

IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH, KOLKATA

**BEFORE SHRI PRADIP KUMAR CHOUBEY, JM
AND
SHRI RAKESH MISHRA, AM**

**ITA No. 1177/KOL/2024
(Assessment Year: 2015-16)**

**DCIT, Central Circle-2(2),
110, Shantipally, 4th Floor,
Pin-700073, West Bengal**

(Appellant)

**Aryan Mining and Trading
Corporation Limited,**

**Vs. P-1, Hide Lane, Johar Building,
PIN-700073, West Bengal**

(Respondent)

PAN No. AADCA7247B

**Assessee by : Shri A.K. Tulsian, AR
Revenue by : Shri Praveen Kishore, DR**

**Date of hearing: 11.06.2025
Date of pronouncement: 23.06.2025**

ORDER

Per Pradip Kumar Choubey, JM:

This is an appeal preferred by the Revenue against the order of the National Faceless Appeal Centre, Delhi (hereinafter referred to as the "Ld. CIT(A)") dated 23.01.2024 for the AY 2015-16.

02. It appears from the report of the registry that the appeal has been filed after a delay of 60 days. At the time of hearing the counsel of the revenue explained the reason for delay in filing the appeal. The Ld. A.R did not raise any objection in condoning the delay. Keeping in view, the submission made by the A.R. and the judicial pronouncement that a case should be decided on merit not on technical issue, the delay is hereby condoned
03. Brief fact of the case is that the assessee company e-filed its original return under sec 139(1) of the Income Tax Act, 1961 was filed on



28.09.2015 disclosing a total income of ₹20,32,46,910/-. The case was selected for Limited scrutiny through CASS and notice u/s 143(2) and 143(1) were issued and served upon the assessee. Assessment was completed u/s 143(3) of the Act on 05.10.2017 determining total Income of Rs. 26,86,43,300/- inter alia making the disallowance of CSR expenditure amounting Rs. 46,36,000/- and disallowance u/s 14A read with Rule 8D of the IT Rules amounting to ₹6,07,60,388/-.

04. Aggrieved by the said order assessee preferred the appeal before the Id. CIT (A), wherein the appeal of the assessee has been partly allowed.
05. Being aggrieved and dissatisfied, the Revenue preferred an appeal before us.
06. The Id. DR challenges the very impugned order thereby submitting that the Id. CIT (A) erred in directing the AO to recompute the addition of ₹6,07,60,388/- made by the AO u/s 14A r.w. Rule 8D based on the CBDT's Circular No. 5/2014 dated 11.02.2014. The Id. CIT(A) erred in relying on assessee's computation for disallowances under Rule 8D without considering the CBDT's Circular No 5/2014 dated 11.02.2014 wherein it has clarified that the usage of term includible in the Heading to section 14A of the Act and also the Heading to Rule 80 of IT Rules 1962 which indicates that it is not necessary that exempt income should necessarily be included in a particular year of income for disallowance to be triggered. Also, section 14A of the Act does not use the word "income of the year but "income under the Act". This also indicates that for invoking disallowance under section 14A not material that assessee should have earned such exempt income during the financial year under consideration. The Id. CIT(A) erred in holding that disallowance u/s 14A read with Rule 8D of IT Rules 1962 is a notional disallowance and cannot be imported while computing book profit u/s 115JB of the Act whereas

clause (f) of the Explanation 1 of section 115JB specifically states that book profit shall be increased by the amount or amounts of expenditure relatable to any income to which section 10 apply and expenditure disallowed u/s 14A related to expense made on earning income exempt u/s 10 of the Act.

07. Contrary to that the Id. AR supports the impugned order thereby submitting that there is no infirmity in the impugned order as assessee had earned total exempted income amounting to ₹31,50,337/- during the year under consideration as it is evident from the audited accounts. The Id. AR submits that the Id. AO while calculating the disallowance u/s 14A of the Act has taken the entire investments appearing in the books of the assessee including those investments from which no exempt income has been earned by the assessee. The Id. AR further submits that the Id. AO has disallowed an amount of ₹6,07,60,388/- u/s 14A read with section Rule 8D of the Rules, ignoring the law that average value of investment needs to be calculated first. The Id. AR submits that Id. CIT (A) have directed the Id. AO to verify and recompute the disallowance considering all those investments which have yielded exempt income during the year and there is no infirmity in the said order. The Id. AR has placed reliance on the following orders of the co-ordinate Bench Kolkata in assessee's own case for A.Y. 2013-14 in ITA No. 1777/KOL/2017 and ITA No. 629/KOL/2022, further in ITA No. 1850/KOL/2024.
08. Upon hearing the submissions of the counsel of the respective parties, we have perused the impugned order and find that assessee has investments of ₹12,13,96,02,123/- being capable of generating exempt income and during the year the assessee has earned exempt income of ₹31,50,337/- on account of interest on IRFC and REC bonds. No dividend or Long-Term Capital Gain (LTCG) which is exempted from tax



