

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "A" MUMBAI**

**BEFORE SHRI D.T. GARASIA (JUDICIAL MEMBER) AND
SHRI N.K. PRADHAN (ACCOUNTANT MEMBER)**

**ITA No. 7083/MUM/2014
Assessment Year: 2011-12**

Kamat Hotels (India) Ltd. 70-C, Nehru Road, Vile Parle (E), Mumbai-400099. PAN No. AAACK2912L	Vs.	DCIT (OSD)-8(2) 2 nd floor, Aayakar Bhavan Mumbai-400020.
Appellant		Respondent

Assessee by	:	Mr. R.C. Jain, AR
Revenue by	:	Mr. Rajesh Kumar Yadav, DR

Date of Hearing	:	04/10/2017
Date of pronouncement	:	14/12/2017

ORDER

PER N.K. PRADHAN, A.M.

This is an appeal filed by the assessee. The relevant assessment year is 2011-12. The appeal is directed against the order of the Commissioner of Income Tax (Appeals)-17, Mumbai and arises out of the assessment completed u/s 143(3) of the Income Tax Act 1961, (the 'Act').

2. The 1st ground raised by the assessee in this appeal is against the order of the Ld. CIT(A) upholding the disallowance of Rs.3,90,13,648/- made by the AO u/s 14A r.w. Rule 8D.

2.1 Briefly stated, the facts of the case are that the assessee-company in its computation of total income filed along with the original return of income computed the disallowance u/s 14A r.w. Rule 8D at Rs.3,90,13,648/-. Subsequently, it revised the same to Rs.3,89,09,022/-. The main reason for revising computation was that, the assessee disallowed expenditure incurred for earning exempt income on account of investment in BW Highway Star Pvt. Ltd. of Rs.3,50,77,397/-. The assessee-company contended that interest paid on borrowing for acquiring controlling interest in BW Highway Star Pvt. Ltd. is not liable to be disallowed u/s 14A r.w. Rule 8D as the purpose for such loan was for acquiring controlling interest (acquiring 79.17% of shares) and not for earning dividend. However, the AO was not convinced with the explanation of the assessee-company and made a disallowance of Rs.3,90,13,648/- u/s 14A r.w. Rule 8D to the normal profit as well as the book profit. Since the tax payable on book profit computed u/s 115 JB is more than the tax payable on total income computed under normal provisions of the Act, the AO computed tax liability of the assessee u/s 115JB.

2.2 Aggrieved by the order of the AO, the assessee filed an appeal before the Ld. CIT(A). During the appellate proceedings, the assessee submitted before the AO that during the impugned assessment year no exempt income has been earned or received by it and hence no disallowance u/s 14A be made. However, the Ld. CIT(A) was not convinced with the same and upheld the disallowance made by the AO.

2.3 Before us, the Ld. counsel of the assessee relies on the decision in the case of *CIT vs. Chettinad Logistics (P) Ltd.* (2017) 80 taxmann.com 221 (Mad), *PCIT vs. M/s Reliance Capital Asset Management* (ITA No. 487/2015) (Bombay High Court) and *Quantum Advisors Pvt. Ltd. vs. DCIT* (ITA No. 3418/Mum/2015) (ITAT, Mumbai).

2.4 On the other hand, the Ld. DR relies on the order passed by the Ld. CIT(A) and the CBDT Circular No. 5/2014.

2.5 We have heard the rival submissions and perused the relevant materials on record. The reasons for our decisions are given below.

In the CBDT Circular relied on by the Ld. DR, it has been stated that 'legislative intent is to allow only that expenditure which is relatable to earning of income and it therefore follows that the expenses which are relatable to earning of exempt income have to be considered for disallowance, irrespective of the fact whether any such income has been earned during the financial year or not'.

2.5.1 We are of the considered view that the legislative intent is more discernible in the judicial decisions. In *Chettinad Logistics (P) Ltd.* (supra), the Hon'ble Madras High Court has held that section 14A cannot be invoked where no exempt income was earned by the assessee in the relevant assessment year. In the case of *CIT v. Shivam Motors (P) Ltd.* (2015) 55 taxmann.com 262 (All), it has been held that in absence of any tax free income earned by the assessee, disallowance u/s 14A could not be made. In a similar vein, it has been held in *Cheminvest Ltd. v. CIT* (2015) 61 taxmann.com 118 (Del) that section 14A will not apply if no

exempt income is received or receivable during the relevant previous year.

In view of the above position of law, we delete the disallowance of Rs.3,90,13,648/- made by the AO. Thus the 1st ground of appeal is allowed.

