

IN THE INCOME TAX APPELLATE TRIBUNAL  
"G" BENCH, MUMBAI

SHRI M. BALAGANESH ACCOUNTANT MEMBER  
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER

ITA No. 2137/MUM/2021  
(ASSESSMENT YEAR: 2015-16)

Deputy Commissioner of Income Tax,  
CC 3(3), Central Range-3(3), Mumbai,  
Room No. 1923, 19<sup>th</sup> Floor,  
Air India Building, Nariman Point,  
Mumbai - 400021  
[PAN: AAACW5308G]

..... Appellant

**Vs**

M/s Welspun Steel Ltd.,  
7<sup>th</sup> Floor, Welspun House,  
S.B. Marg, Kamala Mill Compound,  
Lower Parel (W),  
Mumbai - 400013

..... Respondent

Appearances

For the Appellant/Department : Shri Nikhil Chaudhary  
For the Respondent/Assessee : Ms. Ira Bahl

Date of conclusion of hearing : 09.05.2022  
Date of pronouncement of order : 03.08.2022

**ORDER**

**Per Rahul Chaudhary, Judicial Member:**

1. By way of the present appeal, the Revenue has challenged the order, dated 11.08.2021, passed by the Ld. Commissioner of Income Tax (Appeals)-51, Mumbai, [hereinafter referred to as 'the CIT(A)'] for the Assessment Year 2015-16, whereby the Ld. CIT(A) had partly allowed the appeal against the Assessment Order, dated 30.12.2019, passed under section 153A read with Section 143(3) of the Act.

2. The Revenue has raised the following grounds of appeal read as under:

- “ 1. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) is justified in restricting the addition of Rs. 3,02,08,627/- u/s 14A r.w. Rule 8D(2) of the Rules to Rs. 7,43,185/-.*
- 2. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) is justified in directing the Assessing Officer to delete the disallowance made under section 14A r.w. Rule 8D to the Book profit relying on decision of Hon'ble ITAT in the assessee's own case for the A.Y. 2013-14 & 2014-15 wherein the Hon'ble Tribunal followed special Bench decision of Hon'ble ITAT, Delhi in the case of Vireet Investment Pvt. Ltd. without appreciating the fact that the Department has filed further appeal in the case of Vireet Investment Pvt. Ltd. and that matter has not reached finality”*

Ground No. 1

3. Ground No. 1 raised by the Revenue is directed against the order of CIT(A) restricting the disallowance of INR 3,02,08,627/- made by the Assessing Officer under Section 14A of the Act read with Rule 8D of the Income Tax Rules, 1962 (hereinafter referred to as 'the Rules') to INR 7,43,185/- being the amount of exempt income earned by the Assessee during the relevant previous year.
4. The Learned Department Representative appearing before us submitted that the CIT(A) had granted relief to the Assessee by following the decision of Hon'ble Bombay High Court in the Case of Nirved Traders Pvt. Ltd. [ITA No. 149 of 2017, decided on 23.04.2019]. However, in view of the amendments introduced by the Finance Act 2022, the aforesaid judgment no longer hold

good as the law stands amended retrospectively. While laying emphasis on the expression “shall be deemed to have always applied” used in the Explanation to Section 14A of the Act inserted by the Finance Act 2022, the Learned Departmental Representative submitted that the use of the aforesaid expression clearly brings out the intention of the legislature to give retrospective effect to the provisions contained in Section 14A of the Act which are now to be interpreted taking into account the Explanation inserted by the Finance Act 2022. Referring to the clarification provided under the sub-heading “The clarification in respect of disallowance under Section 14A in absence of any exempt income during an assessment year” contained in the Memorandum to the Finance Bill, 2022, the Learned Departmental Representative submitted that Memorandum clearly provides that the insertion of Explanation to Section 14A of the Act shall have effect from 01.04.2022 and would have effect retrospectively, whereas insertion of non-obstante clause in sub-section 1 of Section 14A will take effect from 01.04.2022 and shall apply in relation to the Assessment Year 2022-23, and subsequent assessment years. In support of the aforesaid submissions, the Learned Departmental Representative placed reliance on the judgment of the Hon’ble Supreme Court in the case of Commissioner of income tax Vs. Poddar Cement P Ltd : (1997) 226 ITR 625 (SC) [laying emphasis on paragraph 42], Commissioner of Income Tax, Ahmedabad Vs. Gold Coin Health Foods P Ltd: (2008) 304 ITR 308 (SC) and Prakash Nath Khanna Vs. Commissioner of Income-Tax: (2004) 266 ITR 1 (SC). On the basis of the aforesaid, the Ld. Departmental Representative submitted that the order passed by the CIT(A) be set aside and addition made

by the Assessing Officer be restored as the provisions contained in Section 14A of the Act do not provide that the disallowance under Section 14A of the Act is to be restricted to the amount of exempt income earned by an assessee during the relevant previous year.

