

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

श्री डी. करुणाकरा राव, लेखा सदस्य एवं श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष
BEFORE SHRI D. KARUNAKARA RAO, AM AND SHRI VIKAS AWASTHY, JM

आयकर अपील सं. / ITA No.2770/PUN/2016
निर्धारण वर्ष / Assessment Year : 2012-13

Gopal Kashinath Lad,
Plot No.1, S.No.74/1B1 "Matoshri"
Gajanan Maharaj Mandir Road,
Near Netaji Play Ground, Deopur,
Dhule-424002.

PAN : AAHPL2206Q

.....अपीलार्थी / Appellant

बनाम / V/s.

DCIT, Circle Dhule.

.....प्रत्यर्थी / Respondent

आयकर अपील सं. / ITA No.783/PUN/2017
निर्धारण वर्ष / Assessment Year : 2013-14

ACIT, Circle Dhule.

.....अपीलार्थी / Appellant

बनाम / V/s.

Gopal Kashinath Lad,
Plot No.1, S.No.74/1/B-1 "Matoshri"
Gajanan Maharaj Mandir Road,
Near Netaji Play Ground, Deopur,
Dhule-424002.

PAN : AAHPL2206Q

.....प्रत्यर्थी / Respondent

आयकर अपील सं. / ITA No.1048/PUN/2017
निर्धारण वर्ष / Assessment Year : 2013-14

Gopal Kashinath Lad,
Plot No.1, S.No.74/1B1 "Matoshri"
Gajanan Maharaj Mandir Road,
Near Netaji Play Ground, Deopur,
Dhule-424002.

PAN : AAHPL2206Q

.....अपीलार्थी / Appellant

बनाम / V/s.

ACIT, Circle Dhule.

.....प्रत्यर्थी / Respondent

Assessee by : Shri M. R. Shirude
Revenue by : Smt. Shabana Parveen

सुनवाई की तारीख / Date of Hearing : 11.06.2019
घोषणा की तारीख / Date of Pronouncement : 04.07.2019

आदेश / ORDER

PER D. KARUNAKARA RAO, AM:

There are **three** appeals under consideration. The appeal in ITA No.2770/PUN/2016 is filed by the assessee against the order of the CIT(A)-1, Nashik dated 20.09.2016 for the assessment year 2012-13. The appeals in ITA No.783/PUN/2017 and ITA No.1048/PUN/2017 are the cross appeals filed by the Revenue as well as by the assessee against the order of the CIT(A)-1, Nashik dated 17.01.2017 for the assessment year 2013-14 respectively.

2. First we shall take up the appeal of the assessee in ITA No.2770/PUN/2016 involving the assessment year 2012-13 for adjudication.

ITA No.2770/PUN/2016 - A.Y. 2012-13 - By Assessee

3. In this appeal, the solitary issue raised in the grounds relates to the disallowance made u/s 14A of the I.T. Act, 1961 read with Rule 8D(2) of the I.T. Rules, 1962.

4. Briefly stated the relevant facts include that the assessee is engaged in the business of plot trading, land developers and builders. The assessee filed the return of income declaring total income of Rs.24,29,050/-. During the assessment proceedings, the Assessing Officer invoked the provisions of section 14A of the I.T. Act r.w. Rule

8D(2) of the I.T. Rules for the assessment year 2012-13 and disallowed an addition of Rs.22,09,971/- invoking the provisions of clauses (ii) and (iii) of the said Rule 8D(2) of the Rules.

5. Aggrieved with the said addition made by the Assessing Officer, the assessee filed an appeal before the CIT(A).

6. Regarding the addition made under clause (ii) of Rule 8D(2) of the Rules, the CIT(A) considered the written submission of the assessee and referred to the various judicial pronouncements on this issue which held in favour of the proportionate disallowance of claim of interest. The CIT(A) observed that the accounts of the assessee are maintained on a mixture funds basis and the 'principle of proportion' is required to be applied. Accordingly, the CIT(A) directed the Assessing Officer to examine the working furnished by the assessee and compute the disallowable interest applying the 'principle of proportion' *qua* the clause (ii) of the said Rule 8D(2) of the Rules. Further, the CIT(A) confirmed the disallowance made under clause (iii) of Rule 8D(2) of the Rules.

7. Aggrieved with the said decision of the CIT(A), the assessee is in appeal before us.

8. Before us, Id. Counsel for the assessee, on this issue, filed a copy of the order giving effect to the direction of the CIT(A) and mentioned that the Assessing Officer did not follow the direction of the CIT(A). The assessee also furnished a copy of the rectification application dated 25.04.2018 with a prayer to rectify the said order of the Assessing Officer

dated 17.10.2016. In this regard, ld. Counsel mentioned that a direction to the Assessing Officer to strictly comply with the direction of the CIT(A) vide the order of the CIT(A) dated 20.09.2016 may be given to the Assessing Officer by the Tribunal now.

9. On hearing both the sides on this issue *qua* the direction of the CIT(A) in connection with the applicability of the 'principle of proportion', we find the order of the Assessing Officer dated 17.10.2016 does not constitute a speaking order on the said issue. We also noticed that the rectification application filed by the assessee is yet to be acted upon even after the lapse of couple of years.

10. Therefore, in our view, we should direct the Assessing Officer to give effect to the said direction of the CIT(A) by passing a speaking order after considering the 'principle of proportion', 'principle of presumption' and the Jurisdictional High Court's judgement in the cases of (i) CIT vs. Reliance Utilities & Powers Ltd., 313 ITR 340 (Bom.) and (ii) HDFC Bank Ltd. vs. CIT, 383 ITR 529 (Bom.) etc. Accordingly, the Assessing Officer is directed to pass a speaking order in a time bound manner within the three months from the date of pronouncement of this order after granting a reasonable opportunity of being heard to the assessee. Accordingly, the issue relating to the applicability of the proportions under clause (ii) of Rule 8D(2) of the Rules is allowed for statistical purposes.

11. Coming to the **second issue** on the applicability of the provisions of clause (iii) of Rule 8D(2) of the Rules.

12. Before us, ld. Counsel for the assessee did not have much to argue in this respect except relying on the ground. On perusal of the order of the CIT(A), we find the CIT(A) rightly complied with the provisions of the said clause (iii) of Rule 8D(2) of the Rules. Therefore, we find no reasons to interfere with the same. Accordingly, the relevant ground on this issue stands dismissed.

13. In the result, the appeal of the assessee in ITA No.2770/PUN/2016 for the assessment year 2012-13 is partly allowed for statistical purposes.

14. Now, we take up the cross appeals filed by the Revenue as well as by the assessee relating to the assessment year 2013-14 for adjudication.

ITA No.783/PUN/2017 - A.Y. 2013-14 - By Revenue
ITA No.1048/PUN/2017 - A.Y. 2013-14 - By Assessee

15. In these cross appeals, the solitary issue raised by both the assessee and the Revenue relates to the applicability of the provisions of section 14A r.w. Rule 8D(2).

16. In the assessment, the Assessing Officer made addition of Rs.53,19,966/- [i.e. Rs.48,19,562/- under clause (ii) of Rule 8D(2) and Rs.50,403 (sic.) under clause (iii) of Rule 8D(2) of the Rules]. Against the said addition made by the Assessing Officer, the assessee filed an appeal before the CIT(A).

17. The CIT(A) partly allowed the appeal of the assessee. Aggrieved with the said decision of the CIT(A), the assessee as well as the Revenue are in cross appeals before us.

18. Before us, ld. Counsel for the assessee fairly submitted that the Assessing Officer has given effect to the direction of the CIT(A) by passing a speaking order dated 30.01.2018 which is subsequent to the filing of appeal by the assessee before the Tribunal. The appeal is filed by the assessee on 26.04.2017. Mentioning the relief granted by the Assessing Officer in the modification order dated 17.10.2016, ld. Counsel submitted for **not pressing the appeal of the assessee** *qua* the applicability of the provisions of clause (ii) of Rule 8D(2) of the Rules. However, ld. AR further submitted for deleting the addition made by the Assessing Officer invoking the provisions of clause (iii) of Rule 8D(2) of the Rules.

19. On hearing both the sides, we find, in principle, the direction of verification given by the CIT(A) is proper and the same does not amount to set-aside the issue to the file of the Assessing Officer. It is a case of mere verification which is different from that of set-aside of an appeal. In any case, the Assessing Officer had already granted relief to the assessee *qua* the addition made by the Assessing Officer under clause (ii) of Rule 8D(2) of the Rules. Therefore, relevant grounds stand dismissed as not pressed.

20. So far as disallowance made by the Assessing Officer amounting to Rs.5,00,403/- under clause (iii) of Rule 8D(2) of the Rules, we find the CIT(A) rightly complied with the provisions of the said clause (iii) of Rule

8D(2) of the Rules. Nothing contrary is brought to our notice by the assessee's counsel. Therefore, we find no reason to interfere with the same. Accordingly, the relevant ground on this issue stands dismissed.

21. In the result, the appeal of the assessee is dismissed.

22. Coming to the main appeal in ITA No.783/PUN/2017, since the appeal of the assessee is dismissed, the cross appeal with linked grounds filed by the Revenue becomes infructuous. Therefore, the cross appeal of the Revenue is dismissed.

23. Resultantly, the appeal of assessee in ITA No.2770/PUN/2016 is partly allowed for statistical purposes and the cross appeals of the Revenue as well as the assessee in ITA No.783/PUN/2017 and ITA No.1048/PUN/2017 are dismissed.

Order pronounced on 04th day of July, 2019.

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

Sd/-
 (डी. करुणाकरा राव/**D. KARUNAKARA RAO**)
 लेखा सदस्य/**ACCOUNTANT MEMBER**

पुणे / Pune; दिनांक / Dated : 04th July, 2019.

Sujeet

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-1, Nashik.
4. The CCIT, Nashik.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" बेंच,
पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

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