

IN THE INCOME TAX APPELLATE TRIBUNAL "D"
BENCH, MUMBAI
BEFORE SHRI SHAMIM YAHYA, AM AND SHRI AMARJIT SINGH, JM

आयकर अपील सं/ I.T.A. Nos.1953 to 1955/Mum/2017
(निर्धारण वर्ष / Assessment Years: 2006-07, 2007-08 & 2008-09)

ACIT-1(3)(1) Room No. 540, 5 th Floor, Aayakar Bhavan, M.K. Road, Mumbai-400020.	<u>बनाम/</u> Vs.	M/s. Raman And Weil Pvt. Ltd. 15, Chetau Marine, B-Road, Churchgate, Mumbai- 400020.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACR5065M		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
Revenue by:	Shri R. Sindhu	
Assessee by:	Shri Percy Pardiwalla/Nishant Thakkur/Jasmin Amalsadvala	

सुनवाई की तारीख / Date of Hearing: 13/05/2019
घोषणा की तारीख /Date of Pronouncement: 25/06/2019

आदेश / O R D E R

PER AMARJIT SINGH (JM):

The Revenue has filed the above mentioned appeals against the different order passed by the Commissioner of Income Tax (Appeals)-3, Mumbai [hereinafter referred to as the "CIT(A)"] relevant to the A.Ys. 2006-07, 2007-08 & 2008-09.

ITA. NO.1953/M/2017

2. The Revenue has filed the present appeals against the order dated 26.12.2016 passed by the Commissioner of Income Tax (Appeals)-3,

Mumbai [hereinafter referred to as the "CIT(A)"] relevant to the A.Y. 2006-07.

3. The Revenue has raised the following grounds: -

- i. *"Whether the Ld. CIT(A) was correct in law and on facts of the case in deleting the addition of Rs.1,20,20,832/- made by Assessing Officer by disallowing the claim of deduction u/s. 801B(4) in respect of Unit - II as the assessee had obtained factory licence on 22.04.2004 i.e. after 31.03.2004 and hence the conditions prescribed for claiming deduction were not fulfilled by the assessee?"*
- ii. *"Whether the Ld. CIT(A) was correct in law and on facts in holding that there is no condition precedent to obtain the factory license before starting industrial undertaking, without appreciating the fact that legally, production cannot commence without obtaining the license to run the factory from the Factory Inspector as per the Factory Act and Rules?"*
- iii. *"Whether the Ld. CIT(A) was correct in law and on facts in restricting the disallowance of Rs.3,60,867/- made u/s. 14A r.w. Rule 8D to 10% of exempt income i.e. Rs. 67,950/-, holding that Rule 8D was not applicable for AY.2006-07, without appreciating that, the amendment introducing the section 14A(2) is clarificatory, and hence considered as retrospective and accordingly applicable even prior to assessment year 2008-09 and accordingly application of Rule 8D while making disallowance u/s. 14A is applicable for A.Y. 2006-07 ?"*
- iv. *"Whether of the facts and in the circumstances of the case and in law, the Ld. CIT(A) was right in restricting the disallowance made under u/s. 14A r.w.r. Rule 8D by holding that investment is made by the assessee in shares and securities out of own funds, by relying on the decision of Hon'ble High Court in the case of Reliance Utilities & Power Ltd. (313 ITR 340) and thereby rejecting the application of Rule 8D?"*
- v. *Whether on the facts and in the circumstances of the case and in Law, the Ld. CIT(A) was right in deciding*

the computation of disallowance made under Rule 8D to apply the ratio of decision given in different context and set of facts in Reliance Utilities & Power Ltd. (313 ITR 340) which has the impact of making the statutory rule redundant and entering into the legislative realm of re-drafting the mandatory rule made by Parliament?"