5. Per contra, the Ld. Authorised Representative for the Assessee submitted that the amendments to Section 14A introduced by the Finance Act 2022 have prospective application. He submitted that the Hon'ble Bombay High Court and the Hon'ble Supreme Court have a number of cases held that the disallowance under Section 14A of the Act cannot exceed the amount of exempt income earned during the relevant previous year. In this regard, he placed reliance upon the following judgments: DCIT Vs. Caraf Builders and Constructions Ltd: 112 Taxmann.com 322 SC, DCIT Vs State Bank of Patiala: 99 Taxmann.com 286 SC, and DCIT Vs. Reliance Ports and Terminals Ltd: 114 Taxmann.com 529 Bombay. Further, relying upon paragraph 7 of the clarification in respect of disallowance under Section 14A of the Act contained in Memorandum to Finance Bill 2022, Ld. Authorised Representative for the Assessee submitted that it has been specifically provided that the amendment shall apply in relation to Assessment Years 2022-23 and subsequent assessment years. He further submitted that the aforesaid amendments to Section 14A were applicable only in a case where no exempt income was earned by the Assessee during the relevant previous year and did not apply in cases where exempt income was earned by the Assessee. He submitted that the judgments on which reliance has been placed by the Learned Departmental Representative

were distinguishable on facts and could not be applied to interpret the amendments introduced in Section 14A by the Finance Act 2022. Relying upon the judgment of Hon'ble Supreme Court in the case of M.M. Aqua Technologies Vs CIT, Delhi-III: 436 ITR 582 (SC) and CIT(Central), New Delhi Vs Vatika Township (P.) Ltd: 367 ITR 466 (SC), the Ld. Authorised Representative for the Assessee submitted that merely the use of expression 'for the removal of doubts' or 'shall be deemed never to have applied' does not lead to a conclusion that the amendments are to applied to be applied retrospectively. He submitted that the CIT(A) has correctly granted relief to the Assessee by following the judgment of the jurisdictional High Court.

6. We have considered the rival submissions and perused the material on record. It is admitted position that the Hon'ble Bombay High Court and the Hon'ble Supreme Court have clearly held that disallowance under Section 14A of the Act cannot exceed the amount of exempt income earned by the Assessee during the relevant previous year. The stand of the Revenue is that amendments to Section 14A introduced by the Finance Act 2022 apply retrospectively and therefore, the aforesaid judgments no longer hold good. Whereas the contention of the Assessee is that the said amendments to Section 14A of the Act are prospective in nature and therefore, the order of CIT(A), passed by following the binding judgments of the Hon'ble Jurisdictional High Court, cannot be set aside by the applying the amended provisions of Section 14A of the Act.
7. We note that the Mumbai Bench of the Tribunal has, in the case of Assistant Commissioner of Income Tax- Circle 3(1)(1) Vs

Bajaj Capital Ventures (P.) Ltd.: [2022] 140 taxmann.com 1 (Mumbai - Trib.) [29-06-2022] and also in the case of Assistant Commissioner Of Income Tax Vs. K Raheja Corporate Services Private Limited [ITA No. 2521 to 2527], held that the amendments to Section 14A introduced by the Finance Act 2022 shall apply from Assessment Year 2022-23 and onwards. Further, Hon'ble Delhi High Court in the case of Principal Commissioner of Income-Tax (Central) -2 Vs. M/s Era Infrastructure India Ltd: [ITA No. 204 of 2022, decided on 20.07.2022] has rejected the contention of the Revenue that amendments to Section 14A introduced by the Finance Act 2022 shall have retrospective effect. Accordingly, Ground No.1 raised by the Revenue is dismissed.

#### Ground No. 2

8. Ground No. 2 of the appeal is directed against the order of CIT(A) whereby the Assessing Officer has been directed to not include in the book profits the amount of disallowance under section 14A of the Act computed as per the provisions of Rule 8D of the Rules for the purpose of computing book profits in terms of Section 115JB of the Act. This issues stands decided in favour of the Assessee by the decision of Special Bench of the Tribunal in the case of ACIT Vs Vireet investments Private Limited: 58 ITR(T) 313 (Delhi - Trib.) (SB)/[2017] 82. Further, the Tribunal has, in the case of the Assessee for the Assessment Year 2013-14 and 2014-15 deleted identical adjustment made by the Assessing Officer while computing Book Profits for the purpose of Section 115JB of the Act. The CIT(A) has granted relief to the Assessee by following the aforesaid decisions. It is not the contention of the Revenue that

the operation of the aforesaid decisions has been stayed in appeal preferred by the Revenue. In view of the aforesaid and taking into account our findings in paragraph 7 above, we hold that there is no infirmity in the order passed by the CIT(A) on this issue. Accordingly, Ground No. 2 raised by the Revenue is dismissed.

In result, the present appeal by the Revenue is dismissed.

Order pronounced on 03.08.2022.

*Sd/-*  
(M. Balaganesh)  
Accountant Member

*Sd/-*  
(Rahul Chaudhary)  
Judicial Member

मुंबई Mumbai; दिनांक Dated : 03.08.2022  
*Alindra, PS*

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR,  
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार /(Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai