

आयकर अपीलीय अधिकरण पुणे न्यायपीठ “एक-सदस्य” मामला पुणे में

**IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH “SMC”, PUNE**

श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष

BEFORE SHRI VIKAS AWASTHY, JM

आयकर अपील सं./ ITA No.2506/PUN/2016

निर्धारण वर्ष / Assessment Year : 2012-13

Sarangdhar Ramchandra Nirmal,
A/p-RanjanKhol, Tal. Rahata,
Dist. Ahmednagar,
Pin-423 107
PAN : AAJPN5198B

.....अपीलार्थी / Appellant

बनाम / V/s.

The Deputy Commissioner of Income Tax,
Ahmednagar Range, Ahmednagar.

.....प्रत्यर्थी / Respondent

आयकर अपील सं./ ITA No.2507/PUN/2016

निर्धारण वर्ष / Assessment Year : 2012-13

Arvind Jaganath Nirmal,
A/p-RanjanKhol, Tal. Rahata,
Dist. Ahmednagar.
PAN : ADFPN5972L

.....अपीलार्थी / Appellant

बनाम / V/s.

The Deputy Commissioner of Income Tax,
Ahmednagar Range, Ahmednagar.

.....प्रत्यर्थी / Respondent

आयकर अपील सं./ ITA No.2508/PUN/2016**निर्धारण वर्ष / Assessment Year : 2012-13**

Kishor Ramchandra Nirmal,
A/p-RanjanKhol, Tal. Rahata,
Dist. Ahmednagar.
PAN : ADJPN3695G

.....अपीलार्थी / Appellant

बनाम / V/s.

The Deputy Commissioner of Income Tax,
Ahmednagar Range, Ahmednagar.

.....प्रत्यर्थी / Respondent

Appellant by : Shri S.N. Puranik
Respondent by : Shri Sudhendu Das

सुनवाई की तारीख / Date of Hearing : 18.09.2018
घोषणा की तारीख / Date of Pronouncement : 28.09.2018

आदेश / ORDER**PER VIKAS AWASTHY, JM**

These three appeals by three different assessees are directed against the order of Commissioner of Income Tax (Appeals)-2, Pune in their respective cases. All the impugned orders in the respective appeals are of even date i.e. 11.07.2016.

2. Since, the issue raised in all the three appeals is identical and is arising from same set of facts, these appeals are taken up together for adjudication and are being disposed of vide this common order. For the sake of convenience, facts are extracted from ITA No. 2506/PUN/2016.

ITA No. 2506/PUN/2016
A.Y.2012-13

3. The assessee has assailed the order of Commissioner of Income Tax (Appeals) on following grounds:

“1. Hon. Commissioner (Appeals) erred in confirming additions of Rs.14,02,920/- made u/s.14A which may please be deleted or reduced.

2. Hon. Commissioner (Appeals) erred in confirming the additions of Rs.2,12,007/- on a/c of agricultural income which may please be deleted or reduced.

3. Hon. Commissioner (Appeals) erred in confirming the ad-hoc additions of Rs.1,75,079/- which may please be deleted or reduced.

4. Appellant prays to add, alter, amend, ratify, explain, and /or withdraw the ground/s as the occasion may demand.”

4. The brief facts of the case as emanating from records are: The assessee is a Director of Prabhat Dairy Pvt. Ltd. and is engaged in the business of transport. The assessee is also having income from agriculture. During the course of scrutiny assessment proceedings, the Assessing Officer observed that the assessee has made investments to the tune of Rs.23,81,14,105/- in shares and Mutual Funds. No suo-moto disallowance u/s.14A of the Act was made by the assessee. The Assessing Officer made disallowance under provisions of section 14A of the Income Tax Act, 1961 (hereinafter referred to as ‘the Act’) r.w.r 8D of the Income Tax Rules, 1962. The Assessing Officer computed disallowance under Rule 8D as under:

i) Clause 2(ii)	Rs. 5,25,450/-
ii) Clause 2(iii)	<u>Rs. 8,70,470/-</u>
Total	Rs.14,02,920/-

5. Aggrieved by the disallowance made by the Assessing Officer vide order dated 23.03.2015, the assessee carried the matter in appeal before the

Commissioner of Income Tax (Appeals). The Commissioner of Income Tax (Appeals) confirmed the additions made by Assessing Officer in toto.

6. Shri S.N. Puranik appearing on behalf of the assessee submitted that the assessee has not received any exempt income during the period relevant to the assessment year under appeal from the investments, therefore, no disallowance u/s.14A r.w.r. 8D is warranted. To support his contentions, the ld. AR placed reliance on following decisions:

i) CIT Vs. Chettinad Logistics (P.) Ltd. (S.C), reported as 257 Taxman 2 (SC).

ii) Pr. CIT Vs. M/s. Ballarpur Industries Limited, decided by Hon'ble Bombay High Court, Nagpur Bench, Income Tax Appeal No. 51 of 2016 decided on 13.10.2016

iii) Force Motors Limited Vs. DCIT, ITA No. 1205 & 1206/PUN/2016 decided on 18.07.2018

iv) DCIT Vs. Dishti Industries Ltd., ITA No.1277/PUN/2016 decided on 25.06.2018

6.1 The ld. AR further submitted that own interest free funds of the assessee are much more than the investment made by assessee. This fact has been recorded by the Assessing Officer in the assessment order. Despite that, the Assessing Officer has made disallowance under Rule 8D(2)(ii). The Hon'ble Jurisdictional High Court in the case of CIT Vs. HDFC Bank Ltd. reported as 366 ITR 505 has held that where own interest free funds are more than the investments, it is presumed that investments are made out of own interest free funds available with the assessee. The ld. AR pointed that the assessee has taken term loan for his transport business. The loan has been utilized for the purpose, it was taken. Borrowed funds have not been diverted for making investments.

7. On the other hand, Shri Sudhendu Das vehemently defended the order of Commissioner of Income Tax (Appeals) in confirming the disallowance made u/s.14A r.w.r. 8D(2). The ld. DR pointed that the assessee has made huge investment in share and mutual funds. No suo-moto disallowance has been made by the assessee despite making huge investment. The possibility of use of business hours, employee's cost, electricity, stationary etc. in making investment in shares/mutual funds cannot be ruled out.

8. Both sides heard. Orders of the Authorities below perused. The assessee in appeal has assailed disallowance made u/s.14A r.w.r.8D. It is an undisputed fact that no suo-moto disallowance u/s.14A of the Act was made by the assessee. It is also an admitted fact that during the period relevant to the assessment year under appeal, the assessee has not earned any tax free income. In so far as disallowance under Rule 8D(2)(ii) is concerned, it is not disputed by the Revenue that own interest free funds of the assessee are sufficient to cover the investment made. Thus, in the light of the decision of Hon'ble Jurisdictional High Court in the case of CIT Vs, HDFC Bank Ltd. (supra.), no disallowance under Rule 8D(2)(ii) is warranted.

9. As has been pointed earlier, the assessee has not earned any exempt income during the year. The Hon'ble Bombay High Court and in various decisions, the Tribunal has held that where no exempt income is earned by the assessee in the relevant period, disallowance u/s. 14A is not warranted.

10. The Hon'ble Jurisdictional High Court in the case of Pr.CIT Vs. M/s. Ballarpur Industries Limited (supra.) has held that the provisions of Section 14A of the Act, would not apply where no exempt income was received or receivable during the relevant previous year.

The Co-ordinate Bench of the Tribunal in the case of Force Motors Limited Vs. DCIT (supra.) and in the case of DCIT Vs. Dishti Industries Ltd.(supra.) and various other decisions have been consistently holding that no disallowance u/s.14A is warranted where no exempt income is earned by the assessee during the relevant previous year.

Thus, in view of undisputed facts and the law laid down by the Hon'ble Bombay High Court, no disallowance under the provisions of section 14A r.w.r 8D is to be made where the assessee has not earned any exempt income. **Accordingly, ground No.1 raised in appeal by the assessee is allowed.**

11. In respect of grounds No. 2 and 3 of the appeal, the ld.AR has stated at Bar that he is not pressing the same. Thus, in view of statement made by the ld. AR, ground Nos. 2 and 3 raised in appeal are dismissed as not pressed.

12. The ground No. 4 of the appeal is general in nature and hence, requires no adjudication.

13. In the result, appeal of the assessee in ITA No.2506/PUN/2016 for assessment year 2012-13 is partly allowed in the terms aforesaid.