was earned during the year. It is pertinent to mention here that investment made in the subsidiary/ group companies are strategic investment that should not be considered for disallowance u/s 14A of the Act. We have gone through the order passed by the co-ordinate Bench of the Kolkata in assessee's own case for A.Y. 2013-14 and find that the issue raised by the Revenue in the said case are as follows: -

"i. That on the fact and in restricting the disallowance u/s 14A to ₹5,10,242/- by observing that such disallowance u/s 14A should be in respect only of that part of investment which gives rise to exempt income during the year, whereas circular No.5/2014 dated 11.02.2014 has amply clarified that for invoking disallowance u/s 14A, it is not material that assessee should have earned such income during the financial year under consideration.

09. The relevant portion of the said order are hereby reproduced hereinbelow: -

"5. We have given a careful consideration to the rival submissions and perused the material available on record, we note that main grievance of the Revenue is against deletion of disallowance of Rs.95,77,250/-, which was made by the AO under rule 8D(2)(iii) read with section 14A of the I.T. Act, 1961. The AO has made calculation under rule 8D read with section 14A of the I T Act, 1961 and made disallowance of Rs. 95,77,250/-. We note that Coordinate Bench of ITAT Kolkata, in the case of REI Agro Ltd. Vs. DCIT 144 ITD 141 (Kol-Trib), has held that it is only the investments which yields dividend during the previous year that has to be considered while adopting the average value of investments for the purpose of Rule 8D(2)(ii) & (iii) of the Rules. The aforesaid view of the Tribunal has since been affirmed as correct by the Hon'ble Calcutta High Court in G.A.No.3581 of 2013 in the appeal against the order of the Tribunal in the case of REI Agro Ltd. (supra). Therefore, we note that the only investment which has given rise to the exempted income would be taken into consideration. The assessee has filed a calculation before Id CIT(A), as per rule 8D read with section 14A, keeping in view the ratio decided in the case of REI Agro Ltd (Supra) which is as under:

Sl.	Particulars	Opening balance	closing balance	Dividend received
1	Standard chartered bank money plus	42,47,234/-	2,42,311/-	48,39,392/-
2	Standard chartered bank	4,65,754/-	5,18,117/-	42,93,163/-
3	Reliance Money Manager Fund	-	198,623,445/-	80,05,458/-
4	Reliance Medium Term Fund	-	-	77,97,632/-
	Total	47,12,988/-	199,383,873/-	249,35,645/-
Average investments = $(47,12,988 + 199,383,873)/2 = \text{Rs.}102,048,430/-$				
Disallowance under Rule 8D(iii) = $(0.5\% \text{ of Avg. Investment}) - (0.5\% \text{ of Rs.}102,048,430) = \text{Rs.}5,10,242/-$				

We note that the calculation u/r 8D(2)(iii) r.w.s. 14A, for the investments made by the assessee come to Rs.5,10,242/- which has been verified by the Id CIT(A), who has co-terminus power as that of assessing officer. Accordingly, addition on this ground is restricted to Rs.5,10,242/- and the balance addition of Rs.90,67,008/- (Rs.95,77,250/- Rs.5,10,242) is directed to be deleted. We do not find any infirmity in the order of Id CIT(A), his order on this issue is hereby upheld and ground raised by the Revenue is dismissed.

6. We note that ground no.2 raised by the Revenue is directed against adding a sum of Rs.95,77,250/-, being the amount of disallowance made u/s 14A of the Act, to the book profit of the assessee determined u/s 115JB of the Act. After giving our thoughtful consideration to the submission of the parties and perusing the judicial decisions relied upon by the Id. AR, we find that the issue involved in the present appeal is no longer *res integra*. The important and relevant thing to note here is that for the purpose of applicability of section 14A r.w.r. 8D the computation of total income has to be under some heads in chapter-IV of the Act. Section 14A clearly says "for the purpose of computing total income under the chapter, no deduction shall be allowed in respect of expenditure incurred by the assessee in relation to income which does not form the part of the total income under this Act". The computation of total income u/s 115JB falls under chapter XIIB of the Act. Therefore, it is very clear that any disallowance/computation for section 14A r.w.r. 8D will not be applicable for the purpose of calculation of income u/s 115JB of the Act. Accordingly, we dismiss the Revenue's appeal on ground no.2."

