

आयकर अपीलीय अधिकरण पुणे न्यायपीठ "ऐ" पुणे में
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "A", PUNE

सुश्री सुषमा चावला, न्यायिक सदस्य एवं श्री अनिल चतुर्वेदी, लेखा सदस्य के समक्ष
BEFORE MS. SUSHMA CHOWLA, JM AND SHRI ANIL CHATURVEDI, AM

आयकर अपील सं. / ITA No.594/PN/2015
निर्धारण वर्ष / Assessment Year : 2010-11

KPIT Technologies Limited,
(earlier known as KPIT Cummins Infosystems Ltd.)
Plot No.35/36, Rajiv Gandhi Infotech Park,
Phase I, MIDC, Hinjewadi Phase 1 Rd,
Pune – 411057

.... अपीलार्थी/Appellant

PAN: AAACK7308N

Vs.

The Asst. Commissioner of Income Tax,
Circle -14, Pune

.... प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Appellant by : Shri Kishore Phadke
प्रत्यर्थी की ओर से / Respondent by : Shri Rajeev Kumar, CIT

सुनवाई की तारीख / Date of Hearing : 03.04.2018	घोषणा की तारीख / Date of Pronouncement: 12.04.2018
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आदेश / ORDER

PER SUSHMA CHOWLA, JM:

The appeal filed by the assessee is against order of ACIT, Circle 14, Pune, dated 02.02.2015 relating to assessment year 2010-11 passed under sections 143(3) r.w.s. 144C(13) of the Income-tax Act, 1961 (in short 'the Act').

2. The assessee has raised the following grounds of appeal:-

1. *The learned AO and TPO erred in law and on facts in proposing and Hon'ble DRP Pune erred in law and on facts in confirming the proposal for addition of Rs.74,38,465/- to the Arm's Length Price of International transaction related to Interest received / receivable on loans extended to AE company by Appellant.*
2. *The learned AO and TPO erred in law and on facts in proposing and Hon'ble DRP Pune erred in law and on facts in confirming the proposal for addition of Rs.15,50,542/- being disallowance u/s 14A r.w.w. 8D instead of appellant company's suo-moto disallowance of Rs.50,000.*
3. *Alternative and without prejudice to the ground no2 above, the learned AO failed to appreciate that appellant is eligible for getting proportionate increase of deduction u/s 10A of Income Tax Act 1961 for the disallowance amounting to Rs.15,50,542 made u/s 14A r.w.r. 8D.*
4. *The learned AO and learned DRP erred in law and on facts in increasing the BOOK PROFIT of the assessee u/s 115JB of Income Tax Act 1961 by adding Disallowance u/s 14A r.w.r. 8D amounting to 15,50,542/-*

3. The first issue raised in the present appeal is against adjustment made on account of arm's length price in relation to interest received / receivable on loans extended to associated enterprises.

4. The learned Authorized Representative for the assessee at the outset pointed out that the issue raised in the present appeal stands covered in favour of assessee by the order of Tribunal in assessee's own case in M/s. KPIT Cummins Infosystems Ltd. Vs. ACIT in ITA No.247/PN/2013, relating to assessment year 2008-09 and ITA No.526/PN/2014, relating to assessment year 2009-10, order dated 24.02.2016. The learned Authorized Representative for the assessee pointed out that the assessee was earlier known as KPIT Cummins Infosystems Ltd. and now the name has been changed to KPIT Technologies Ltd.

5. The learned Departmental Representative for the Revenue relied on the orders of authorities below.

6. We have heard the rival contentions and perused the record. The assessee was engaged in onsite and offsite software development. The assessee was providing software solutions and support services to its associated enterprises and in respect of same, no issue has been raised. However, in the TP proceedings, the Transfer Pricing Officer (TPO) also noted that the assessee had granted loans to its associated enterprises and had earned interest on the said loans granted. The loans were granted in foreign currency and were also repayable in foreign currency. Hence, the assessee contended that most appropriate rate comparison would be the rates prescribed by RBI for foreign currency deposits for residents of India. However, the TPO noted that similar adjustment has been made in earlier years and following the same reasoning, arm's length price computed by the assessee in respect of international transactions relating to provision of interest was found to be not acceptable. The TPO based on the rate of BPLR of State Bank of India applied the rate of 12.25% and worked out the adjustment at ₹ 74,38,465/-. Against the said adjustment, the Assessing Officer issued draft assessment order and the assessee filed objections before the Dispute Resolution Panel (DRP), which rejected the same. The Assessing Officer thus, in the final assessment order passed under section 143(3) r.w.s. 144C(13) of the Act, made addition on account of same at ₹ 74,38,465/-.

