

आयकर अपीलीय अधीकरण, न्यायपीठ – “D” कोलकाता,
IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH: KOLKATA
(समक्ष) श्री ऐ. टी. वर्की, न्यायीक सदस्य एवं डॉ. अर्जुन लाल सैनी, लेखा सदस्य)
[Before Shri A. T. Varkey, JM & Dr. A. L. Saini, AM]

I.T.A. No. 918/Kol/2018
Assessment Year: 2013-14

Sudha Apparels Ltd. (PAN: AAHCS6369J)	Vs.	Deputy Commissioner of Income-tax, Circle-10(2), Kolkata.
Appellant		Respondent

&

I.T.A. No. 1047/Kol/2018
Assessment Year: 2013-14

Deputy Commissioner of Income-tax, Circle-10(2), Kolkata.	Vs.	Sudha Apparels Ltd.
Appellant		Respondent

Date of Hearing	24.01.2019
Date of Pronouncement	11.04.2019
For the Assessee	Shri S. M. Surana, Advocate
For the Assessee	Shri A. K. Nayak, CIT, DR

ORDER

Per Shri A.T.Varkey, JM

Both these appeals preferred by the assessee and the revenue are against the order of Ld. CIT(A)-4, Kolkata dated 19.03.2018 for AY 2013-14. Since both the appeals have been heard together, we dispose of the same by a consolidated order for the sake of convenience.

2. First we take up revenue's appeal. Ground no.1 of revenue's appeal is as under:

“1. The Ld. CIT(A) erred in holding that for disallowance under Rule 8D(2)(ii), only those investments have to be taken into account from which exempt income has earned ignoring

the fact that the provisions of section 14A of the Act read with the parameters laid down in Rule 8D(2)(iii) & CBDT Circular No. 5/2014, there is no ambiguity that all the investments from which the assessee could have earned exempt income are required to be considered for computing disallowance u/s. 14A.”

3. After having heard both the parties and after perusal of the assessment order, we note that the ground raised by the revenue involves the further disallowance of Rs.35,55,156/- u/s. 14A of the Income-tax Act, 1961 (hereinafter referred to as the “Act”) as per normal computation of income which goes below the tax effect as prescribed by the CBDT Circular No. 3/2018 dated 11.07.2018. Since this appeal is hit by the CBDT Circular, cited supra, this ground of appeal of revenue is dismissed.

4. Ground no. 2 of the revenue’s appeal is as under:

“2. The Ld. CIT(A) erred in deleting the addition made u/s. 14A of the Act of Rs.94,72,341/- to the book profit ignoring the section 115JB of the Act which stated that the disallowance made under section 14A of the Act should be added to the book profit.”

5. After hearing both the parties and on perusal of the computation as well as the assessment order it reveals that the assessee is assessed under the normal computational provision and not under book profit under MAT. So, in that view of the matter, the disallowance u/s. 14A of the Act of Rs.94,72,341/- added back u/s. 115JB of the Act which was deleted by Ld. CIT(A) and now urged in appeal by the revenue has no tax effect for the simple reason that the assessee company was finally assessed under the normal computational provision by the AO himself and the computation of book profit was only of academic interest having no bearing on the tax liability of the assessee, therefore, this ground of appeal of revenue is also to be dismissed. So, overall, we note that the tax effect in both the grounds of appeal below the threshold limit prescribed by the CBDT Circular No. 3/2018 dated 11.07.2018 and, therefore, the appeal of the revenue is dismissed.

6. Coming to assessee’s appeal. The sole ground of appeal raised by the assessee is as under:

“For that under the facts & circumstances of the case, the Ld. CIT(A) erred in law as well as on fact in confirming the disallowance on account of depreciation claim of Rs.21,00,707/- u/s. 14A of the Act read with rule 8D(2)(ii) of the I. T. Rules, 1962.”

7. Briefly stated facts are that during the year the assessee company filed its return of income u/s. 139(1) of the Income-tax Act, 1961 (hereinafter referred to as the “Act”) showing a total income of Rs.8,23,14,780/- besides disclosing exempt dividend income of Rs.40,89,455/- u/s. 10(34) of the Act. In respect to the said exempt income, assessee suo moto made a disallowance in the return of Rs.59,17,185/- u/s. 14A of the Act on account of expenses relatable to earning of exempt income. The AO, however, calculated the disallowance on account of interest expenses under Rule 8D(2)(ii) by taking all investments whether yielding exempt income or not. Similarly, disallowance for other expenses under rule 8D(2)(iii) was worked out taking depreciation claim of Rs.21,00,707/- and included the said amount of depreciation of Rs.21,00,707/- enhancing the disallowance u/r 8D(2)(iii) of the Rules. Aggrieved, assessee preferred an appeal before the Ld. CIT(A), who upheld the action of AO. Aggrieved, assessee is before us.

8. After having heard both the parties the question whether depreciation claimed by the assessee u/s. 32 of the Act can be considered for the purpose of computing disallowance u/s. 14A of the Act is no longer res integra in view of the decision of the Special bench of the Tribunal in the case of Vishnu Anant Mahajan Vs. ACIT 16 ITR 621, wherein the Tribunal held as under:

“8. Coming to the question regarding depreciation being an expenditure or not, it has been held in the case of Hoshang D. Nanavati (supra) that section 14A deals only with the expenditure and not any statutory allowance admissible to the assessee. The decision has been arrived at after considering the decision in the case of Nectar Beverages Pvt. Ltd. Vs. DCIT (2009) 314 ITR 314. The ld. CIT (DR) has not been able to displace the ratio of these cases. Thus, on consideration, we find that section 14A uses the words “expenditure incurred by the assessee in relation to income”. A statutory allowance under section 32 is not an expenditure. Therefore, we are in agreement with the decision of the Division Bench in the case of Hoshang D. Nanavati.”

9. Respectfully following the ratio laid by the Hon'ble Supreme Court in Nector Beverages Pvt. Ltd. Vs. DCIT (2009) 314 ITR 314 (SC) and the decision of Special bench in Vishnu Anant Mahajan (supra), we allow the ground of appeal raised by the assessee.

10. In the result, appeal of revenue is dismissed and that of the assessee is allowed.

Order is pronounced in the open court on 11.04.2018

Sd/-
(Dr. A. L. Saini)
Accountant Member

Sd/-
(A. T. Varkey)
Judicial Member

Dated: 11th April, 2019

Jd.(Sr.P.S.)

Copy of the order forwarded to:

- 1 Appellant – Smt. Sudha Apparels Ltd., 2/5, Sarat Bose Road, Kolkata-700 026.
- 2 Respondent – DCIT, Circle-10(2), Kolkata
- 3 CIT(A)-4, Kolkata..
- 4 CIT, Kolkata.
- 5 DR, Kolkata Benches, Kolkata (sent through e-mail)

/True Copy,

By order,

Assistant Registrar