10. Going over the aforesaid order as well as considering the present facts of the case, we do not find any infirmity in the impugned order as the Id. CIT (A) has rightly directed the Id. AO to verify and recompute the disallowance u/s 14A read with Rule 8D of the Rules considering only those investments which have yielded exempt income during the year.

11. So far as the second ground of appeal is concerned, we find that the co-ordinate Bench of Kolkata in ITA No. 1850/KOL/2024 has discussed the issue and the relevant portion of the order is reproduced hereinbelow: -

"11. So far as the second issue is concerned, it was the submission of the assessee that the issue of disallowance under section 14A while computing the book profit under section 115JB of the Act, has been settled in view of the decision of the Hon'ble Apex Court in the case of Appollo Tyres Limited -vs.- CIT reported in [2002] 122 taxman 562 (SC). He further submitted that according to the Id. Assessing Officer, the assessee has not added this expenditure while computing the book profit under section 115JB of the Act and accordingly the Id. Assessing Officer added the same to the book profit of the assessee under section 115JB of the Act. He further submitted that the Id. Assessing Officer as well as Id. CIT(Appeals) both were wrong in considering the disallowance while computing the book profit under section 115JB of the Act.

12. On the other hand, Id. D.R. submitted that he is relying on the orders passed by the lower authorities.

13. I have perused the material placed before me. It is an admitted fact that the Hon'ble Apex Court has categorically held that book profit is to be considered under section 115JB as per the Companies (Schedule 3) Act and hence any disallowance is not permitted to be added in the calculation of book profit under section 115JB of the Act. Therefore, in view of the above decision of the Hon'ble Apex Court, I am inclined to set aside the order passed by the Id. Addl./JCIT(Appeals) and direct the Id. Assessing Officer to delete the addition made to the book profit. The ground raised by the assessee is allowed."

12. The Id. CIT (A) in its impugned order has also discussed this issue elaborately and the relevant portion of the Id. CIT (A) order is essential to reproduce hereinbelow:-

"With regard to application u/s. 14A while computing the book profit u/s. 115JB. the appellant submits that the provisions of section 115JB shall have an overriding effect on the other provisions of the Act. Section 115JB(2) provides the modes of computation of the book profit of the assessee.

Section 115JB(2) provides the mode of computation of the book profit of the assessee. Book Profit means the net profit as shown in the Profit & Loss Account for the relevant previous year prepared in accordance with the provisions of II and III of Schedule VI to the Companies Act, 1956 (1 of 1956). Such Book Profit is then increased by adding items (a) to (k) as mentioned in Explanation 1 to section 115JB if they are debited to the Profit & Loss Account and then reduced by items (i) to (viii) as mentioned in Explanation 1 to section 115JB, if they are credited to the Profit & Loss Account.



As per clause (f) of Explanation 1 of section 115JB, net profit as shown in the Profit & Loss Account for the relevant previous year shall be increased by an amount of expenditure relatable to any income to which section 10 applies only if such expenditure is debited to the Profit & Loss Account.

Sec. 115JB being a deeming provision, the clauses contained therein has to be strictly construed. Hence, only the provision of section 14A(1) can be imported into clause (f) of section 115JB of the Act. The scope of section 115JB cannot be enlarged to cover within its ambit the provision of Rule 8D and hence, disallowance made by applying Rule 8D cannot be imported while computing book profit as per section 115JB.

The disallowance u/s. 14A rwr 8D of IT Rules, 1962 is a notional disallowance and cannot be imported while computing book profit u/s. 115JB."

13. Keeping in view the above discussion as well as the facts of the case, we do not find any infirmity in the impugned order. Accordingly, the order passed by the Id. CIT (A) is affirmed and appeal of the Revenue is hereby dismissed.

14. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open court on 23.06.2025.

Sd/-
RAKESH MISHRA
(ACCOUNTANT MEMBER)

Sd/-
(PRADIP KUMAR CHOUBEY)
(JUDICIAL MEMBER)

Kolkata, Dated: 23.06.2025

Sudip Sarkar, Sr.PS

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent
3. CIT
4. DR, ITAT,
5. Guard file.

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Kolkata