

आयकर अपीलीय अधिकरण "बी" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, PUNE

श्री अनिल चतुर्वेदी, लेखा सदस्य, एवं श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष
BEFORE SHRI ANIL CHATURVEDI, AM AND SHRI VIKAS AWASTHY, JM

आयकर अपील सं. / ITA Nos.1638 to 1641/PUN/2015

निर्धारण वर्ष / Assessment Years: 2009-10 to 2012-13

Indian Seamless Enterprises Ltd.
CTS No.199, Plot No.03,
Lunkad Towers, Viman Nagar,
Nagar Road, Pune-411 014
PAN : AAACI3891C

.....अपीलार्थी / Appellant

बनाम / V/s.

The Deputy Commissioner of Income Tax,
Central Circle-2(1), Pune.

.....प्रत्यर्थी / Respondent

Assessee by : Shri P.I. Patwa
Revenue by : Shri J.P. Chandrakar

सुनवाई की तारीख / Date of Hearing : 06.09.2018

घोषणा की तारीख / Date of Pronouncement : 14.09.2018

आदेश / ORDER

PER VIKAS AWASTHY, JM

These four appeals by the assessee for the assessment years 2009-10 to 2012-13 are directed against the order of Commissioner of Income Tax (Appeals)-12, Pune dated 10.09.2015 common for the aforementioned assessment years.

2. Since identical issue has been raised in all the four appeals, these appeals are taken up together for adjudication and are being disposed of vide this common order.

3. The assessee in ITA No.1638/PUN/2015 has raised following grounds:

“1.The learned Assessing Officer has erred in applying provisions of rule 8D r.w.s 14A without passing any speaking order as to non-satisfaction about working of disallowance u/s.14A and without establishing any nexus between borrowed funds and investments.

2. The learned Assessing Officer has erred in making disallowance by applying provisions of rule 8D r.w.s 14A ignoring basis/facts established and demonstrated and methodology adopted by the predecessor for A. Y. 2005-06 which facts continued during the year under consideration also. The disallowance u/s 14A be restored as per basis established in order passed u/s 143(3) of the Income Tax Act, 1961 for A.Y. 2005-06.

3. The learned Assessing Officer has erred in making disallowance under provisions of rule 8D r.w.s.14A ignoring the fact that the investments made by the company are of strategic nature and hence no disallowance u/s. 14A r.w.r. 8D is warranted.

4. Your appellant prays leave to add, substitute, amend, modify or withdraw any of the grounds of the appeal if the occasion arises.”

Identical grounds have been raised by the assessee assailing the order of Commissioner of Income Tax (Appeals) for assessment years 2010-11, 2011-12 and 2012-13.

4. Shri P.I. Patwa appearing on behalf of the assessee submitted that on the basis of method adopted for making disallowance in the assessment year 2005-06, the assessee made suo-moto disallowance u/s.14A of the Income Tax Act,1961 (hereinafter referred to as ‘the Act’) in the impugned assessment years. The details of suo-moto disallowances made by assessee in the impugned assessment years are as under:

Assessment year	Amount
2009-10	1,04,49,268/-
2010-11	51,79,590/-
2011-12	1,78,09,980/-
2012-13	2,31,29,018/-

However, in assessment proceedings, the Assessing Officer invoked the provisions of Rule 8D of the Income Tax Rules, 1962 and enhanced the disallowances u/s. 14A of the Act as under:

Assessment year	Disallowance u/s.14A enhanced by Assessing Officer. (Amount)
2009-10	1,37,98,000/-
2010-11	1,52,19,000/-
2011-12	1,27,07,000/-
2012-13	1,52,11,000/-

5. The ld. AR submitted that no disallowance under Rule 8D(2)(ii) is warranted as the assessee has not utilized borrowed funds for making investment. Own funds of the assessee are much more than the investments made. The case of the assessee is squarely covered by the decision of Hon'ble Bombay High Court in the case of CIT Vs. Reliance Utilities and Power Ltd., reported as 313 ITR 340 and HDFC Bank Limited Vs. DCIT, reported as 366 ITR 505.

5.1 The ld. AR further submitted that in so far as disallowance under Rule 8D(2)(iii) is concerned, the Assessing Officer while making disallowance

has not reduced the amount of suo-moto disallowance made by the assessee. The ld. AR submitted that the disallowance already made by the assessee should be reduced from the disallowance made under Rule 8D(2)(iii) of the I.T. Rules. In the First Appellate Proceedings, the Commissioner of Income Tax (Appeals) has confirmed the disallowance made by Assessing Officer.

6. On the other hand, Shri J.P. Chandrakar representing the Department vehemently defended the impugned order and prayed for dismissing the appeals of the assessee.

7. We have heard the submissions made by representatives of rival sides and have perused the orders of Authorities below. The solitary issue raised in all the four appeals by the assessee is against making disallowance u/s.14A r.w.r 8D over and above suo-moto disallowance made by the assessee.

ITA No.1638/PUN/2015
(Assessment Year 2009-10)

8. The assessee in ground No.1 of the appeal has assailed the manner of recording satisfaction by Assessing Officer for rejecting suo-moto disallowance by the assessee. During the course of submissions before us, the ld. AR of the assessee has failed to point any infirmity in the satisfaction recorded by the Assessing Officer for invoking provisions of Rule 8D. Hence, **ground No.1 in the appeal by assessee is dismissed.**

9. The assessee has made suo-moto disallowance by adopting the method as applied in assessment year 2005-06. It is relevant to mention here that section 14A was amended by the Finance Act, 2006 w.e.f.

01.04.2007. After the amendment disallowance is to be computed in accordance with Rule 8D of the Income Tax Rules. Thus, the method of computing disallowance u/s.14A of the Act prior to assessment year 2008-09 and post amendment have gone under substantial change. Thus, in the light of the amended provisions of section 14A and introduction of Rule 8D, the method of computation of disallowance u/s.14A has to be in accordance with Rule 8D.

10. As per provision of Rule 8D(2)(ii), the interest paid on borrowed funds utilized for making investment is to be disallowed. However, where no interest bearing funds are utilized for making such investment, no disallowance under Rule 8D(2)(ii) is warranted. The Hon'ble Bombay High Court in the case of CIT Vs. Reliance Utilities and Power Ltd. (supra.) has held that where both interest free funds and interest bearing funds are available and the interest free funds are more than the investment made, the presumption is that the investment is made out of interest free funds available with the assessee. The Hon'ble Jurisdictional High Court in the case of HDFC Bank Ltd. Vs. DCIT (supra.) following the ratio laid down in the case of CIT Vs. Reliance Utilities and Power Ltd.(supra.) has held that investment in tax free securities by the assessee would be presumed to have been made from own funds in case they are in excess of investment made.

11. In the present case, we find that Authorities below have failed to consider the decisions of Hon'ble High Court while making disallowance under Rule 8D(2)(ii) of IT Rules. The Authorities below have also failed to ascertain availability of interest free funds with the assessee for making investment during the impugned assessment years. The fact whether sufficient interest free funds were available with the assessee during the

assessment years under appeal for making investment needs verification. Under such circumstances, we deem it appropriate to remit this issue back to the file of the Assessing Officer to verify the availability of interest free funds with the assessee for making investment and thereafter, by following the ratio laid down by the Hon'ble Jurisdictional High Court in the cases of CIT Vs. Reliance Utilities and Power Ltd.(supra.) and HDFC Bank Limited Vs. DCIT (supra.), shall compute disallowance under rule 8D(2)(ii), if required.

12. In so far as disallowance under Rule 8D(2)(iii) is concerned, the Assessing Officer is directed to reduce the amount of suo-moto disallowance made by the assessee and thereafter, determine the final disallowance under the provisions of section 14A r.w.r 8D. The Assessing Officer while revisiting this issue shall grant reasonable opportunity of hearing to the assessee, in accordance with law. **The ground No. 2 of the appeal by the assessee is partly allowed for statistical purposes in the terms aforesaid.**

13. The Id. AR of the assessee has not pressed ground No. 3, accordingly the same is dismissed.

14. In the result, the appeal of the assessee in ITA No.1638/PUN/2015 for assessment year 2009-10 is partly allowed for statistical purposes.

15. In appeals for assessment years 2010-11 to 2012-13, the assessee has assailed the findings of Commissioner of Income Tax(Appeals) by raising grounds identical to the grounds raised in the appeal for assessment year 2009-10. It is an admitted fact that the Assessing Officer has made

disallowance u/s.14A r.w.r. 8D in all the four impugned assessment years in similar manner. Thus, the findings given by us while adjudicating appeal of the assessee for assessment year 2009-10 would *mutatis-mutandis* apply to assessment years 2010-11 to 2012-13. Accordingly, the appeals of the assessee in ITA Nos.1639 to 1641/PUN/2015 for assessment years 2010-11 to 2012-13 are partly allowed for statistical purpose in similar terms.

16. In the result, the appeals of the assessee for assessment years 2009-10 to 2012-13 are partly allowed for statistical purposes.

Order pronounced on Friday, the 14th day of September, 2018.

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

Sd/-
(विकास अवस्थी /VIKAS AWASTHY)
न्यायिक सदस्य/JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 14th September, 2018

SB

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals)-12, Pune.
4. The Pr. CIT, Central, Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" बेंच,
पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

// True Copy //

आदेशानुसार / BY ORDER,

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