7. The assessee is in appeal against the same.

8. We find that similar issue of adjustment made on account of international transactions of interest received / receivable on loans extended to associated enterprises arose before the Tribunal in assessee's own case in assessment years 2008-09 and 2009-10. The Tribunal in turn, relying on the ratio laid down

in the case of Varroc Engineering Pvt. Ltd. Vs. ACIT in ITA No.2482/PN/2012, relating to assessment year 2008-09, vide order dated 30.12.2014 and also relying on the ratio laid down by the Hon'ble Bombay High Court in CIT Vs. Tata Autocomp Systems Ltd. reported in 56 taxman.com 206 (Bom) had held as under:-

“18. The Pune Bench of Tribunal in Varroc Engineering Pvt. Ltd. Vs. ACIT (supra) had also laid down similar proposition and directed the Assessing Officer/TPO to verify the claim of the assessee vis-à-vis the borrowals of loans, which in turn, were advanced at LIBOR + rate to the associate enterprises, in case the advancement of loan to the associate enterprises is on LIBOR+ / WIBOR+ rates, then the said transaction with the associate enterprises is within arm's length price, otherwise, the TPO may re-compute the arm's length price of international transactions. Following the same parity of reasoning, we direct the Assessing Officer to compute the adjustment, if any, in the hands of assessee, after verifying the claim of the assessee. The ground of appeal No.4 raised by the assessee is thus, allowed.”

9. The issue in the present assessment year has also to be decided in line with the issue decided in earlier years and following the same parity of reasoning, we direct the Assessing Officer to verify whether the loans were advanced to associated enterprises on LIBOR+ or WIBOR+ rates, as the case may be, and if so, then the said transaction was within arm's length price; otherwise; the TPO can re-compute the arm's length price of international transactions. Accordingly, the matter is set aside to the file of Assessing Officer/TPO to compute adjustment, if any, in the hands of assessee after verifying the claim of assessee. The ground of appeal No.1 raised by the assessee is thus, allowed for statistical purposes.

10. The issue in ground of appeal No.2 raised by the assessee is against disallowance made under section 14A of the Act read with Rule 8D of the Income Tax Rules, 1962 (in short 'the Rules').

11. Brief facts relating to the issue are that the assessee on its own motion *suo moto* disallowed ₹ 50,000/- as expenses relating to earning of exempt income under Rule 8D(iii) of the Rules. The Assessing Officer on the other hand, applied provisions of Rule 8D(iii) of the Rules and disallowed sum of ₹ 15,50,542/-.

12. The assessee is in appeal against the same on the ground that the Assessing Officer had failed to record satisfaction as required under section 14A(2) of the Act before making aforesaid disallowance. The learned Authorized Representative for the assessee in this regard, placed reliance on the ratio laid down by the Hon'ble Supreme Court in *Godrej & Boyce Manufacturing Company Ltd. Vs. DCIT* (2017) 81 taxmann.com 111 (SC) and in *Maxopp Investment Ltd. Vs. CIT* (2018) 91 taxmann.com 154 (SC).

13. The learned Departmental Representative for the Revenue on the other hand, placed reliance on the orders of authorities below and provisions of the Act.

14. We have heard the rival contentions and perused the record. The basic issue which arises in the present appeal is against non-recording of satisfaction by the Assessing Officer before invoking provisions of section 14A of the Act. The assessee is aggrieved by the order of Assessing Officer in working the disallowance under Rule 8D(iii) of the Rules at ₹ 15,50,542/-.

15. We find that similar issue of non-recording of satisfaction by the Assessing Officer arose before the Tribunal in the case of *Capgemini Technology Services India Limited Vs. DCIT* in ITA No.216/PUN/2015 and

Cross Appeal in ITA No.360/PUN/2015, relating to assessment year 2010-11, order dated 25.01.2018. The Tribunal in this regard, held as under:-

“34. We have heard the rival contentions and perused the record. The Assessing Officer while passing the assessment order in para 10 had observed that the assessee had earned significant amount of tax free dividends and in the computation of income, the assessee has disallowed sum of Rs.50 lakhs under section 14A of the Act. Then, reference is made to the Note filed by the assessee on expenditure disallowable under section 14A of the Act. The Assessing Officer thereafter, takes note of the contents of said explanation and observed as under:-

“I have gone through the submissions made by the assessee. It is observed that apart from investments in the overseas subsidiaries (where there is no tax-free income since the dividend is also taxable) the investments made by the assessee are in mutual funds. The entire investment in mutual fund is in non-equity scheme. In respect of investment in mutual funds, except for growth funds, the company receives tax free dividend. The amount of dividend received by the company is substantial. This is a clear case for application of Rule 8D. Hence, the contention of the assessee cannot be accepted. The disallowance u/s 14A is required to be made by applying Rule 8D. As per the working of disallowance u/s 14A as per Rule 8D, the amount of disallowance comes to Rs.5,68,32,323/-. The assessee has already disallowed Rs.50,00,000/- in the computation of income.”

35. The requirement of section 14(2) of the Act is that the Assessing Officer is to record as to why the disallowance made by the assessee i.e. Rs.50 lakhs under section 14A of the Act is not correct. The Assessing Officer takes note of the disallowance, considers the explanation of assessee and holds that the contention of assessee cannot be accepted. The preliminary satisfaction to be recorded by Assessing Officer, before making disallowance under section 14A of the Act read with Rule 8D of the Rules, is missing in the case; in the absence of the same, there is no merit in the disallowance made by the Assessing Officer. We find support from the ratio laid down by the Hon'ble Supreme Court in Godrej & Boyce Manufacturing Co. Ltd. Vs. DCIT & Anr. (2017) 394 ITR 449 (SC).

“37. We do not see how in the aforesaid fact situation a different view could have been taken for the assessment year 2002-03. Sub-sections (2) and (3) of section 14A of the Act read with rule 8D of the Rules merely prescribe a formula for determination of expenditure incurred in relation to income which does not form part of the total income under the Act in a situation where the Assessing Officer is not satisfied with the claim of the assessee. Whether such determination is to be made on application of the formula prescribed under rule 8D or in the best judgment of the Assessing Officer, what the law postulates is the requirement of a satisfaction in the Assessing Officer that having regard to the accounts of the assessee, as placed before him, it is not possible to generate the requisite satisfaction with regard to the correctness of the claim of the assessee. It is only thereafter that the provisions of section 14A(2) and (3) read with rule 8D of the Rules or a best judgment determination, as earlier prevailing, would become applicable.”

(underline provided by us for emphasis)

36. The ratio laid down by the Hon'ble High Court of Delhi in Indiabulls Financial Services Ltd. Vs. DCIT (supra) is thus, not applicable. The ground of appeal No.3 raised by the Revenue is thus, dismissed.”

16. The Hon'ble Supreme Court in Maxopp Investment Ltd. Vs. CIT (supra) has held as under:-

“41. Having regard to the language of Section 14A(2) of the Act, read with Rule 8D of the Rules, we also make it clear that before applying the theory of apportionment, the AO needs to record satisfaction that having regard to the kind of the assessee, suo moto disallowance under Section 14A was not correct. It will be in those cases where the assessee in his return has himself apportioned but the AO was not accepting the said apportionment. In that eventuality, it will have to record its satisfaction to this effect. Further, while recording such a satisfaction, nature of loan taken by the assessee for purchasing the shares / making the investment in shares is to be examined by the AO.”

17. In the present case, the Assessing Officer has failed to record necessary satisfaction as to why *suo moto* disallowance made by the assessee was not correct and in the absence of the same and applying the ratio laid down by the Hon'ble Supreme Court in Godrej & Boyce Manufacturing Company Ltd. Vs. DCIT (supra) and in Maxopp Investment Ltd. Vs. CIT (supra), we find no merit in the disallowance worked out by the Assessing Officer by invoking provisions of Rule 8D(iii) of the Rules. In the absence of recording of satisfaction under section 14A(2) of the Act, the action of Assessing Officer is not as per law and the same is reversed. Consequently, the ground of appeal No.2 raised by the assessee is thus, allowed.

18. The plea raised vide ground of appeal No.3 is alternate to the ground of appeal No.2 and since we have allowed the ground of appeal No.2, the alternate plea does not stand.

19. Now, coming to the issue raised vide ground of appeal No.4 i.e. while computing book profit under section 115JB of the Act, the disallowance worked out under section 14A of the Act read with Rule 8D of the Rules amounting to ₹ 15,50,542/- not to be added.

20. The learned Authorized Representative for the assessee pointed out that this issue was also decided by the Tribunal in assessee's own case in assessment years 2008-09 and 2009-10.

21. The learned Departmental Representative for the Revenue placed reliance on the order of Assessing Officer.

22. We have heard the rival contentions and perused the record. The issue of adjustment of book profit under section 115JB of the Act does not arise since we have already directed the Assessing Officer to delete disallowance made under section 14A of the Act read with Rule 8D(iii) of the Rules. In any case, even if the disallowance is to be upheld, the same is not to be added to the book profits under section 115JB of the Act. The Tribunal in assessee's own case has decided the issue as under:-

"20. The next issue vide ground of appeal No.6 is whether while computing the book profits under section 115JB of the Act, disallowance under section 14A is to be added back.

21. The learned Authorized Representative for the assessee pointed out that the said issue is also covered by the ratio laid down by the Pune Bench of Tribunal in Varroc Engineering Pvt. Ltd. Vs. ACIT (supra) that while computing book profits under section 115JB of the Act, no addition is to be made on account of disallowance under section 14A of the Act. In view of the decision of Pune Bench of Tribunal, we find no merit in the reliance placed upon by the learned Departmental Representative for the Revenue. The Tribunal while deciding the issue in para 42 had held as under:-

"42. The issue before us is identical to the issue before the Chandigarh Bench of the Tribunal in Nahar Industrial Enterprises Ltd., Vs. DCIT (supra) and following the same parity of reasoning we direct the Assessing Officer to exclude the disallowance made under section 14A of the Act, while computing the book profits u/s 115JB of the Act. Accordingly, we direct the Assessing Officer to re-compute the book profits under section 115JB of the Act. The ground of appeal No.5 is thus, allowed."

22. In respect of ground of appeal No.6, the learned Departmental Representative for the Revenue pointed out that the issue was decided against the assessee by the Mumbai Bench of Tribunal in Dabur India Ltd. Vs. ACIT (2013) 37 taxmann.com 289 (Mumbai – Trib). However, the issue is covered in favour of the assessee by the decision of Pune Bench of Tribunal.

23. Accordingly, we hold that in view of the issue being squarely covered by the orders of Pune Bench of Tribunal, the Assessing Officer is directed to exclude the disallowance made under section 14A of the Act, while computing book profits under section 115JB of the Act.”

23. Accordingly, we direct the Assessing Officer not to include the disallowance under section 14A of the Act read with Rule 8D of the Rules, if any, as part of book profits under section 115JB of the Act. The ground of appeal No.4 is thus, allowed.

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

Order pronounced on this 12th day of April, 2018.

Sd/-
(ANIL CHATURVEDI)
लेखा सदस्य / ACCOUNTANT MEMBER

Sd/-
(SUSHMA CHOWLA)
न्यायिक सदस्य / JUDICIAL MEMBER

पुणे / Pune; दिनांक Dated : 12th April, 2018.

GCVSR

आदेश की प्रतिलिपि अग्रहित/Copy of the Order is forwarded to :

1. The Appellant;
2. The Respondent;
3. The DIT (TP/IT), Pune;
4. The DRP, Pune;
5. The DR 'A', ITAT, Pune;
6. Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune