

## Expenditure disallowed under sec. 14A to be added back for computation of book profit under sec. 115JB

**Summary – The Mumbai ITAT in a recent case of RBK Share Broking (P.) Ltd., (the Assessee) held that sum disallowed under section 14A should be added while computing profit under section 115JB.**

### Facts

- The assessee received exempt dividend income.
- The Assessing Officer noticed that no expenses were attributed to earning of said exempt income. Invoking the provisions of rule 8D, the Assessing Officer made disallowance at 0.5 per cent towards expenses, other than interest. Pursuant to the making of disallowance under section 14A, the Assessing Officer added back said sum in computing 'book profit' under section 115JB. Further, the Assessing Officer denied rebate under section 88E on tax on total income computed under section 115JB.
- On appeal, the Commissioner (Appeals) confirmed the disallowance under section 14A. Further, he directed the Assessing Officer to allow rebate under section 88E subject to provisions of section 87(2).
- On second appeal.

### Held

#### ***Disallowance under section 14A read with rule 8D***

- The disallowance under section 14A is required to be worked out as per the mandate of rule 8D. The Assessing Officer has recorded satisfaction about the expenses attributed to the tax free income not misallocated by the assessee. It is in the background of this scenario that the disallowance at 0.5 per cent has been made towards expenses other than interest. As this disallowance has been computed as per the mandate of Rule 8D, which is applicable for the year under consideration, there was no reason to interfere with the impugned order on this issue

#### ***Disallowance under section 14A be included in computation under section 115JB***

- The ITAT held that 'Book profit' under section 115JB is computed as per *Explanation (1)* to sub-section (2) of section 115JB. A bare perusal of clause (f) of *Explanation (1)* makes it abundantly clear that the amount of expenditure 'relatable to' any exempt income, other than section 10(38), is liable to be added back to the amount of net profit as shown in the profit and loss account.
- As per section 14A, it transpires that it talks of disallowing any expenditure incurred in relation to income not includible in the total income. The expression 'in relation to' used for making disallowance under section 14A has been employed in *Explanation (1)* to section 115JB(2) as

expenditure 'relatable to', in more or less the same form. It is manifest that the amount of dividend is exempt under section 10(33) [not section 10(38)] of the Act. Thus, any expenditure 'relatable to' the exempt dividend income would fall under clause (f). The assessee argued that unless an amount is specifically debited to the Profit and loss account in respect of an exempt income, the same cannot be brought within the purview of clause (f) of the *Explanation 1* to section 115JB(2). He stated that since the disallowance under section 14A is computed as per rule 8D, the origin of the expenses disallowed cannot be traced to the profit and loss account and hence it cannot be covered within the mischief of clause (f) of the *Explanation*. There was no logic in this submission because of the clear language of the *Explanation 1*, which provides in unequivocal terms that the amount of expenditure 'relatable to' exempt income shall be added back. Neither the language of clause (f) expressly refers to the amount specifically debited to the profit and loss account nor there can be an implication in this regard.

- The ITAT observed that what has been contemplated by the provision is the amount of the expenditure 'relatable to' exempt income. Further, the amount disallowable under section 14A is always part of the expenses specifically debited to the profit and loss account. It is axiomatic that unless any expenditure is incurred and claimed as deduction, there can be no question of any hypothetical disallowance under section 14A. It, therefore, follows that the amount disallowable under section 14A is covered under clause (f) of *Explanation (1)* to section 115JB(2).

#### ***Rebate under section 88E***

- The Commissioner (Appeals) was right in directing the Assessing Officer to allow rebate under section 88E subject to amended sub-section (2) of section 87. As the direction is only for allowing the rebate after verification as per law applicable for the assessment year at the end of the Assessing Officer, there was no reason for interfering with the same.