

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'B' BENCH
MUMBAI**

**BEFORE: SHRI VIKAS AWASTHY, JUDICIAL MEMBER
&**

SHRI M.BALAGANESH, ACCOUNTANT MEMBER

**ITA No.4488/Mum/2019
(Assessment Year :2014-15)**

M/s. Nirmal Industrial Control Private Limited 1 st Floor, Samruddhi Building Near Talwalkar Gym, Near P & T Colony Off. LBS Marg Mulund (W) Mumbai – 400 080	Vs.	The ACIT-15(2)(1) Room No.357, 3 rd Floor Aayakar Bhawan Mumbai – 400 020
PAN/GIR No.AABCN1777B		
(Appellant)	..	(Respondent)

Assessee by	Ms. Hanisha Jatania
Revenue by	Shri Tharian Oommen
Date of Hearing	11/08/2021
Date of Pronouncement	16/08/2021

आदेश / O R D E R

PER M. BALAGANESH (A.M):

This appeal in ITA No.4488/Mum/2021 for A.Y.2014-15 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-24, Mumbai in appeal No.CIT(A)-24/ACIT-15(2)(1)/IT-633/2016-17 dated 01/03/2019 (Id. 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 19/12/2016 by the Id. Asst. Commissioner of Income Tax-15(2)(1), Mumbai (hereinafter referred to as Id. AO).

2. The ground Nos. 1 and 6 raised by the assessee are general in nature and does not require any specific adjudication.

3. The ground No.3 raised by the assessee was stated to be not pressed by the Id. AR. The same is reckoned as a statement made from Bar and accordingly, the ground No.3 raised by the assessee is dismissed as not pressed.

4. The ground Nos. 2 & 5 raised by the assessee are challenging the disallowance made u/s.14A of the Act r.w.r. 8D(2) of the Rules both under normal provisions of the Act as well as in the computation of book profits u/s. 115JB of the Act respectively.

5. We have heard rival submissions and perused the materials available on record. The assessee is a company engaged in the business of manufacturing of industrial valves. The assessee electronically filed its return of income for the A.Y.2014-15 on 07/04/2014 declaring total income of Rs.8,44,68,280/-. We find that assessee had earned dividend income of Rs.18,50,218/- and claimed the same as exempt. We find that assessee had made suo-moto disallowance of expenses u/s.14A of the Act amounting to Rs.3,78,562/- both under normal provisions of the Act as well as in the computation of book profits u/s.115JB of the Act treating the same as expenses incurred for the purpose of earning exempt income in the return of income filed. The Id. AO however, disregarded the same and proceeded to make disallowance by applying the computation mechanism provided in Rule 8D(2) of the Rules as under:-

i) Under Rule 8D(2) (ii)	-	Rs.13,41,480/-
ii) Under Rule 8D(2)(iii)	-	<u>Rs.10,31,354/-</u>
Total		Rs.23,72,834

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5.1. The Id. AO disallowed the aforesaid sum of Rs.23,72,834/- u/s.14A of the Act r.w.r. 8D(2) of the Rules both under normal provisions of the Act as well as in the computation of book profits u/s.115JB of the Act. While doing so, the Id. AO did not reduce the suo moto disallowance of Rs.3,78,562/- made by the assessee.

5.2. Before the Id. CIT(A), assessee pleaded that it has got sufficient own funds in the form of share capital and reserves and surplus to the tune of Rs.38,60,64,566/- which is much more than the investments made by the assessee and hence, no disallowance of interest in terms of Rule 8D(2)(ii) of the Rules is warranted, With regard to disallowance made u/s.14A in the computation of book profits u/s.115JB of the Act, the assessee placed reliance on the Special Bench of Delhi Tribunal in the case of ACIT vs. Vireet Investments Pvt. Ltd., reported in 165 ITD 27 wherein it was held that computation mechanism provided in Rule 8D(2) of the Rules cannot be imputed in Clause (f) of Explanation 2 to Section 115JB(2) of the Act for the purpose of making disallowance of expenses incurred for earning exempt income. However, the Id. CIT(A) did not heed to these contentions of the assessee and upheld the disallowance made by the Id. AO.

5.3. We find that from perusal of the audited balance sheet of the assessee that it has sufficient interest free funds in its kitty which is much more than the investments made by it and hence, it could be safely

presumed that the investments were made by the assessee out of own funds and not with the borrowed funds. Hence, by respectfully following the decision of the Hon'ble Jurisdictional High Court in the case of HDFC Bank reported in 366 ITR 505, we direct the Id. AO to delete the disallowance of interest under Rule 8D(2)(ii) of the Rules. With regard to disallowance of administrative expenses under Rule 8D(2)(iii) of the Rules, we direct the Id. AO to consider only those investments which had actually yielded dividend during the year and apply 0.5% on the average value of such investments alone for the purpose of disallowance under Rule 8D(2)(iii) of the Rules. This would be in consonance with the decision of Special Bench of Delhi Tribunal in the case of Vireet Investments reported in 165 ITD 27. From the disallowance figures so arrived, the Id. AO is hereby directed to reduce the voluntary disallowance made by the assessee in the return of income under normal provisions of the Act.

5.4. With regard to disallowance of expenses u/s.14A in the computation of book profits u/s.115JB of the Act, we find that the Special Bench of Delhi Tribunal had already held that the computation mechanism provided in Rule 8D(2) of the Rules cannot be imputed for the purpose of making disallowance in terms of Clause (f) of Explanation-2 to Section 115JB(2) of the Act. Hence, only actual expenses incurred by the assessee for the purpose of earning exempt income would be liable for disallowance in terms of Clause (f) referred to thereon. Since, assessee itself, has voluntarily disallowed by identifying actual expenses in the sum of Rs.3,78,562/- in the computation of book profits u/s.115JB of the Act, the same is hereby directed to be adopted and no further disallowance is warranted thereon. Accordingly, the ground No.2 raised by the assessee is partly allowed and ground No.5 raised by the assessee is allowed.

6. The ground No.4 raised by the assessee is with regard to disallowance made u/s.35(2AB) of the Act in the sum of Rs.1,07,722/-.

6.1. We have heard the rival submissions and perused the materials available on record. We find that assessee had incurred expenditure related to research and development activities as follows:-

Expenditure related to research & development activities are as follows :-

Revenue expenditure on research & development -

Particulars	Amount
Bonus salary	Rs 3,57,000/-
Conveyance expenses	Rs 30,736/-
Employee welfare expenses	Rs 13,715/-
Incentive	Rs 19,302/-
Leave encashment	Rs 11,286/-
Leave travel allowance	Rs 40,463/-
Materials Purchased	Rs 4,89,9997/-
Salary	Rs 40,34,482/-
Telephone exp	Rs 24,100/-
Testing charges	Rs 4,04,395/-
Travelling expenses	Rs 3,49,133/-
TOTAL	Rs 57,74,611/-

Capital expenditure on research & development-

Particulars	Amount
Plant & machinery purchased	Rs 20,66,642/-
TOTAL	Rs 20,66,642/-

6.2. The total of aforesaid Revenue as well as capital expenditure comes to Rs.78,41,253/-. We find that assessee had claimed weighted deduction @200% thereon in the sum of Rs.1,56,82,506/- u/s.35(2AB) of the Act in the return of income. There is no dispute that during the year under consideration, that assessee company was involved in the activities of in-house research and development disallowed and is eligible for deduction u/s.35(2AB) of the Act. The research and development activity carried out by the assessee is duly approved by the Department of Scientific and Industrial Research (DSIR), New Delhi. The assessee also submitted a report in Form 3CL approved by the DSIR, New Delhi. We find that the Id. AO on perusal of Form 3CL report observed that recognition has been granted in respect of capital expenditure to the tune of Rs.20.67 lakhs and Revenue expenses to the tune of Rs.57.21 lakhs. The total expenditure approved comes to Rs.77.88 lakhs and that assessee would be effectively eligible for weighted deduction u/s.35(2AB) of the Act only to the extent of Rs.1,55,76,000/- (Rs.77,88,000/- * 200%). Since assessee had claimed weighted deduction u/s.35(2AB) of the Act in the sum of Rs.1,56,82,506/- in the return, the excess sum representing difference of Rs.1,07,222(Rs.15,62,506–Rs.1,55,76,000/-) was sought to be disallowed by the Id. AO in the assessment. This was upheld by the Id. CIT(A).

6.3. We find that once an expenditure is approved as incurred for development of R & D facility (both Revenue and capital expenditure) and such R & D facility is also approved by DSIR, New Delhi, the assessee would be entitled for weighted deduction u/s.35(2AB) of the Act. Considering the plain reading of the said Section, coupled with its intention of granting weighted deduction to the assessee for encouraging development of R & D facility, we hold that assessee would be entitled for weighted deduction of Rs.1,07,222/- u/s.35(2AB) of the Act in the facts and circumstances of the instant case. Accordingly, the ground No.4 raised by the assessee is allowed.

8. In the result, appeal of the assessee is partly allowed.

Order pronounced on 16/08/2021 by way of proper mentioning in the notice board.

Sd/-
(VIKAS AWASTHY)
JUDICIAL MEMBER

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

Mumbai; Dated 16/08/2021

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