ITA No. 2507/PUN/2016
A.Y.2012-13

14. In ITA No.2507/PUN/2016, the assessee has raised following grounds :

“1. Hon. Commissioner (Appeals) erred in confirming additions of Rs.7,06,459 /- made u/s.14A which may please be deleted or reduced.

2. Hon. Commissioner (Appeals) erred in confirming the additions of Rs.50,956/- on a/c of agricultural income which may please be deleted or reduced.

3. *Hon. Commissioner (Appeals) erred in confirming the ad-hoc additions of Rs.1,97,977/- which may please be deleted or reduced.*

4. *Appellant prays to add, alter, amend, ratify, explain, and /or withdraw the ground/s as the occasion may demand."*

15. During assessment proceedings, the Assessing Officer made following disallowance under Rule 8D:

i) Clause 2(ii)	Rs.2,43,999/-
ii) Clause 2(iii)	<u>Rs.4,62,460/-</u>
Total	Rs.7,06,459/-

16. The assessee has made investment in shares and mutual funds to the tune of Rs.9,33,74,007/- and own interest free funds available with the assessee are to the tune of Rs.12,10,88,559/-. The assessee has not earned any tax free income during the relevant period. These facts are not disputed by the Revenue. Since the facts of the present case are identical to the facts in ITA No.2506/PUN/2016, findings given while adjudicating ground No. 1 of the said appeal would apply mutatis mutandis to the present case as well. Accordingly, **ground No. 1 raised in appeal by assessee is allowed for similar reasons.**

17. So far as ground Nos. 2 and 3 are concerned, the ld. AR has stated at Bar that he is not pressing the same. Thus, in view of statement made by the ld. AR, ground Nos. 2 and 3 raised in appeal are dismissed as not pressed.

18. The ground No. 4 raised of the appeal is general in nature and hence, requires no adjudication.

19. In the result, appeal of the assessee in ITA No. 2507/PUN/2016 for assessment year 2012-13 is partly allowed in the terms aforesaid.

ITA No. 2508/PUN/2016
A.Y.2012-13

20. In ITA No.2508/PUN/2016, the assessee has raised following grounds :

“1. Hon. Commissioner (Appeals) erred in confirming additions of Rs.470906/- made u/s.14A which may please be deleted or reduced.

2. Hon. Commissioner (Appeals) erred in confirming the additions of Rs.230086/- on a/c of agricultural income which may please be deleted or reduced.

3. Hon. Commissioner (Appeals) erred in confirming the ad-hoc additions of Rs.119827/- which may please be deleted or reduced.

4. Appellant prays to add, alter, amend, ratify, explain, and /or withdraw the ground/s as the occasion may demand.”

21. During assessment proceedings, the Assessing Officer made disallowance u/s.14A r.w.r. 8D(2)(iii) of Rs.4,70,906/-. The assessee has made investment in share and mutual funds to the tune of Rs.9,38,63,100/-. The assessee has not earned any exempt income from the investments during the relevant previous year. These facts are not disputed by the Revenue. The facts of the present case are identical to the facts in ITA No.2506/PUN/2016. Thus, the findings given while adjudicating ground No. 1 of the said appeal would apply mutatis mutandis to the present case as well. Accordingly, **ground No. 1 raised in appeal by the assessee is allowed in the similar terms.**

22. So far as ground Nos. 2 and 3 are concerned, the ld. AR has stated at Bar that he is not pressing the same. Thus, in view of statement made by the ld. AR, ground Nos. 2 and 3 of the appeal are dismissed as not pressed.

23. The ground No. 4 raised in appeal is general in nature and hence, requires no adjudication.

24. In the result, appeal of the assessee in ITA No.2508/PUN/2016 for assessment year 2012-13 is partly allowed in the terms aforesaid.

25. To sum up, appeals of the assesseees in ITA No.2506/PUN/2016, ITA No.2507/PUN/2016 and ITA No.2508/PUN/2016 are partly allowed.

Order pronounced on Friday, the 28th of September, 2018.

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

पुणे / Pune; दिनांक / Dated : 28th September, 2018.

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

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

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आदेशानुसार / BY ORDER,

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