

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "B", PUNE

BEFORE SHRI R.S. SYAL, VICE PRESIDENT
AND SHRI VIKAS AWASTHY, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.1355/PUN/14
निर्धारण वर्ष / Assessment Years : 2007-08

ACIT, Circle-10,
Pune

Vs.

Premium Transmission Ltd.,
Premium House,
Mumbai Pune Road,
Chinchwad,
Pune 411 019

PAN : AADCP2916N

(Appellant)

(Respondent)

आयकर अपील सं. / ITA No.1121/DEL/14
निर्धारण वर्ष / Assessment Years : 2007-08

Premium Transmission Ltd.,
Premium House,
Mumbai Pune Road,
Chinchwad,
Pune 411 019

Vs.

ACIT, Range-14,
New Delhi

PAN : AADCP2916N

(Appellant)

(Respondent)

Assessee by
Revenue by

Shri Abhay Avchat
Shri Sudhendu Das

Date of hearing

28-11-2018

Date of pronouncement

29-11-2018

आदेश / ORDER

PER R.S.SYAL, VP :

These two cross appeals - one by the assessee and other by the Revenue arise out of the order passed by the CIT(A)-XVII, Delhi on 03-12-2013 in relation to the assessment year 2007-08.

ITA No.1355/PUN/2014 - By Revenue :

2. First two grounds of the Revenue's appeal are against deletion of addition made by the Assessing Officer (AO) on account of Provision for warranty.

3. Briefly stated, the facts of the case are that the assessee is engaged in the business of manufacturing of Auto components. Provision of Rs.71.12 lakhs was made for warranties. On being called upon to substantiate the calculation of such provision, the assessee furnished year-wise chart which has been captured on page 6 of the assessment order. It was explained that the provision for warranties was made consistently at 0.30% of gross sales and the period of warranty extended from one year to 30 months. The AO observed that as against the opening balance of provision at

Rs.50.95 lakhs, the assessee incurred actual expenses of Rs.54.40 lakhs, meaning thereby the excess expenses were to the tune of Rs.3.44 lakhs (Rs.54.40 – Rs.50.95). He, therefore, held that the excess provision made during the year for a sum of Rs.67,67,752/- (Rs.71,12,571 minus Rs.3,44,819) was liable to be disallowed. The ld. CIT(A) deleted the addition.

4. We have heard both the sides and gone through the relevant material on record. It is seen that the assessee has been consistently making provision at the rate of 0.30% of gross sales over the years. Creation of similar provision for the preceding years at the same rate has been accepted by the Department. The AO has simply gone by the figure of the expenses actually incurred for the current year by ignoring that there was utilization of such provision in the succeeding years. Taking into consideration the mandate of the judgment of the Hon'ble Supreme Court in the case of *Rotork Controls India (P) Ltd., Vs. CIT (2009) 314 ITR 62 (SC)*, we are of the considered opinion that no fault can be found with the ld. CIT(A) in deleting this addition. The impugned order is upheld and the ground is dismissed.

5. The only other issue raised by the Department in its appeal is against treating Rs.1,40,000/- as revenue expenditure, which was considered by the AO as capital in nature. The assessee in its Ground no. 2 is aggrieved by the confirmation of disallowance of Rs.45,26,115/- treating certain amounts as capital expenditure.

6. Facts relating to these two grounds are that the assessee debited certain sums as repairs of buildings, plant and machinery and others. On verification, the AO found that some expenses out of such an amount were capital in nature. He, therefore, held the amount of Rs.7,83,904/- for CNC system; Rs.2,80,857/- for Stabilizer; Rs.28,40,127/- and Rs.1,87,442/- for Computer fitting expenses; Rs.1,98,840/- towards Machine shifting & concrete work; Rs.1,40,000/- towards Construction of power coating room; Rs.1,33,187/- towards Machinery foundation & erection; and Rs.4,33,785/- for Servo stabilizer, as capital in nature. After allowing depreciation @15%, 10% and 10% on such amounts falling in the blocks of Machinery and plant, Building and Furniture and fitting, the AO made total disallowance of Rs.44,06,808/-. The

Id. CIT(A) examined the nature of each expenditure as was stated before the AO and thereafter upheld the action of the AO in relation to CNC system - Rs.7,83,904/-; Stabilizer - Rs.2,80,857/-; Computer fitting expenses - Rs.28,41,027/- & Rs.1,87,442/-; and Servo stabilizer - Rs.4,33,785/-. The remaining amounts were held to be revenue in nature. Both the sides are in appeal on their respective stands.

7. We have heard both the sides and gone through the relevant material on record. In so far as the departmental ground is concerned, the same is confined to Construction of power coating room. The assessee submitted before the AO that this `expenditure represents cost of purely temporary structure (weather shed) created to protect the machine from likely damages of other work carried out near the machine'. It is thus evident from the nature of expenditure given by the assessee that the same is not in the capital field as it was incurred on purely temporary structures. We, therefore, countenance the view taken by the Id. CIT(A) in treating this amount as that of revenue nature.

8. Coming to the grievance of the assessee, it is seen that the first item is expenditure of Rs.7,83,904/- on CNC system. The assessee submitted before the Id. AO that 'the said system was replaced to keep the machine in working condition'. Obviously, when an old asset is replaced with a new asset, it gives an advantage of enduring nature and the assumes the character of capital expenditure. We, therefore, hold that the Id. CIT(A) was justified in treating this amount as capital expenditure.

9. The second item is 'purchase' of new Stabilizer amounting to Rs.2,80,857/-. Purchase of an asset cannot be characterized as a revenue expenditure. It is the case of purchase of new asset and not that of repair of an existing asset. We, therefore, hold that the Id. CIT(A) was right in not accepting the assessee's claim on this amount.

10. The next two items of Rs.28,40,127/- and Rs.1,87,442/- are in respect of 'Computer fitting expenses'. The assessee submitted before the AO that this expenditure was on 'computing peripherals, such as cabling, networking, switches, ports, sockets, printer ribbons' etc. A perusal of the items on

which such amount was spent, clearly decipher the same to be of capital nature as it is for installation of new computers and not for repairs etc. We, therefore, uphold the impugned order on this score.

11. The last item is 'purchase of a new stabilizer' amounting to Rs.4,33,785/-. This amount again falls within the domain of capital expenditure as it is purchase of a new asset. We, therefore, uphold the impugned on this score as well.

12. The grounds taken by the assessee as well as the Revenue are, therefore, dismissed.

13. The only other issue which survives in the appeal of the assessee is against confirmation of disallowance of expenses u/s 14A of the Act at Rs.5.19 lakh based on 0.5% of the total investment. The AO applying the provisions of Rule 8D of the Income-tax Rules, 1962 worked out the disallowance at Rs.35,42,000/-. The ld. CIT(A) deleted a part of addition on account of disallowance of interest and sustained the disallowance at 0.5% in terms of Rule 8D(2)(iii). The assessee is aggrieved by such sustenance.

14. We have heard both the sides and gone through the relevant material on record. The assessment year under consideration is A.Y. 2007-08. The Hon'ble Supreme Court in *CIT Vs. Essar Teleholdings Ltd. (2014) 401 ITR 435 (SC)* has held that Rule 8D is prospective and accordingly applies only from A.Y. 2008-09. In view of this precedent, the mandate of Rule 8D cannot be applied to A.Y. 2007-08 under consideration. However, the disallowance u/s 14A is called for in the present circumstances on some reasonable basis, if not under rule 8D. The ld. AR submitted that the assessee earned exempt income of Rs.37,320/-. He, however, could not point out such figure as recorded in the assessment order or the impugned order.

15. The Hon'ble Delhi High Court in the case *Cheminvest Ltd. vs. CIT (2015) 378 ITR 33 (Del)* has held that if there is no exempt income, there can be no question of making any disallowance u/s 14A of the Act. Similar view has been taken by the Hon'ble Delhi High Court in *CIT vs. Holcim India P. Ltd. (2014) 90CCH 081-Del-HC*. The net effect of these decisions is that the disallowance u/s 14A gets restricted to the

extent of exempt income, even if the provisions of the section 14A are attracted. In view of the above precedents, we direct to limit the disallowance to the extent of exempt income, as claimed by the Id. AR, after verification.

16. In the result, appeal of the Revenue is dismissed and that of the assessee is partly allowed for statistical purposes.

Order pronounced in the Open Court on 29th November, 2018.

Sd/-
(VIKAS AWASTHY)
JUDICIAL MEMBER

Sd/-
(R.S.SYAL)
VICE PRESIDENT

पुणे Pune; दिनांक Dated : 29th November, 2018
सतीश

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

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. आयकर आयुक्त(अपील) /
The CIT (Appeals)-XVII, Delhi
4. The CIT-V, New Delhi
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "बी" /
DR 'B', ITAT, Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune

		Date	
1.	Draft dictated on	28-11-18	Sr.PS
2.	Draft placed before author	28-11-18	
3.	Draft proposed & placed before the second member		
4.	Draft discussed/approved by Second Member.		
5.	Approved Draft comes to the Sr.PS/PS		
6.	Kept for pronouncement on		
7.	File sent to the Bench Clerk		
8.	Date on which file goes to the AR		
9.	Date on which file goes to the Head Clerk.		
10.	Date of dispatch of Order.		

*