, whenever Legislature has intended not to allow deduction or set off of loss, it has been clearly provided in the statute and wherever only restriction is for not allowing the deduction in respect of any expenditure or allowance, then same has to be confined to the language given in the statute and nothing can be inferred or read into to import any other restriction in the said provision, i.e., the set off of loss should also be read into. Section 115BBD is similar to section 115BBF, which is tax on income on patent and there only restriction provided in sub section (2) is with regard to non-allowability of non-deduction in respect of any expenditure or allowance. No amendment has been brought in section 115BBD in sub section (2) as was brought in sub section (2) of section 115BBE w.e.f. 01.04.2017.

42. ***Further, whenever income is proposed to be taxed on gross basis at a specified rates without grant of any deduction towards expenditure allowance or any set off of loss, then it is expressly provided in statute which in the case of foreign dividend income u/s 115BBD, no such restriction has been provided for not allowing the set off of loss, albeit the only restriction is for allowability of any expenditure or allowance.***

43. Ergo, from a plain reading of the Section 115BBD, it is seen that the language of the statute is absolutely clear and there is no ambiguity in such provision. Nowhere the section speaks that dividend income received from specified foreign company cannot be set-off from the business losses while computing the total income which is computed as per the Act and set off is allowed as per section 71 of the Act. *It is trite and well settled law that the construction of the statute must be taken from the bare words of the Act. One should not look what could have been the intention of the legislature behind the legislating section and if a legislature did intend in this way, then it has to be expressed clearly in the language of the Section. The Courts cannot invent something which is not there in the statute nor should try to gauge the intention of the Legislature. It is only where the language of the statute in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the*

apparent purpose of the enactment, or to some inconvenience or absurdity, hardship or injustice, presumably not intended, then a construction may be given which modifies the meaning of the words and even the structure of the sentence. In such circumstances, the Courts while interpreting the provision probable can go what was the purpose of bringing that legislation. Here we have already discussed the various provisions of sections in the statute where different set of limitation and restriction has been provided while computing different kinds of income and hence restriction applicable for one source of income cannot be applied to other source of income nor can same be imported and read into other section. Here, there no such ambiguity or contradiction in the language used in the section to import any such fetters.

44. Thus, we hold that there is no restriction or bar in set off of foreign dividend of income from the current year loss while computing the total income. Accordingly, the order of Ld. CIT (A) is confirmed. In any case similar view has been taken by the Coordinate Bench in the case of Tata Motors Ltd. vs. DCIT (supra) which has been followed by the Ld. CIT (A), hence we do not find any infirmity in following the principle laid down therein. Accordingly, ground nos. 6.1 to 6.3 raised by the revenue is ***dismissed****.*

(Emphasis supplied by us)

2.11. In view of the aforesaid observations and respectfully following the judicial precedents relied upon hereinabove, we hold that –

a) assessee would be entitled for set off of current year loss with the foreign dividend income;

b) assessee would be entitled for set off of brought forward business losses and unabsorbed depreciation of earlier years with the foreign dividend income ; and

c) assessee would be eligible for deduction u/s 80G of the Act from the Gross Total Income subject to the restrictions provided in that relevant section.

2.12. Accordingly, the grounds raised by the assessee and the additional ground raised by the assessee are allowed.

<u>ITA No. 421/Mum/2020 – Revenue Appeal – Asst Year 2016-17</u>

3. The only issue to be decided in this appeal is with regard to the disallowance u/s 14A of the Act both under normal provisions of the Act as well as in the computation of book profits u/s 115JB of the Act.

3.1. We have heard the rival submissions and perused the materials available on record. We find that the assessee company received dividend income from subsidiaries and others amounting to Rs 118.39 crores and exemption claimed u/s 10(34) of the Act was for Rs 41.56 crores. The assessee made suo moto disallowance of expenses u/s 14A of the Act in the return of income to the tune of Rs 3,47,57,769/- as under:-

Under Rule 8D(2)(i)	-	2,76,661/-
Under Rule 8D(2)(iii)	-	3,44,81,108/-

3.2. The ld. AO ignored the contentions of the assessee and proceeded to make disallowance of expenses u/s 14A of the Act read with Rule 8D(2) of the Rules as under:-

Under Rule 8D(2)(i)	-	2,76,661/-
Under Rule 8D(2)(iii)	-	11,14,51,688/-
		11,17,28,349/-
Less: Disallowance by assessee		3,47,57,769/-
Additional disallowance		7,69,70,580/-

3.3. The ld. AO disallowed Rs 7,69,70,580/- u/s 14A of the Act under normal provisions of the Act and added back Rs 11,14,51,688/- in terms of clause 'f' of Explanation 1 to section 115JB(2) of the Act.

3.4. The ld. CIT(A) by placing reliance on the decision taken in assessee's own case for the A.Y. 2015-16 and A.Y. 2014-15 directed the ld. AO to rework the disallowance u/s 14A of the Act read with Rule 8D of the Rules by excluding the value of such investments where the dividend received

thereon is chargeable to tax and by excluding the value of investments on which dividend income has not been received by the assessee company during the year under consideration, as far as disallowance under normal provisions of the Act. As far as disallowance while computing book profits u/s 115JB of the Act, the ld. CIT(A) directed the ld. AO to decide the same in the light of the directions that were given for the A.Y. 2015-16. Aggrieved, the revenue is in appeal before us.

3.5. At the outset, we find that the investments made in subsidiary companies for the purpose of holding dominant control over the same or for the purpose of strategic investments would also have to be considered for the purpose of working out the disallowance u/s 14A of the Act in the light of decision of Hon'ble Supreme Court in the case of Maxopp Investments reported in 402 ITR 640(SC). However, the same could be considered only in respect of those investments which had actually yielded exempt income to the assessee company during the year under consideration. Obviously, the foreign dividend income which is chargeable to tax would be outside the purview of application of provisions of section 14A of the Act. We find that the ld. CIT(A) had merely directed the ld. AO to exclude the investments which had yielded taxable income and to include only those investments which had actually yielded exempt income. This issue is now very well settled by the decision of Hon'ble Supreme Court in the case of Maxopp referred to supra. Hence we do not find any infirmity in the order of the ld. CIT(A) giving directions to ld. AO to recompute the disallowance under normal provisions of the Act.

3.6. However, with regard to computation of book profits u/s 115JB of the Act, computation mechanism provided in Rule 8D(2) of the Rules cannot be imputed in clause 'f' of Explanation 1 to section 115JB(2) of the Act as has been held by the Special Bench of Delhi Tribunal in the case of Vireet

Investments reported in 165 ITD 27. However, the actual expenses incurred by the assessee thereon would have to be considered in clause 'f' which has already been done by the assessee in the instant case, while computing book profits u/s 115JB of the Act. Hence the directions of the ld. CIT(A) are modified accordingly.

3.7. The grounds raised by the revenue are disposed off in the aforementioned manner.

4. In the result, the appeal of the assessee is allowed and appeal of the revenue is partly allowed.

Order pronounced on 29 / 11 /2022 by way of proper mentioning in the notice board.

Sd/-	**Sd/-**
(RAHUL CHAUDHARY)	**(M.BALAGANESH)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Mumbai; Dated 29/11/2022

KARUNA, *sr.ps*

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai