IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

ITA No.180 of 2017 (O&M)
Assessment Year : 2006-07
Decided on : 29.10.2018

Pr. Commissioner of Income Tax (Central), Gurgaon

.... Appellant

Versus

M/s Ind Swift Laboratories Limited

...... Respondent

CORAM : HON'BLE MR. JUSTICE AJAY KUMAR MITTAL, JUDGE
HON'BLE MR. JUSTICE AVNEESH JHINGAN, JUDGE

Present : Mr. Vivek Sethi, Senior Standing Counsel
for the appellant-revenue.

Mr.Rohit Sood, Advocate
for the respondent.

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AVNEESH JHINGAN, J.

The revenue has filed the present appeal under Section 260A of Income Tax Act, 1961 (for brevity, 'the Act') against the order of Income Tax Appellate Tribunal, Chandigarh (hereinafter referred to as 'Tribunal') passed in ITA No.745/Chd/2012 dated 28.08.2004 for the assessment year 2006-07.

2. Appellant claims following substantial questions of law arise for consideration in the present appeal:-

i) Whether on the facts and circumstances of the case, the Hon'ble ITAT was justified in restricting the disallowance made u/s 14A from ₹31,55,004/- to

₹ 2 lakhs without any sound and valid reason?

ii) Whether on the facts and circumstances of the case, the Hon'ble ITAT was justified in rejecting the method for calculation of disallowance u/s 14A provided in Rule 8D just because the said Rule was inserted from 23.04.2008 even if it was a logical method?

iii) Whether on the facts and circumstances of the case, the Hon'ble ITAT was justified in rejecting the method for calculation of disallowance u/s 14A provided in Rule 8D just because the said Rule was inserted from 23.04.2008, when this was the prescribed method available in the statute when the disallowance was made?

iv) Whether on the facts and in the circumstances of the case, the Tribunal was right in law in computing book profits u/s 115JB of the I.T.Act, 1961 in view of explanation (1) (f) to Section 115JB of the I.T.Act, 1961 ?

3. The brief facts necessary for adjudication of the appeal are that for assessment year 2006-07, the assessee-company filed a return declaring loss of ₹28,03,95,438/-. The return was revised on 31.10.2007 and the business loss of ₹37,60,87,896/- was shown. The return was further revised twice and ultimately a loss of ₹37,43,05,752/- was declared and tax was paid under Section 115 JB of the Act. The return was processed under Section 143 (1) of the Act on 14.11.2007. The case was selected for scrutiny. Notice under Section 143(2) of the Act was issued on 24.10.2007. The assessment was finalised vide order dated 30.12.2008. During the assessment proceedings apart from other issues, the Assessing Officer noticed that

assessee had invested a sum of ₹7,39,85,179/- in shares of other companies. The Assessing Officer invoked the provisions of Section 14A of the Act read with Rule 8D of the Income Tax Rules, 1962 (in short, 'the Rules'). The AO applied Rule 8D of the Rules and worked out the disallowance of expenses under Section 14A of the Act at ₹31,55,004/-.

4. Against the said order, the assessee-company filed an appeal before the Commissioner of Income Tax (Appeals), Chandigarh (for brevity, '(CIT(A)'). The Appellate Authority vide order dated 03.04.2012 sustained the disallowance of expenses under Section 14A of the Act. Dissatisfied, the assessee-company preferred further appeal before the Tribunal. The issue of disallowance under Section 14A of the Act was allowed by the tribunal vide order dated 28.08.2014. Tribunal relied upon its decision in the case of M/s Indo Swift Ltd. in ITA No.511/Chd/2009 wherein the Tribunal had followed the decision of the Bombay High Court in the case of ***Godrej Boyce Mfg. Company Pvt. Ltd. vs. Deputy CIT and another, 2010 (328) ITR 81.*** However, the Tribunal restricted the disallowance to ₹2 lakhs. Hence the present appeal.

5. In ITA No.212 of 2017, similar issue came up for consideration before this Court where the appeal of the revenue was dismissed in respect of similar questions No.1 to 3 as in the present appeal.

6. The question No.4 is consequential to the disallowance made under Section 14A of the Act. The assessing Officer while computing the book profit under Section 115JB of the Act added back the disallowance worked under Section 14A of the Act to the net profit shown in the profit and loss amount and computed the profit for the year. Since the disallowance of expenses under Section 14A of the Act has already been set

aside, the question No.4 claimed in the appeal no longer survives.

7. No interference is called for in the order passed by the Tribunal. No substantial question of law arises.

8. Consequently, the appeal is dismissed.

(AJAY KUMAR MITTAL)
JUDGE

(AVNEESH JHINGAN)
JUDGE

October 29, 2018
anju

Whether speaking/reasoned: Yes

Whether reportable : Yes