3. The 2nd ground of appeal is against the order of the Ld. CIT(A) confirming the addition of provision for doubtful debts/advances amounting to Rs.43,67,928/- made by the AO to the book profit u/s 115JB.

3.1 In a nutshell, the facts are that the assessee-company had *suo motu* added back the provision for doubtful debts/advances of Rs.43,67,928/- while computing the books profit u/s 115JB. However, in the revised return of income filed on 28.03.2013, the assessee excluded the book profit u/s 115JB relying on the decision in the case of *CIT vs. Yokogawa India Ltd.* (2012) 17 taxmann.com 15 (Kar.).

The AO was not convinced with the said working of the assessee because as per clause (i) in *Explanation* (1) to sub-section (2) of section 115JB which was introduced with retrospectively effect from 01.04.2011, if any provision for diminution in the value of any asset has been debited to the profit and loss account, it is to be added to the net profit as shown in the profit and loss account for the purpose of computation of book profit. Therefore, the AO increased the net profit as per the profit and loss account by the amount of provision of doubtful debts/advances of Rs.43,67,928.

3.2 Aggrieved by the order of the AO, the assessee filed an appeal before the Ld. CIT(A). The Ld. CIT(A) relying on the decision in the case of *CIT vs. Ilpea Paramount Pvt. Ltd.* (2011) 336 ITR 54 (Del) and *DCM Shriram Consolidated Ltd. vs. CIT* (2010) 39 SOT 203 (Del), confirmed the action of the AO increasing the net profit as per profit and loss account by the amount of provision for doubtful debts/advances of Rs.43,67,928/-.

3.3 Before us, the Ld. counsel of the assessee relies on the decision in *Yokogawa India Ltd.* (supra) whereas the Ld. DR relies on the order passed by the Ld. CIT(A).

3.4 We have heard the rival submissions and perused the relevant materials on record. The reasons for our decisions are given below.

In *Yokogawa India Ltd.* (supra), the Hon'ble Karnataka High Court has held that while computing book profits, provisions made for bad and doubtful debts cannot be added back in accordance with Explanation (c) to section 115JB (1) as same is not an ascertain liability.

On the other hand, in the case of *Ilpea Paramount Pvt. Ltd.* (supra) the Hon'ble Delhi High Court has held that provision for doubtful debts and provision for doubtful advances are nothing but the provisions for diminution in the value of assets, hence the same are to be added back in computing book profit in view of the retrospective amendment introduced in section 115JA by inserting clause (g) in *Explanation* to section 115JA (2) which specifically mentions the amount set aside as provision for diminution in the value of any asset.

Also in the case of *CIT vs. Steriplate (P) Ltd.* (2011) 338 ITR 547 (P&H), the Hon'ble Punjab and Haryana High Court has held that by virtue of clause (i) of Explanation 1 to sub-section (2) of section 115JB, as inserted by the Finance (2) Act, 2009, retrospectively from 1st April 2001, any amount set aside as provision for diminution in the value of any asset would not reduce the book profits of an assessee for the assessment year 2002-03.

3.4.1 We follow the above judgment of the Hon'ble Delhi High Court and Punjab and Haryana High Court and uphold the order of the Ld. CIT(A) confirming the addition of Rs.43,67,928/- made by the AO. Thus this ground of appeal is dismissed.

4. Another part of the 2nd ground raised by the assessee is against the order of the Ld. CIT(A) confirming the disallowance made by the AO of Rs.3,90,13,648/- u/s 14A r.w. Rule 8D while computing book profit u/s 115JB.

4.1 We find that in a recent decision the ITAT Delhi Bench 'H' (Special Bench) in the case of *ACIT vs. Vireet Investment (P.) Ltd.* (2017) 165 ITD 27 (Delhi-Trib) (SB) has held that computation under clause (f) of *Explanation 1* to section 115JB (2) is to be made without resorting to computation as contemplated u/s 14A r.w. Rule 8D.

We follow the above decision of the Special Bench of the Tribunal and delete the addition of Rs.3,90,13,648/- made by the AO u/s 14A r.w. Rule 8D while computing book profit u/s 115JB.

Thus this part of the 2nd ground of appeal filed by the assessee is allowed.

5. In the result, the appeal is partly allowed.

Order pronounced in the open Court on 14/12/2017.

Sd/-
(D.T GARASIA)
JUDICIAL MEMBER

Sd/-
(N.K. PRADHAN)
ACCOUNTANT MEMBER

Mumbai;

Dated: 14/12/2017

Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai