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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Judgment reserved on: 14 February 2024**
Judgment pronounced on: 11 March 2024

+ ITA 421/2018

PRINCIPAL COMMISSIONER OF INCOME TAX
(CENTRAL) – 1

..... Appellant

Through: Mr. Puneet Rai, SSC with Mr.
Ashwini Kumar & Mr. Rishabh,
JSC.

versus

M/S MOON STAR SECURITIES TRADING & FINANCE CO.
PVT. LTD.

.... Respondent

Through: Ms. Kavita Jha, Mr. Vaibhav
Kulkarni & Mr. Udit Naresh,
Advocates.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR
KAURAV

J U D G M E N T

PURUSHAINDRA KUMAR KAURAV, J.

1. The present appeal under Section 260A of the Income Tax Act, 1961 [“Act”], at the instance of the Revenue, impugns the order dated



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31.10.2017 passed by the Income Tax Appellate Tribunal [“ITAT”] for the assessment year [“AY”] 2011-12.

2. *Vide* the instant appeal, the Revenue has proposed the following questions of law for our consideration:-

A. Whether on facts and in the circumstances of the case the ITAT was correct in law in deleting disallowance of Rs.12,65,71,862/- made by the Assessing Officer [“AO”] under Section 14A of the Act read with Rule 8D of the Income Tax Rules, 1962 [“Rules”]?

B. Whether on facts and in the circumstances of the case the ITAT was correct in law in deleting the increase made by the AO in the book profits by adding the disallowance under Section 14A of the Act read with Rule 8D of the Rules for the purpose of calculating Minimum Alternate Tax [“MAT”] under Section 115JB of the Act?

3. The facts of the case exhibit that on 01.09.2012, the respondent-assessee filed its Income Tax Return [“ITR”] declaring nil income, which was selected for scrutiny assessment and a notice under Section 143(2) of the Act was duly issued by the Revenue. During the concerned AY, the respondent-assessee had earned an exempt income by way of dividend amounting to Rs.58,09,619/- and consequently, it disallowed the same in accordance with Section 14A of the Act.

4. However, on 10.01.2014, the assessment order was passed by the AO, whereby, the aforesaid disallowance was enhanced to a sum of Rs.12,65,71,862/- as per Section 14A of the Act read with Rule 8D of the Rules, under normal provisions and to Rs.12,65,71,862/-, under special provision of the Act i.e., Section 115JB.



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5. Aggrieved with the said order of the AO, the respondent-assessee preferred an appeal before the Commissioner of Income Tax (Appeals) [“CIT(A)”], wherein, the CIT(A), while partially allowing the appeal, upheld the invocation of Section 14A of the Act read with Rule 8D of the Rules. The CIT(A) determined the disallowance to the tune of Rs.2,08,72,836/- as against the original computation of Rs.12,65,71,862/- made by the AO.

6. Thereafter, the Revenue as well as the respondent-assessee, filed cross appeals against the order of the CIT(A) before the ITAT. The ITAT, while ruling in favour of the respondent-assessee, held that the disallowance made by the AO under Section 14A of the Act read with Rule 8D of the Rules, without recording any satisfaction, is unsustainable. The ITAT further held that the disallowances under Section 14A of the Act cannot be considered for computation of MAT as per the scheme of Section 115JB of the Act.

7. The Revenue, therefore, being aggrieved by the order of the ITAT, preferred the instant appeal.

8. This Court *vide* order dated 11.04.2018 in the instant appeal, while relying upon the decision in the case of **CIT v. Taikisha Engineering India Ltd.** [2014 SCC OnLine Del 7156], upheld the order of the ITAT to the extent of rejecting the disallowance under Section 14A of the Act in the absence of any satisfaction by the AO. It was further noted that only proposed Question (B), as already



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mentioned above, requires consideration. The order dated 11.04.2018 reads as under:-

“Two questions are urged by the Revenue in this appeal under Section 260-A of the Income Tax Act (hereafter ‘the Act’). The first question is with respect to the disallowance directed by the Assessing Officer (‘AO’) to the extent of over Rs.12.5 Crores under Section 13-A of the Act by applying Rule 8-D of the Income Tax Rules, 1962. This issue is covered by the judgment of this Court in the case of ‘Commissioner of Income Tax-VI vs. Taikisha Engineering India Ltd.’, 370 ITR 338 (Delhi), where the Court held that unless the AO rejects the explanation that induces the necessity to offer a specific amount as expenditure by some reasons, the mere rejection per se is unacceptable. The ITAT followed that decision; therefore, no question of law arises on this aspect.