4. The brief facts of the case are that the assessee filed its return of income on 27.11.2006 declaring total income to the tune of Rs.4,28,92,252/-. The return was processed u/s 143(1) of the I.T. Act, 1961 resulting in refund of Rs.11,76,326/- which was fully adjusted against the demand for A.Y. 2004-05. Thereafter, the case was selected for scrutiny, therefore, notices u/s 143(2) & 142(1) of the Act were issued and served upon the assessee. While completing the assessment, the AO disallowed an amount of Rs.61,96,563/- in respect of Depreciation on intangible assets and an amount of Rs.1,55,000/- in respect of Legal fees paid for acquisition of technical know-how and an amount of Rs.81,133/- in respect of Sundry Expenses and an amount of Rs.30,84,397/- in respect of disallowance u/s 145A and an amount of Rs.75,995/- in respect of Training Expenses and an amount of Rs.3,60,867/- in respect of u/s 14A read with Rule 8D of the Act. The total income of the assessee was assessed at Rs.6,48,77,400/-. Feeling aggrieved, the assessee filed an appeal before the CIT(A) who partly allowed the claim of the assessee but the revenue was not satisfied on the issues which has been mentioned above, therefore, the revenue has filed the present appeal before us.

ISSUE NOs.1 & 2

5. Under these issues the revenue has challenged the allowance of the claim of the assessee in sum of Rs.1,20,20,832/- u/s 80IB(4) in respect of Unit-II. The Ld. Representative of the revenue has argued that the assessee obtained the factory licence on 22.04.2004 i.e. after 31.03.2004, therefore, necessary conditions for the claim u/s 80IB(4) was not fulfilled but the CIT(A) has wrongly allowed the claim of the assessee, therefore, the finding of the CIT(A) is not justifiable, hence, is liable to be set aside. However, on the other hand, the Ld. Representative of the assessee has strongly relied upon the order passed by the CIT(A) in question. Before going further, we deem it necessary to advert the finding of the CIT(A) on record.:-

“6 Ground No.1 to 8 relate to disallowance of deduction u/s 80-IB in respect of Unit-II amounting to Rs.1,20,20,832/-. This issue has been taken by the appellant in AY 2005-06 in Grounds No. 2 to 7 in Appeal No. CIT(A)-3/ACIT1(3)(2)/IT-29/2016-17. This issue was discussed elaborately and the deduction is allowed in respect of Unit-II. In view of the same, Ground no. 1 to 8 are allowed.”

6. On appraisal of the above mentioned finding, we noticed that the claim of the assessee has been allowed on the basis of the decision of CIT(A)-3, Mumbai for the A.Y. 2005-06. In fact, the claim of the exemption of the assessee u/s 80IB has been accepted in A.Y. 2004-05, therefore, in the said circumstances, the exemption is not liable to be declined in subsequent year and in this regard we also find support in law settled in **CIT Vs. Wester Outdoor Interactive (P) Ltd. (349**

IGTR 309)(Bom) & CIT Vs. Paul Brothers (216 ITR 548)(Bom).

Moreover, we noticed that the claim of the assessee was also declined on account of this fact that the factory licence was taken on 22.04.2004 but it cannot ground to deny the exemption u/s 80IB and in this regard, we also find support in the decision of Bombay High Court in the case of **M/s. Jolly Polymers Vs. CIT appeal no. 1622 of 2012**. Taking into account all the facts and circumstances, we are of the view that the finding of the CIT(A) on the issues is quite correct which is not liable to be interfere with at this appellate stage. Accordingly, these issues are decided in favour of the assessee against the revenue.

ISSUE NOs.3, 4, &5

7. Under these the revenue has challenged the restriction of the claim u/s 14A r.w. Rule 8D of the Act to the extent of 10% of the exempt income in sum of Rs.3,60,867/-. The Ld. Representative of the Department has argued that the provision u/s 14A r.w. Rule 8D of the Act is clarificatory in nature, therefore, the same was applicable even earlier to the A.Y. 2008-09 but the CIT(A) has wrongly failed to apply the said provisions, hence, the finding of the CIT(A) is not justifiable and is liable to be set aside. However, on the other hand, the Ld. Representative of the assessee has strongly relied upon the order passed by the CIT(A) in question. Before going further, we deem it necessary to advert the finding of the CIT(A) on these issues which

has been discussed in para no. 11.1 and is hereby reproduced as under.:-

“11.1 I have carefully considered the rival submissions and the facts of the case. The appellant company has received dividend amounting to Rs.3,93,753/- and long term capital gains of Rs. 2,85,739/-. It is true that Rule 8D is not applicable during the AY, however the section 14A of the IT Act was very much applicable in the year under consideration. Since the section 14A is mandatory in nature, the same is applicable in this year also. Since the appellant has not furnished any documentary evidence in support of the claim, I disallow the 10% of the total exempt income of Rs. 6,79,492/- (Rs.3,93,753 + Rs.2,85,739), which comes to Rs. 67,950/. Therefore, Ground No. 17 is partly allowed.”

8. It is not in dispute that the provisions of Section 14A r.w. Rule 8D of the Act is applicable subsequent to the A.Y. 2008-09. The present case is in connection with the A.Y. 2006-07. The assessee earned the exempt income in sum of Rs.3,93,753/-. The CIT(A) has restricted the expenditure to earn the exempt income to the extent of 10% dividend income which nowhere seems unjustifiable. Earlier to the period 2008-09 it was justifiable to earn the exempt income on reasonable basis unless satisfaction has been recorded by AO in the order. We also find support of law settled in case titled as **CIT Vs. Essar Technology Ltd. 90 Taxmann.com 2(SC) & Godrej & Boyce 328 ITR 81 (Bom)**. Taking into account of all the facts and circumstances, we are of the view that the CIT(A) has decided the matter of controversy judiciously and correctly which is not liable to

be interfere with at this appellate stage. Accordingly, these issues are decided in favour of the assessee against the revenue.

In the result, appeal filed by the revenue is hereby dismissed.

ITA. NO.1954/M/2017

9. The Revenue has filed the present appeals against the order dated 26.12.2016 passed by the Commissioner of Income Tax (Appeals)-3, Mumbai [hereinafter referred to as the "CIT(A)"] relevant to the A.Y. 2007-08.

10. The Revenue has raised the following grounds: -

1. Whether the Ld. CIT(A) was correct in law and on facts of the case in deleting the addition of Rs.169,94,460/- made by AO by disallowing the claim of deduction u/s 80IB(4) in respect of Unit-II as the assessee had obtained factory license on 22.04.2004 i.e. after 31.03.2004 and hence the conditions prescribed for claiming were not fulfilled by the assessee.

2. Whether the Ld. CIT(A) was correct in law and on facts in holding that there is no condition precedent to obtain the factory license before starting industrial undertaking, without appreciating the fact that legally, production cannot commence without obtaining the license to run the factory from the Factory Inspector as per the Factory Act and Rules?"

3. Whether the Ld. CIT(A) was correct in law and on facts in deleting the disallowance of Rs.14,04,536/- made 36(1)(va) of the I.T. Act 1961 , on erroneous presumption that expenses on account of payment to employees contribution are covered u/s. 43B and are allowable if paid before the due date of filing of return as per section 139(1), when as per explanation to section 36(1)(va) the due date for payment of employees contribution is due date under the relevant act and payments made after such due date are not allowable ?"

4. *"Whether the Ld. CIT(A) was correct in law and on facts in deleting the disallowance of expenses pertaining to payments made by assessee towards employees contribution by relying upon High Court decision in the case CIT (Cent.) Rune, Vs. Ghatge Patil Transports Ltd., when the said decision itself is erroneous as in the said case , it has been wrongly interpreted that the Apex Courts decision in the case of Alom Extrusions 319 ITR 306 relates to employees contribution , when in fact , it is related to employers contribution governed by Section 43B ?"*

5. *"Whether the Ld. CIT(A) was correct in law and on facts in restricting the disallowance of Rs.5,64,418/- made u/s. 14A r.w. Rule 8D to 10% of exempt income i.e. Rs.1,07,377/-, holding that Rule 8D was not applicable for AY.2007-08, without appreciating that, the amendment introducing the section 14A(2) is clarificatory, and hence considered as retrospective and accordingly applicable even prior to assessment year 2008-09 and accordingly application of Rule 8D while making disallowance u/s. 14A is applicable for A.Y. 2007-08 ?"*

6. *"Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was right in restricting the disallowance made under u/s. 14A r.w. Rule 8D by holding that investment is made by the assessee in shares and securities out of own funds, by relying on the decision of Hon'ble High Court in the case of Reliance Utilities & Power Ltd. (313 ITR 340) and thereby rejecting the application of Rule 8D?"*

7. *Whether on the facts and in the circumstances of the case and in Law, the Ld. CIT(A) was right in deciding the computation of disallowance made under Rule 8D to apply the ratio of decision given in different context and set of facts in Reliance Utilities & Power Ltd. (313 ITR 340) which has the impact of making the statutory rule redundant and entering into the legislative realm of re-drafting the mandatory rule made by Parliament?"*

11. The facts of the present case are quite identical to the facts of the case as narrated above while deciding the case in ITA. No. 1953/M/2017, therefore, there is no need to repeat the same. However, the figure is different.

ISSUE NOs.1 & 2

12. Under these issues the revenue has challenged the allowance of claim of the assessee u/s 80IB(4). These issues have already been discussed and decided while deciding the issues nos. 1 & 2 in ITA. No.1953/M/2017. The finding given in the said appeal is quite applicable as mutatis mutandis. Accordingly, we decide these issues in favour of the assessee against the revenue.

ISSUE NOs.3 & 4

13. Under these issues the revenue has challenged the allowance of claim of the assessee u/s 36(1)(va) of the I.T. Act, 1961. The assessee received the employee's contribution but paid before due date of filing the return. The CIT(A) has given the relevant finding in para no. 12.1 which is hereby reproduced as under.:-

“12. Ground No. 8 relates to making addition of Rs.14,04,536/- on account of delayed payment of employee's provident fund. During the course of assessment proceedings, the AO has noticed that the appellant has made this payment after the due date. On the other hand, the appellant submitted that the payments were made before the due date of filing of the Return of Income.

12.1 I have carefully considered the rival submissions and the facts of the case. The delay in making the payments is not for a long period. Moreover, the payments made before filing of return of income, for which necessary evidence were filed along with IT Return, to establish the said payment. In view of the same, I find no for making such disallowance, and the same is to be deleted. Ground No. 8 is, therefore, allowed.”

14. On appraisal of the above said finding, we noticed that the AO has noticed that the assessee has not made the payment earlier to filing the return of income, therefore, the said amount was added to the income of the assessee. It is also not in dispute that the assessee deposited the said amount before filing the return of income. In this regard, the law has now been settled by Bombay High Court in the case of **CIT Vs. Ghatge Patil Transports Ltd. (368 ITR 749) (Bom)**. If the assessee deposit employee's contribution funds before due date of filing the return, therefore, in the said circumstances, the claim of the assessee is not liable to be disallowed. In view of the said discussion, we are of the view that the CIT(A) has decided the matter of controversy judiciously and correctly which is not liable to be interfere with at this appellate stage. Accordingly, these issues are decided in favour of the assessee against the revenue.

ISSUE NOs.5, 6 & 7

15. Under these issues the revenue has challenged the restriction of claim of the assessee to the extent of 10% of the exempt income in view of the provisions u/s14A r.w. Rule 8D of the Act. This issue has already been discussed and decided while deciding the appeal of revenue bearing ITA. No.1953/M/2017 for the A.Y.2006-07. The finding given in the said appeal on the issues is quite applicable to the facts of the present case also as mutatis mutandis. Accordingly, we are

of the view that the finding of the CIT(A) is quite justifiable which is not liable to be interfere with at this appellate stage.

ITA. NO.1955/M/2017

16. The Revenue has filed the present appeals against the order dated 26.12.2016 passed by the Commissioner of Income Tax (Appeals)-3, Mumbai [hereinafter referred to as the "CIT(A)"] relevant to the A.Y. 2008-09.

17. The Revenue has raised the following grounds: -

1. "Whether the Ld. CIT(A) was correct in law and on facts of the case in deleting the addition of Rs.163,27,932/- made by Assessing Officer by disallowing the claim of deduction u/s. 8018(4) in respect of Unit - II as the assessee had obtained factory licence on 22.04.2004 i.e. after 31.03.2004 and hence the conditions prescribed for claiming deduction were not fulfilled by the assessee?"

2. "Whether the Ld. CIT(A) was correct in law and on facts in holding that there is no condition precedent to obtain the factory license before starting industrial undertaking, without appreciating the fact that legally, production cannot commence without obtaining the license to run the factory from the Factory Inspector as per the Factory Act and Rules?"

3. "Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was right in deleting the disallowance of Rs. 2,50,638/-, made under u/s. 14A r.w.r. Rule 8D(2) by holding that investment is made by the assessee in shares and securities out of own funds, by relying on the decision of Hon'ble High Court in the case of Reliance Utilities & Power Ltd. (313 ITR 340) and thereby rejecting the application of Rule 8D?"

4. Whether on the facts and in the circumstances of the case and in Law, the Ld. CIT(A) was right in deciding the computation of

disallowance of Rs.2,50,638/- made under Rule 8D to apply the ratio of decision given in different context and set of facts in Reliance Utilities & Power Ltd. 313 ITR 340) which has the impact of making the statutory rule redundant and entering into the legislative realm of re-drafting the mandatory rule made by Parliament?"

18. The facts of the present case are quite identical to the facts of the case as narrated above while deciding the case in ITA. No. 1953/M/2017, therefore, there is no need to repeat the same. However, the figure is different.

ISSUE NOS.1 & 2

19. Under these issues the revenue has challenged the allowance of claim of the assessee u/s 80IB(4). These issues have already been discussed and decided in favour of the assessee while deciding the issues nos. 1 & 2 in ITA. No.1953/M/2017. The finding given in the said appeal is quite applicable as mutatis mutandis. Accordingly, we decide these issues in favour of the assessee against the revenue.

ISSUE NOS.3 & 4

20. Under these issues the revenue has challenged the deletion of the addition raised in view of the provisions u/s 14A r.w. Rule 8D(2) of the Act. Before going further, we deem it necessary to advert the finding of the CIT(A) on record.:-

"9.1 I have carefully considered the rival submissions and the facts of the case. The appellant company has received dividend amounting to Rs.5,33,572/- and long term capital gains of

Rs.13,67,505/-. Since the investment is made out of its own funds available with the appellant, no disallowance u/s 14A r.w. Rule 8D(2)(ii) of the I.T. Act, 1962 is to be made. As regards, the disallowance u/r 8D(2)(iii) of the I.T. Rules, 1962 is concerned, the appellant has not pointed out any mistake in the computation, hence, the addition made is confirmed. Therefore, Ground no. 6 is partly allowed.”

21. On appraisal of the above said mentioned finding, we noticed that the CIT(A) has allowed the claim of the assessee on the basis of this fact that the assessee’s own fund is more than the investment. The CIT(A) has also placed reliance upon the decision in the case of **CIT Vs. Reliance Utilities Power Ltd. (2009) 178 Taxmann 135 (Bom)**. The facts are not distinguishable at this stage. The presumption lies in favour of the assessee if the assessee have own fund more than investment than the assessee’s investment would be treated from his own fund to earn the exempt income. The CIT(A) has also relied upon the decision in the case of **Reliance Industries (supra)**, therefore, we are of the view that the finding of the CIT(A) is quite correct which is not liable to be interfere with at this appellate stage. Accordingly, these issues are decided in favour of the assessee against the revenue.

22. In the result, appeals filed by the revenue are hereby ordered to be dismissed.

Order pronounced in the open court on 25/06/2019

Sd/-

(SHAMIM YAHYA)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai दिनांक Dated : 25/06/2019

Sd/-

(AMARJIT SINGH)

न्यायिक सदस्य/JUDICIAL MEMBER

Vijay

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदे
शानुसार/ BY
ORDER,
सत्या
पित प्रति

//True Copy//

उप/सहायक पंजीकार / (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai