

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.337 OF 2013

The Commissioner of Income Tax-8 .. Appellant.  
V/s.  
M/s. Bengal Finance & Investments Pvt. Ltd. .. Respondent.

Mr. Arvind Pinto, for the Appellant.  
Dr. K. Shivram, Sr. Advocate with Mr. Ajay R. Singh, for the Respondent.

**CORAM: M.S.SANKLECHA, &  
G.S.KULKARNI, JJ.**

**DATE : 10<sup>th</sup> FEBRUARY, 2015.**

**P.C:-**

This Appeal under Section 260-A of the Income Tax Act, 1961 (the Act), challenges the order dated 3<sup>rd</sup> July, 2012 passed by the Income Tax Appellate Tribunal (the Tribunal) for the Assessment Year 2007-08.

2 The Revenue press the following questions of law for our consideration:

*“(a) Whether on the facts and in the circumstances of the case and in law, the Tribunal is justified in restoring the issue of disallowance u/s. 14A to the file of the Assessing to decide afresh in view of the decision of the Hon'ble Bombay High Court in the case of Godrej & Boyce Mfg. Co. Ltd. [328 ITR 81] without appreciating the fact that the issue of disallowance u/s. 14A read with Rule 8D, has not reached its finality as the Department has agitated the matter before the Hon'ble Supreme Court, which is pending for final decision.?”*

*(b) Whether on the facts and in the circumstances of the case, and in law, the ITAT is justified in deleting the addition of*

*Rs.78,84,387/- under clause (f) of Explanation 1 to Section 115JB relying upon the decision in the case of Goetze (India) Ltd. v/s. CIT (2009) 32 SOT 101 (Del.), which has been followed by ITAT, Mumbai in the cases referred to in para 5 of the impugned order without appreciating that the above decision in the case of Goetze (India) Ltd. was rendered by the ITAT, Delhi Bench on completely distinguishable set of facts, peculiar to the said case?”*

3 So far as Question (a) is concerned, we find that the Tribunal has merely followed the decision of this Court in **Godrej & Boyce Manufacturing Co. Ltd. v/s. DCIT 328 ITR 81**, directing the Assessing Officer to work out the disallowance on a reasonable basis and not under Rule 8D under the Income Tax Rules for the Assessment Year 2007-08. The Tribunal has merely followed the decision of the jurisdictional High Court and no fault can be found with the same. Accordingly, no substantial question of law arises in Question (a). Hence dismissed.

4 So far as Question (b) is concerned, the impugned order of the Tribunal followed its decision in **M/s. Essar Teleholdings Ltd. v/s. DCIT in ITA No. 3850/Mum/2010** to held that an amount disallowed under Section 14-A of the Act cannot be added to arrive at book profit for purposes of Section 115JB of the Act. The Revenue's Appeal against the order of the Tribunal in M/s. Essar Teleholdings (supra) was dismissed by this Court in Income Tax Appeal No.438 of 2012 rendered on 7<sup>th</sup> August, 2014. In view of the above, question (b) does not raise any substantial question of law.

5 Accordingly, **appeal dismissed**. No order as to costs.

**(G.S.KULKARNI,J.)**

**(M.S.SANKLECHA,J.)**

**आयकर अपीलिय अधिकरण, मुंबई न्यायपीठ 'बी', मुंबई ।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**MUMBAI BENCHES "B", MUMBAI**

सर्वश्री आर.एस. स्याल, लेखा सदस्य एवं श्री विवेक वर्मा, न्यायिक सदस्य, के समक्ष ।

**Before Shri R.S.Syal, AM and Shri Vivek Varma, JM**

आयकर अपील सं./ITA No.5620/Mum/2010  
(निर्धारण वर्ष / Assessment Year : 2007-2008)

M/s.Bengal Finance & Investments Private Limited 2-B, 10 Mittal Industrial Estate Andheri (East), Mumbai – 400 059. <b>PAN : AABCB7225Q.</b>	<b>बनाम/</b> Vs.	The Asstt.Commissioner of Income-tax Circle 8(1) Mumbai.
(अपीलार्थी /Appellant)		(प्रत्यर्थी/Respondent)

आयकर अपील सं./ITA No.5937/Mum/2010  
(निर्धारण वर्ष / Assessment Year : 2007-2008)

The Asstt.Commissioner of Income-tax Circle 8(1) Mumbai.	<b>बनाम/</b> Vs.	M/s.Bengal Finance & Investments Private Limited 2-B, 10 Mittal Industrial Estate Andheri (East), Mumbai – 400 059.
(अपीलार्थी /Appellant)		(प्रत्यर्थी/Respondent)

राजस्व की ओर से/Revenue by : Shri Mohit Jain  
निर्धारिती की ओर से/Assessee by : Shri Ajay R.Singh

सुनवाई की तारीख / Date of Hearing : 24.07.2012	घोषणा की तारीख / Date of Pronouncement : 31.07.2012
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**आदेश / ORDER**

**Per R.S.Syal, AM :**

These two cross appeals - one by the assessee and the other by the Revenue – arise out of the order passed by the Commissioner of Income-tax (Appeals) on 14.05.2010 in relation to the assessment year 2007-2008.

2. The only issue raised by the assessee in its appeal is computation of disallowance u/s 14A read with Rule 8D.

3. We have heard the rival submissions and perused the relevant material on record. It is noted that the question of making disallowance u/s 14A is no more *res integra* in view of the judgment of the Hon'ble Bombay High Court in *Godrej & Boyce Ltd. Mfg. Co. VS. DCIT [(2010) 328 ITR 81 (Bom)]* holding that the provisions of section 14A are applicable in circumstances as are prevailing presently and the disallowance has to be worked out by the AO on some 'reasonable basis' and not rule 8D. Under such circumstances, we set aside the impugned order and restore the matter to the file of the AO for deciding the quantum of disallowance, as per the aforementioned judgment, after allowing a reasonable opportunity of being heard to the assessee.

4. The Revenue in its appeal is aggrieved against the direction of the learned CIT(A) in deleting the addition of the amount of disallowance u/s 14A and disallowance of ₹10.06 lakh of prior period expenses while computing profits u/s 115JB of the Act.

5. We have heard the rival submissions and perused the relevant material on record. It is observed that the Assessing Officer added the amount disallowed by him u/s 14A to the tune of ₹78.84 lakh to the book profit computed u/s 115JB. The learned CIT(A) ordered for the deletion of this amount. The learned AR has placed on record a copy

of the order passed by the Mumbai Bench of the Tribunal in the case of M/s.Essar Teleholdings Ltd. v. DCIT in ITA No.3850/Mum/2010 in which it has been held that the amount disallowed u/s 14A cannot be added to the amount of book profit u/s 115JB. In this order it has been laid down that unless a particular expenditure is debited to the profit and loss account relating to the earning of exempt income, the same cannot be imported into the computation of book profit as clause (f) of *Explanation 1* to section 115JB which only refers to the amount debited to the profit and loss account. In reaching this conclusion the Mumbai Bench relied on another order of the Delhi Bench in the case *Goetze (India) Ltd. v. CIT [(2009) 32 SOT 101 (Del.)]* laying down similar proposition. The learned AR has also placed on record one more order passed by the Delhi Bench in the case of *Quippo Telecom Infrastructure Ltd. v. ACIT* in ITA No.4931/Del/2010 in which it has been reiterated that the amount disallowed u/s 14A cannot be considered while computing book profit u/s 115JB of the Act. No contrary decision has been brought on record by the learned Departmental Representative. In view of these facts, we are of the considered opinion that the learned CIT(A) was justified in directing that the amount of disallowance u/s 14A cannot be considered while computing book profit u/s 115JB.

6. As regards the other amount of ₹10.06 lakh, being prior period expenses, we find that the same have been debited to the profit and loss account. Starting point for computing book profit u/s 115JB is the amount of net profit as disclosed by Profit and loss account. Only

the items enumerated in *Explanation 1* to section 115JB are required to be increased for determining the book profit. There is no reference to increasing the amount of net profit by the prior period expenses in *Explanation 1* to section 115JB. In view of these facts, we are of the considered opinion that the learned CIT(A) was justified in directing accordingly.

7. परिणामतः निर्धारिती की अपीलें सांख्यकीय उद्देश्य केलिए स्वीकृत की जाती है । राजस्व की अपीलें खारिज की जाती है । In the result, assessee's appeal is allowed for statistical purposes and the Revenue's appeal is dismissed.

Order pronounced on this 31<sup>st</sup> day of July, 2012.

आदेश की घोषणा दिनांक: को की गई ।

Sd/-  
(Vivek Varma)

न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-  
(R.S.Syal)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated 31<sup>st</sup> July, 2012.

Devdas\*

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)-XVI, Mumbai.
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

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY****ORDINARY ORIGINAL CIVIL JURISDICTION****INCOME TAX APPEAL NO.438 OF 2012**

The Commissioner of Income Tax-5, ...Appellant  
v/s  
M/s Essar Teleholdings Ltd. ...Respondent

Mr Abhay Ahuja with Ms Padma Divakar for Appellant.  
None for Respondent.

**CORAM : S.G. DHARMADHIKARI AND  
B.P. COLABAWALLA JJ.**

**DATE : 7TH AUGUST 2014.**

**P.C. :-**

1. We have heard Mr Ahuja, learned counsel appearing on behalf of the Appellant on the questions which have been termed as substantial questions of law. They are formulated in this Memo of Appeal by the Revenue at page 3. They read as under :-

“(A) Whether on the facts and circumstances of the case and in law, the Hon'ble ITAT is right in setting aside and restoring back the issue to the file of AO for de novo adjudication in light of the provisions of Rule 8D ?

(B) Whether on the facts and circumstances of the

case and in law, the Hon'ble ITAT is right in deleting the addition of Rs.4.06 crores made by the AO u/s 14A of the Act for the purpose of computing book profit u/s 115JB(f) of the Income Tax Act 1961 ?”

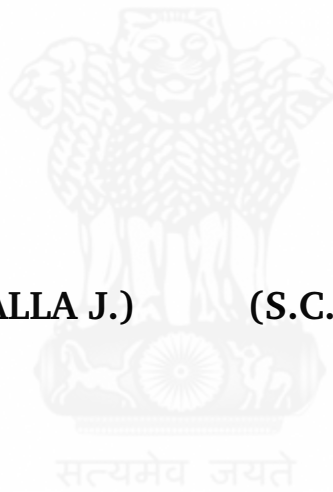
3. In relation to the second question, Mr Ahuja stated that it is a substantial question of law simply because the Tribunal while remanding and restoring the case to the file of the Assessing Officer has given a finding with regard to the course to be adopted after restoration by the Assessing Officer. The Tribunal should not have done this. In such circumstances, the Appeal raises substantial questions of law. We are of the view that the Tribunal had only reiterated in paragraph 8 of the order under challenge delivered on 29<sup>th</sup> July 2011 the finding on the expenditure as per rule 8D r/w section 14A of the Income Tax Act 1961. In relation to that, the Tribunal held that Rule 8D is not applicable to the A.Y. Under consideration. Hence, applying the provisions of Rule 8D is not justified. The further finding of the Tribunal is only to bring to the notice of the Assessing Officer that he has to abide by clause (f) of Explanation 115JB of the Income Tax Act. In such circumstances, what the Tribunal has done is to invite attention of the Assessing Officer to the orders



passed by the Tribunal, Delhi Bench. Beyond this, we do not think that the Tribunal has adjudicated the claim or has accepted the contentions raised before it by either side. In these circumstances and when the Assessing Officer is expected to determine the claim afresh and in accordance with law, we do not see any basis for the apprehension and which is voiced by Mr Ahuja. With this additional clarification, the Appeal does not raise any substantial question of law. Appeal is dismissed. No costs.

( B.P. COLABAWALLA J.)

(S.C. DHARMADHIKARI J.)



IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH 'E' MUMBAI

**BEFORE SHRI J. SUDHAKAR REDDY (AM)  
AND SMT. ASHA VIJAYARAGHAVAN (JM)**

ITA Nos. 3850 /Mum/2010  
Assessment year- 2005-06

M/s. Essar Teleholdings Ltd., 11, Keshavrao Khadye Marg, Mahalaxmi, Mumbai-400 034  PAN-AAACS 4448K	Vs.	The DCIT, Range 5(1), Aayakar Bhavan, Mumbai-400 020
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Appellant by: Shri Vijay Mehta  
Respondent by: Shri B. Jaya Kumar

**ORDER**

**PER ASHA VIJAYARAGHAVAN (JM)**

This appeal preferred by the assessee are directed against the order dt.29.6.2011 passed by the Id. CIT(A)-9 for the Assessment Year 2005-06.

2. The brief facts of the case are that the appellant company is engaged in the business of investment. Return of income showing total loss of Rs. 87,98,40,509/- was filed on 31.10.2005 alongwith the copies of audited balance sheet and profit and loss account and the Tax Audit Report u/s. 44AB of the I.T. Act. After scrutiny of return, details and information submitted, the Assessing Officer computed total loss of Rs. 65,60,40,509/- u/s. 143(3) of the Act on 27.12.2007. While arriving the aforesaid loss, the AO disallowed finance charges to the tune of Rs. 22.38 crores u/s. 14A of the I.T. Act. During the year, the assessee company has not received any dividend or any income in respect of investment of shares which is exempt or otherwise does not form part of total income. The AO therefore applying provisions of Sec. 14A

and thereby disallowing proportionate interest on loans taken for the purpose of investment.

3. While arriving the Book Profit u/s. 115JB, the AO added proportionate finance charges of Rs. 4.06 crores related to exempt income u/s. 10(34) of the Act. During the year, the assessee company has not received any dividend or any income in respect of investment of shares which is exempt or otherwise does not form part of total income. The AO therefore erred in adding the proportionate finance charges of Rs. 4.06 crores related to exempt income u/s. 10(34) of the Act, while computing the Book Profit u/s. 115JB of the I.T. Act.

4. Aggrieved by the order of the AO, assessee preferred an appeal before the Ld. CIT(A).

5. The first ground raised by the assessee reads as follows:

*"1. The CIT(A) erred in directing the AO to disallow the expenditure as per Rule 8D r.w. 14A of the I.T. Act.*

*1.1 The CIT(A) erred in enhancing the amount of disallowance u/s. 14A, by directing to disallow the expenditure as per Rule 8D as against the disallowance made by the AO based on the average cost of funds.*

*1.2 The CIT(A) erred in applying Rule 8D of I.T. Rules to the appellant for the A.Y. under appeal without appreciating the fact that Rule 8D was applicable from A.Y. 2007-08."*

6. On perusal of the Ld. CIT(A)'s order, we find that the CIT(A) has confirmed the AO's action by applying the decision of ITAT, Special Bench Mumbai in the case of Daga Capital Management Pvt. Ltd. (2008) 119 TTJ 289 (Mum) and, has thus, applied the method provided under Rule 8D of the I.T. Rules. At this stage, it is pertinent to note that the decision of Special Bench of Tribunal in the case of Daga Capital Management Pvt. Ltd. (supra) holding that Rule 8D is retrospective in nature, has been over-ruled by

the Hon'ble Bombay High Court in the case of Godrej Boyce Vs DCIT (2010) 43 DTR 177 (Bom.), wherein it has been held that Rule 8D would be applicable only on and from A.Y. 2008-09 onwards and not prior to A.Y. 2008-09. In the light of the decision of Hon'ble Bombay High Court in the case of Godrej Boyce Vs DCIT (supra), we set aside the orders of the authorities below and hold that no disallowance u/s. 14A shall be made by applying the method provided u/R 8D of the I.T Rules, in the present assessment year which is prior to A.Y. 2008-09.

However in circumstances as are prevailing presently and the disallowance has to be worked out by the AO on some 'reasonable basis' and not Rule 8D. Under such circumstances, we set aside the impugned order and restore the matter to the file of the AO for deciding the quantum of disallowance, as per the afore-noted judgment of Godrej & Boyce (supra) after allowing a reasonable opportunity of being heard to the assessee.

7. The second ground raised by the assessee reads as follows:

*"The CIT(A) erred in directing the AO to adjust the book profits computed u/s. 115JB with the expenditure as per Rule 8D r.w.s.14A of the Act."*

8. As already held in ground No. 1 the provisions of Rule 8D are not applicable to the present A.Y. under consideration. Therefore, disallowance of expenditure by applying Rule 8D is not justified. Further, no actual expenditure was debited in the profit & loss account relating to the earning of exempt income. Therefore the provisions of Sec. 14A cannot be imported into while computing the book profit u/s. 115JB of the Act inasmuch as clause (f) of Explanation to Sec. 115JB refers to the amount debited to the profit & loss account which can be added back to the book profit while computing book profit u/s. 115JB of the Act. In this connection, reliance can be placed upon the decision of ITAT Delhi Bench in the case of Goetze (India) Ltd. Vs CIT (2009) 32 SOT 101 (Del), wherein it has been held that provisions of Sub-Sec. (2) & (3)

of Sec. 14A cannot be imported into clause (f) of the Explanation to Sec. 115JA of the Act. In this view of the matter, we therefore, delete the disallowance of expenses confirmed by the CIT(A) while computing book profit u/s. 115JB of the Act. In other words, no addition to the book profit shall be made on account of alleged expenditure incurred to earn exempt income while computing income u/s. 115JB of the Act. Thus ground No. 2 is decided in favour of the assessee.

9. In the result, the appeal filed by the assessee is partly allowed.

Order pronounced on this 29<sup>th</sup> day of July, 2011

Sd/-  
(J.SUDHAKAR REDDY)  
Accountant Member

Sd/-  
(ASHA VIJAYARAGHAVAN)  
Judicial Member

Mumbai, Dated 29<sup>th</sup> July, 2011  
Rj

*Copy to :*

1. *The Appellant*
2. *The Respondent*
3. *The CIT-concerned*
4. *The CIT(A)-concerned*
5. *The DR ' E' Bench*

*True Copy*

*By Order*

*Asstt. Registrar, I.T.A.T, Mumbai*

		Date	Initials	
1.	Draft dictated on:	25.6.2011		Sr. PS/PS
2.	Draft placed before author:	26.07.2011		Sr. PS/PS
3.	Draft proposed & placed before the second member:			JM/AM
4.	Draft discussed/approved by Second Member:			JM/AM
5.	Approved Draft comes to the Sr. PS/PS:			Sr. PS/PS
6.	Order pronounced on:			Sr. PS/PS
7.	File sent to the Bench Clerk:			
8.	Date on which file goes to the Head Clerk:			Sr. PS/PS
9.	Date on which file goes to AR			
10.	Date of dispatch of Order:			