The Court is, however, of the opinion that the second question urged by the Revenue does require consideration, which is as follows:-

“Did the ITAT fall into error in overlooking the Explanation (f) to Section 115J of the Act, in the circumstances of the case?”

Issue notice of the appeal to the assessee, returnable on 27th July, 2018.”

9. Learned counsel appearing on behalf of the Revenue submitted that the ITAT has erred in deleting the addition of Rs.12,65,71,862/- as the book profit ought to have been increased for the purpose of computation of MAT under Section 115JB, particularly when the said amount was calculated as per Section 14A of the Act read with Rule 8D of the Rules. He specifically drew our attention to Clause (f) of Explanation 1 to Section 115JB of the Act to submit that the ITAT should have appreciated adding the said income in order to correctly compute the book profit.



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10. *Per contra*, learned counsel appearing on behalf of the respondent-assessee vehemently opposed the submissions advanced by the learned counsel for the Revenue.

11. She submitted that the amounts which are disallowed as per Section 14A of the Act could not be added to net profit while computing book profit under Section 115JB of the Act. According to her, Section 115JB of the Act is a complete Code in itself as it deems book profit as total income of an assessee and consequently, determines the tax liability therein.

12. She further contended that Section 115JB of the Act, by virtue of a deeming fiction, considers book profit as the total income of the assessee, which is calculated post authorized adjustments to the profit as shown in audited profit and loss account of the assessee. She, therefore, submitted that the provisions of the said Section must be construed strictly. She also submitted that there does not exist any scope for adjustments in accordance with any other provisions of the Act, except to the extent provided under Explanation 1 to Section 115JB of the Act.

13. Learned counsel also contended that the AO cannot wield any authority to traverse beyond the adjusted book profit as shown in the profit and loss account, mandatorily prepared by every company in accordance with the Companies Act, 1956. She, thus, submitted that since Clause (f) of Explanation 1 to Section 115JB of the Act does not make any reference to the provisions of Section 14A of the Act, it is not



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permissible to import the sum and substance of Section 14A of the Act in Clause (f) of Explanation 1.

14. She has placed reliance on the decisions in the cases of **Sobha Developers Ltd. v. Dy. CIT** [2021 SCC OnLine Kar 110], **Indo Rama Synthetics (I) Ltd. v. CIT** [2011 SCC OnLine SC 121], **Ajanta Pharma Ltd. v. CIT** [2010 SCC OnLine SC 993], **JCIT v. Rolta India Ltd.** [2011 SCC OnLine SC 131], **PCIT v. JSW Energy Ltd.** [2023 SCC OnLine Bom 2846] and **PCIT v. Gujrat Flurochemicals Ltd.** [2023 SCC OnLine Guj 4767].

15. We have heard the learned counsels appearing for the parties and perused the record.

16. The limited controversy involved in the instant appeal which requires consideration pertains to whether the disallowance under Section 14A of the Act can be imported to Section 115JB of the Act, particularly in light of Clause (f) of Explanation 1 to Section 115JB of the Act, for computation of MAT.

17. For the sake of clarity, it is significant to primarily refer to Section 115JB of the Act, the relevant extract of which is reproduced as under:-

115-JB. Special provision for payment of tax by certain companies.—

(1) Notwithstanding anything contained in any other provision of this Act, where in the case of an assessee, being a company, the income tax, payable on the total income as computed under this Act in respect of any previous year relevant to the assessment year commencing on or after [the 1st day of April, 2012], is less than [eighteen and one-half per cent] of its book profit, [such book profit shall be deemed to be the total income of the assessee and the tax



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payable by the assessee on such total income shall be the amount of income tax at the rate of [eighteen per cent]:

[Provided that for the previous year relevant to the assessment year commencing on or after the 1st day of April, 2020, the provisions of this sub-section shall have effect as if for the words “eighteen and one-half per cent.” occurring at both the places, the words “fifteen per cent.” had been substituted.]

(2) [Every assessee,—

(a) being a company, other than a company referred to in clause (b), shall, for the purposes of this section, prepare its [statement of profit and loss] for the relevant previous year in accordance with the provisions of [Schedule III] to [the Companies Act, 2013 (18 of 2013)]; or

(b) being a company, to which the [second proviso to sub-section (1) of Section 129] of [the Companies Act, 2013 (18 of 2013)] is applicable, shall, for the purposes of this section, prepare its [statement of profit and loss] for the relevant previous year in accordance with the provisions of the Act governing such company:]

Provided that while preparing the annual accounts including [statement of profit and loss],—

(i) the accounting policies;

(ii) the accounting standards adopted for preparing such accounts including [statement of profit and loss];

(iii) the method and rates adopted for calculating the depreciation,

shall be the same as have been adopted for the purpose of preparing such accounts including [statement of profit and loss] and laid before the company at its annual general meeting in accordance with the provisions of [Section 129] of [the Companies Act, 2013 (18 of 2013)]:

Provided further that where the company has adopted or adopts the financial year under [the Companies Act, 2013 (18 of 2013)], which is different from the previous year under this Act,—

(i) the accounting policies;

(ii) the accounting standards adopted for preparing such accounts including [statement of profit and loss];



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(iii) the method and rates adopted for calculating the depreciation,

shall correspond to the accounting policies, accounting standards and the method and rates for calculating the depreciation which have been adopted for preparing such accounts including [statement of profit and loss] for such financial year or part of such financial year falling within the relevant previous year.

[*Explanation-1*].—For the purposes of this section, ‘book profit’ means the [profit] as shown in the [statement of profit and loss] for the relevant previous year prepared under sub-section (2), as increased by—

- (a) the amount of income tax paid or payable, and the provision therefor; or
- (b) the amounts carried to any reserves, by whatever name called [, *other than a reserve specified under Section 33-AC*]; or
- (c) the amount or amounts set aside to provisions made for meeting liabilities, other than ascertained liabilities, or
- (d) the amount by way of provision for losses of subsidiary companies; or
- (e) the amount or amounts of dividends paid or proposed; or
- (f) the amount or amounts of expenditure relatable to any income to which [Section 10 [other than the provisions contained in clause (38) thereof] or [* * *] Section 11 or Section 12 apply; or]**

***”

18. A bare perusal of the abovementioned provisions would signify that sub-Section (1) prescribes the mode and manner for computing the total income of the assessee under Section 115JB of the Act. However, Clause (f) of Explanation 1 only alludes to the amounts of expenditure relatable to any income to which Section 10 (excluding provisions



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contained in Clause 38 thereof) or Section 11 or Section 12 apply. Thus, the said explanation nowhere mentions or denotes any mandate to import the disallowance as per Section 14A of the Act for computing MAT under Section 115JB of the Act.

19. It is also apposite to refer to the decision of the Hon'ble Supreme Court in the case of *Indo Rama Synthetics (I) Ltd. (supra)* to understand the nature and scope encompassed in Section 115JB of the Act. Paragraph no.14 of the said decision succinctly encapsulates the position of Section 115JB in the following words:-

“14. It is, thus, clear that what is “book profit” has been defined and explained in the above explanation. **Section 115-JB is a self-contained code. It applies notwithstanding other provisions of the Act. There is no scope for any allowances or deductions under any other section from what is deemed to be the total income of the company (the assessee).**”

20. This Court *vide* order dated 29.09.2015 in ITA no.593 of 2015 titled as **PCIT v. Bhushan Steels Ltd.**, has held that since Explanation to Section 115JB does not specifically mention Section 14A of the Act, the view taken by the ITAT therein regarding deletion of addition cannot be held to be erroneous. The relevant paragraph of the said decision reads as under:-

“7. Question No.6 concerns deletion of addition of Rs.89,00,000 made by the AO for computation of the income for the purposes of Minimum Alternate Tax (‘MAT’) under Section 115 JB of the Act. This pertained to the expenditure incurred for earning exempt income under Section 14A read with Rule 8D. The ITAT has rightly held that this being in the nature of disallowance, and with Explanation 115JB not specifically mentioning Section 14A of the Act, the addition of Rs.89,00,000 was not justified. The



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view taken by the ITAT cannot be faulted with. It is consistent with the decision in Apollo Tyres Ltd. v. Commissioner of income Tax (2002) 255 ITR 273 (SC) which held that "the Assessing Officer does not have the jurisdiction to go behind the net profit shown in the profit and loss account - except to the extent provided in the Explanation to Section 115J." The Court declines to frame a question on the above issue."

21. The Karnataka High Court in the case of *Sobha Developers Ltd.* (*supra*) while rejecting the permissibility of adding back the disallowance on exempt income as per Section 14A of the Act to book profit under Section 115JB of the Act, has held as under:-

"7. Thus from a perusal of the relevant extract of section 115JB, it is evident that sub-section (1) of section 115JB provides the mode of computation of the total income of the assessee and tax payable on the assessee under section 115JB of the Act. Sub-section (5) of section 115JB provides that save as otherwise provided in this section, all other provisions of this Act shall apply to every assessee being a company mentioned in this section. **Therefore, any expenditure relatable to earning of income exempt under section 10(2A) and section 10(35) of the Act is disallowed under section 14A of the Act and is added back to book profit under clause (f) of Explanation 1 to section 115JB of the Act, the same would amount to doing violence with the statutory provision, viz., sub-sections (1) and (5) of section 115JB of the Act.** It is also pertinent to mention here that the amounts mentioned in clauses (a) to (i) of Explanation 1 to section 115JB(2) are debited to the statement of profit and loss account, then only the provisions of section 115JB would apply. The disallowance under section 14A of the Act is a notional disallowance and therefore, by taking recourse to section 14A of the Act, the amount cannot be added back to book profit under clause (f) of Explanation 1 to section 115JB of the Act. It is also pertinent to mention here that similar view, which has been taken by this court in *Gokaldas Images (P.) Ltd.* (*supra*) was also taken by the High Court of Bombay in *CIT v. Bengal Finance and Investments Pvt. Ltd.* I. T. A. No. 337 of 2013, dated February 10, 2015]. It is pertinent to note that in *Rolta India Ltd.*, the Supreme Court was dealing with the issue of chargeability of interest under sections 234B



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and 234C of the Act on failure to pay advance tax in respect of tax payable under section 115JA/115JB of the Act and therefore, the aforesaid decision has no impact on the issue involved in this appeal. Similarly, in Maxopp”

22. Further, in the case of **Apollo Tyres Ltd. v. CIT** [(2002) 9 SCC 1], the Hon’ble Supreme Court was of the opinion that the AO is not vested with an authority to travel beyond the net profit shown in the profit and loss account and the said jurisdiction is confined to the extent provided in the Explanation to Section 115J of the Act. Paragraph no.8 of the said decision reads as under:-

“8. Therefore, we are of the opinion, the Assessing Officer while computing the income under Section 115-J has only the power of examining whether the books of account are certified by the authorities under the Companies Act as having been properly maintained in accordance with the Companies Act. The Assessing Officer thereafter has the limited power of making increases and reductions as provided for in the Explanation to the said section. To put it differently, the **Assessing Officer does not have the jurisdiction to go behind the net profit shown in the profit and loss account except to the extent provided in the Explanation to Section 115-J.**”

23. A conspectus of the aforementioned judicial pronouncements would lead us to safely conclude that the scheme of Section 115JB, particularly in relation to Clause (f) of Explanation 1 therein, does not envisage any addition of disallowance computed under Section 14A of the Act to calculate MAT as per Section 115JB of the Act. Rather, both the provisions stand separately as no correlation exists between them for the purpose of determining the taxable income. The addition of the



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concerned disallowance made by the AO while computing MAT is *dehors* the provisions of the Act and hence, cannot be sustained.

24. In view of the aforesaid, we find that the arguments raised by the Revenue are bereft of any merit and thus, the question of law which arose in the instant appeal is answered against the Revenue. Consequently, we do not find any reason to interfere with the decision rendered by the ITAT.

25. We accordingly dismiss the instant appeal and dispose of the pending application(s), if any.

PURUSHAINDRA KUMAR KAURAV, J.

YASHWANT VERMA, J.

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