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

BEFORE SHRI R.S. SYAL, VICE PRESIDENT AND
SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER

आयकर अपील सं. / ITA Nos. 1271 & 1272/PUN/2018
निर्धारण वर्ष / Assessment Years: 2013-14 & 2014-15

M/s. KPIT Technologies Limited, Rajiv Gandhi Info Tech Park, Phase-I, MIDC, Hinjewadi, Pune – 411 057 PAN : AAACK7308N	**Vs.**	DCIT, Circle-14, Pune
(Appellant)		(Respondent)

Appellant by	Shri Kishor Phadke
Respondent by	Shri Jeevan Bachhav, DCIT
Date of hearing	17-10-2019
Date of pronouncement	18-10-2019

आदेश / ORDER

PER BENCH :

These two appeals by the assessee relate to the assessment years 2013-14 & 2014-15. Since common issues are raised in these appeals, we are, therefore, proceedings to dispose them off by this consolidated order for the sake of convenience.

A.Y. 2013-14 :

2. The first ground raised in this appeal is against the confirmation of addition of Rs.49,95,140/- made by the Assessing

Officer (AO) under section 14A of the Income-tax Act, 1961 read with Rule 8D of the Income-tax Rules, 1962.

3. Succinctly, the facts of the case are that the assessee is engaged in the business of manufacture and development of software. Exempt income of odd Rs.5.42 crore was declared on account of dividend. The assessee, in its computation of total income, attributed expenditure of Rs.10.00 lakh to the exempt income and offered disallowance. The AO, not satisfied, computed the disallowance u/s 14A of the Act in two parts viz., under Rule 8D(2)(ii) at Rs.85,45,330/- and under Rule 8D(2)(iii) at Rs.59,95,150.-. After reducing the *suo moto* disallowance offered by the assessee, the AO made an addition of Rs.1,35,40,471/-. The ld. CIT(A) deleted the disallowance under Rule 8D(2)(ii) pertaining to interest component. However, the remaining amount of disallowance under Rule 8D(2)(iii), being, 0.5% of the average value of investments, was sustained. The assessee is aggrieved by the confirmation of the *pro tanto* addition.

4. Having heard both the sides and gone through the relevant material on record, it is observed that the assessee itself offered disallowance u/s.14A at Rs.10.00 lakh. The AO has recorded that:

"the assessee was requested to explain as to why the provisions of section 14A of the I.T. Act, 1961 should not be invoked along with working of amount of disallowance under the said section r.w. Rule 8D of I.T.Rules, 1962". Thereafter, the AO recorded that: "*The contention of the assessee has been considered. The same are however not acceptable. It is seen that the assessee has been making investments. Where the expenditure is clearly incurred for earning of exempt income, the same is covered by the provisions of Rule 8D(2)….. However, where it is not possible to figure out such expenditure but at the same time such expenditure is being incurred, provisions of Rule 8D …. are applicable*". Thereafter, he straightway proceeded to compute the disallowance under Rule 8D(2). It is aptly borne out from the above extracted portions of the assessment order that the AO did not record any satisfaction as to how the disallowance of Rs.10.00 lakh offered by the assessee was incorrect. He simply noted that the assessee offered disallowance and then came to the conclusion that further disallowance was called for under Rule 8D. The Hon'ble Supreme Court in *Maxopp Investments Ltd. VS. CIT (2018) 402 ITR 640 (SC)* has held in para 41 that: "*before applying the theory of apportionment, the AO needs to record satisfaction that having regard to the kind of the assessee,*

suo moto disallowance u/s.14A was not correct. It will be in those cases where the assessee in his return has himself apportioned but the AO was not accepting the said apportionment. In that eventuality, it will have to record its satisfaction to this effect". In view of the above proposition laid down by the Hon'ble Supreme Court, it is evident that where the assessee has itself offered some disallowance with which the AO is not satisfied, it becomes incumbent upon him to record satisfaction, before embarking upon the disallowance as per rule 8D of the I.T. Rules, as to how the apportionment made by the assessee was not correct. We are confronted with a situation in which the assessee *suo moto* offered a disallowance of Rs.10.00 lakh. The AO without recording any such satisfaction about the incorrectness of the apportionment made by the AO, simply proceeded to compute the disallowance under Rule 8D(2). When we consider the factual panorama prevailing in the instant case in *juxtaposition* to the mandate of section 14A(2), it becomes manifest that the AO failed to record the mandatory satisfaction before proceeding to make disallowance u/s.14A of the Act, which has resulted in vitiating the addition. Respectfully following the precedent, we order to delete the disallowance sustained in the first appeal.

5. It is seen that the AO eventually computed the income of the assessee in accordance with section 115JB of the Act. Notwithstanding our deletion of disallowance sustained in the first appeal, we find that, even otherwise also, no addition can be made u/s 14A in computation of book profit u/s 115JB of the Act. The Hon'ble Delhi High Court in *Pr. CIT Vs. M/s. Bhushan Steel Limited and others (2015) 94 CCH 0335 DEL-HC* has held that no disallowance can be made u/s.14A in computation of income u/s.115JB of the Act. Similar view has been reiterated by the Special Bench of the Tribunal in *ACIT Vs. Vireet Investments (P) Ltd. (2017) 165 ITD 27 (Del) (SB).* We, therefore, hold that neither the disallowance can be made u/s.14A nor any addition on this score can be made in the computation of income u/s.115JB of the Act. These grounds are, therefore, allowed.

6. The only other issue which survives in this appeal is against the confirmation of disallowance of weighted deduction of Rs.71,35,914/- u/s.35(2AB) of the Act.

7. Simply put, the facts of the ground are that the assessee claimed weighted deduction u/s.35(2AB) of the Act amounting to Rs.3,67,88,233/-. The AO observed that the DSIR (Department of

Scientific and Industrial Research), New Delhi, which is an approving authority approving weighted deduction, reduced such claim to Rs.3,32,20,276/-. The AO, therefore, disallowed the deduction of such R&D expenses of Rs.35,67,957/-. This resulted into disallowance of weighted deduction at Rs.71,35,914/-, being, 200% of the amount of expenditure incurred. The ld. CIT(A) sustained the disallowance.

8. Having heard both the sides and gone through the relevant material on record, it is noted that section 35(2AB), at the material time, provided for weighted deduction on the basis of report to be submitted in Form 3CL read with Rule 6 of the Income-tax Rules. Clause (b) of Rule 6(7A), at the relevant time provided that: "*The prescribed authority shall submit its report in relation to the approval of in-house Research and Development facility in Form 3CL to the Director General (Income Tax Exemptions) within sixty days of its granting approval*". An amendment was carried out to clause (b) of Rule 6(7A) w.e.f. 01-07-2016 providing that "*The prescribed authority shall furnish electronically its report,- (i) in relation to the approval of in-house Research and Development facility in Part A of Form No. 3CL; (ii) quantifying the expenditure*

incurred on in-house research and development facility by the company during the previous year and eligible for weighted deduction under sub-section (2AB) of section 35 of the Act in Part B of Form No. 3CL". Simultaneous with the amendment in Rule 6(7B), an amendment was also made to Form 3CL. Whereas the earlier Form, being, the Report to be submitted by the prescribed authority to the Director General (IT Exemptions) u/s.35(2AB), talked of recognition granted by DSIR to the in-house Research and Development Centre of the company, the amended Form 3CL, pursuant to amendment in Rule 6(7A)(b), bifurcated the report into two parts, namely, Part-A containing one-time recognition by the DSIR and Part-B containing year-wise details of the expenditure incurred and approval. When we consider the position prevailing as per Rule 6(7A) and Form 3CL before and after the amendment w.e.f. 01-07-2016, it becomes manifest that in the pre-amendment period, the requirement was only for registration with DSIR and not to the grant of the year-to-year approval of the amount spent on Research and Development by a company qualifying for weighted deduction. Such an amendment came into force only from 01-07-2016, by virtue of which the claim of the assessee for weighted deduction became subject matter of examination by the DSIR and

resultantly the AO, on year to year basis. Since it is the position prevailing in the pre-amendment era which governs the years under consideration, once the assessee has been registered and other necessary requirements have been satisfied, the entire amount spent on Research and Development qualifies for weighted deduction u/s.35(2AB) irrespective of the fact that some amount was not approved by the DSIR. Actual amount spent on research and development *vis-à-vis* the approval by the DSIR on year-to-year basis, entitling the assessee to the weighted deduction, has become relevant only after the amendment carried out from 01-07-2016. Since it is not the case of the AO that the assessee did not fulfill all other relevant conditions, we hold that it is entitled to weighted deduction for the full amount of the expenditure incurred on Research and Development irrespective of the fact that a part of the amount so incurred was not approved by the DSIR.

A.Y. 2014-15 :

9. We have heard both the sides and gone through the relevant material on record. It is a common submission by both the sides that the facts and circumstances of the instant year are *mutatis mutandis* similar to those of the immediately preceding year. In

fact, both the sides adopted their arguments advanced for the A.Y. 2013-14 and no separate arguments were put forth for the A.Y. 2014-15, except for pointing out the amounts in question.

10. The first ground is against the confirmation of disallowance of Rs.74,40,373/- u/s.14A of the Act. For this year, again the AO recorded satisfaction in the same manner despite the assessee's *suo moto* disallowance of Rs.20.00 lakh as in his order for the immediately preceding year. Following the view taken hereinabove, we order to delete the disallowance made u/s.14A of the Act.

11. In so far as the addition of the amount disallowed u/s.14A to the amount of book-profit as per computation u/s.115JB of the Act is concerned, we hold that, primarily, there cannot be any addition because the disallowance itself has been deleted and secondly, even otherwise the disallowance u/s.14A cannot be made in the computation of income u/s.115JB of the Act.

12. The third ground is against the disallowance of weighted deduction u/s.35(2AB). Here again the facts and circumstances are similar. Following the view taken hereinabove for the immediately preceding assessment year, we allow this ground.

13. In the result, both the appeals are allowed.

Order pronounced in the Open Court on 18th October, 2019.

Sd/-	Sd/-
(S.S. VISWANETHRA RAVI)	**(R.S.SYAL)**
JUDICIAL MEMBER	**VICE PRESIDENT**

पुणे Pune; दिनांक Dated : 18th October, 2019
सतीश

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

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. The CIT(A)-7, Pune
4. The Pr. CIT-6, Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे
   "**C**" / DR 'C', 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	17-10-2019	Sr.PS
2.	Draft placed before author	17-10-2019	Sr.PS
3.	Draft proposed & placed before the second member		JM
4.	Draft discussed/approved by Second Member.		JM
5.	Approved Draft comes to the Sr.PS/PS		Sr.PS
6.	Kept for pronouncement on		Sr.PS
7.	Date of uploading order		Sr.PS
8.	File sent to the Bench Clerk		Sr.PS
9.	Date on which file goes to the Head Clerk		
10.	Date on which file goes to the A.R.		
11.	Date of dispatch of Order.		

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