

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

BEFORE SHRI ANIL CHATURVEDI, AM AND  
SHRI S.S. VISWANETHRA RAVI, JM

आयकर अपील सं / ITA No.287/PUN/2017

निर्धारण वर्ष / Assessment year : 2011-12

The Asst.Commissioner of Income Tax,  
Central Circle 1(1), Pune.

..... अपीलार्थी /  
Appellant.

बनाम v/s

Dhariwal Industries Ltd.,  
Manikchand House, Plot No.100/101,  
D. Kennedy Road,  
Behid Hotel Le Meradien,  
Pune – 411 001.

..... प्रत्यर्थी /  
Respondent

PAN : AAACD5896L.

Assessee by : None.

Revenue by : Shri S.B. Prasad.

सुनवाई की तारीख / Date of Hearing : 17.10.2019	घोषणा की तारीख / Date of Pronouncement: 30.10.2019
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**आदेश / ORDER**

**PER ANIL CHATURVEDI, AM :**

1. This appeal filed by the Revenue is emanating out of the order of Commissioner of Income Tax (A), Pune – 11 dated 28.11.2016 for the assessment year 2011-12.

2. The relevant facts as culled out from the material on record are as under :-

Assessee is a company who electronically filed its return of income for A.Y. 2011-12 on 29.09.2011 declaring loss of Rs.66,41,42,079/-.

The case was selected for scrutiny and thereafter assessment was

framed u/s 143(3) of the Act vide order dated 14.03.2014 and the total loss was determined at Rs.52,18,16,211/- and income u/s 115JB of the Act was determined at Rs.46,22,169/-. Aggrieved by the order of AO, assessee carried the matter before Ld.CIT(A), who vide consolidated order for A.Y. 2004-05 to 2013-14 (in appeal No.PN/CIT(A)-11/DCIT, Cen.Cir.1(1), Pune/148/2014-15) granted partial relief to the assessee. Aggrieved by the order of Ld.CIT(A), Revenue is now in appeal before us and has raised the following grounds :

*“1. Whether on the facts and in the circumstances of the case, the Ld.CIT(A) was justified in restricting the disallowance under Rule 8D(2)(iii) to each year on 'ad hoc basis' without appreciating that Section 14A(2) mandates that the amount of expenditure to be disallowed is to be determined as per the method prescribed in Rule 8D of the I.T. Rules, 1962 and when Rule 8D(2) uses the word "shall" and therefore computation of disallowance is also mandatory?*

*2. Whether on the facts and circumstances of the case and in law, the Hon'ble ITAT was justified in allowing the claim of additional depreciation on windmills of the assessee for A.Y.201 0-11, when the Finance Bill, 2012 envisaged allowance of initial depreciation w.e.f. A.Y.2013-14 and subsequent years?*

*3. The order of CIT(A) may be vacated and that of the Assessing Officer be restored.”*

3. The case file reveals that there is no appearance from assessee side even in the past despite service of notices. Even on the date of present hearing, none appeared on behalf of assessee nor any adjournment application was filed. We therefore proceed to dispose of the appeal ex-parte qua the assessee.

4. First ground is with respect to disallowance u/s 14A of the Act.

4.1. During the course of assessment proceedings, AO noticed that assessee had claimed Rs.27,20,26,138/- as exempt income u/s 10 of the Act and had attributed Rs.41,425/- on ad hoc basis as expenditure

towards earning of exempt income. It was also noticed that amount attributed by the assessee towards earning exempt income was without applying the provisions of Rule 8D of IT Rules. The assessee was therefore asked to explain as to why the expenditure in relation to exempt income should not be disallowed u/s 14A r.w. Rule 8D of I.T. Rules, to which assessee inter-alia submitted that assessee has already disallowed the expenses for earning exempt income. The submissions of the assessee were not found acceptable to the AO as AO noticed that assessee had offered Rs.41,425/- on account of salary and telephonic expenses etc towards earning exempt income and that too on adhoc basis. AO noted that Hon'ble Bombay High Court in the case of Godrej & Boyce Manufacturing Co. Ltd., Vs. DCIT reported in (2017) 394 ITR 449 (SC) has held that provisions of Rule 8D are applicable for the year under consideration and therefore by following the methodology prescribed under Rule 8D of IT Rules, worked out the disallowance u/s 14A of the Act at Rs.27,71,521/-. Aggrieved by the order of AO, assessee carried the matter before Ld.CIT(A), who while deciding the issue noted that the Tribunal in assessee's own case for A.Y. 2008-09 to 2010-11 had restricted the disallowance of administrative expenses to Rs.2 lakhs. He thereafter directed the AO to follow the Tribunal's decision in A.Y. 2008-09 to 2010-11. Aggrieved by the order of Ld.CIT(A), Revenue is now before us.

5. Before us, Ld. D.R. submitted that the provisions of Rule 8D are applicable for the year under consideration and therefore the disallowance has to be made as per Sec.14A r.w. Rule 8D of I.T. Rules. He further submitted that in the order of lower authorities there is no finding with respect to the expenditure incurred by the assessee on

earning exempt income working out disallowance under Rule 8D(2)(ii) and the availability of interest free funds for working out the disallowance of interest under Rule 8D(2)(iii) of I.T. Rules. He therefore fairly submitted that the issue may be remitted back to the file of AO to work out the disallowance as per the provisions of the Act.

6. We have heard the Ld. D.R. and perused the material available on record. The issue in the present ground is with respect to disallowance u/s 14A r.w Rule 8D of I.T. Rules. It is an undisputed fact that the provisions of Rule 8D are applicable for the year under consideration. Rule 8D of the I.T. Rules prescribes the method for determining amount of expenditure in relation to income not includable in total income. As per Rule 8D(2) the disallowance of expenses is aggregate of expenditure directly relating to exempt income, [(Rule 8D(2)(i)], disallowance of interest expenses as per working of Rule 8D(2)(ii) and disallowance of administrative expenses as per Rule 8D(2)(iii). With respect to disallowance of interest expenses under Rule 8D(2)(ii), various High Courts including Hon'ble Bombay High Court in the case of CIT Vs. HDFC Bank Ltd., (2014) 160 DTR 140 have held that if the assessee has interest free funds more than the investments, then there is a presumption that interest free funds have been utilized for making investments and no disallowance of interest under Rule 8D(2)(ii) is called for.

7. In the present case, there is no material on record to demonstrate the availability of interest free funds vis-à-vis the investments. Further, no details are available on the nature of expenses which have been incurred by the assessee to earn exempt income. Considering the totality of the aforesaid facts, we are of the view that the issue needs to

be reexamined by AO. We therefore restore the issue back to the file of AO to re-examine and decide the issue in accordance with law and after considering the submissions of the assessee. Assessee is also directed to furnish all the required details called for by the authorities. In case the assessee fails to file the requisite details, the AO shall be at liberty to decide the issue on the basis of material available on record. **Thus, the ground of Revenue is allowed for statistical purposes.**

8. Ground No.2 is with respect to allowing the claim of additional depreciation on windmill.

8.1. AO on perusing the depreciation chart noticed that assessee had claimed additional depreciation at 20% on windmill amounting to Rs.7,90,56,303/-. The assessee was asked to justify the claim of additional depreciation, to which the assessee made the submissions which were not found acceptable to the AO. AO was of the view that the assessee was not manufacturing or producing any article or thing by operating windmills and the process of 'power generation' was not described in the statute, as claimed by the assessee. He was of the view that therefore assessee was not eligible to claim additional depreciation amounting to Rs.7,90,56,303/- and accordingly denied the claim of additional depreciation. Aggrieved by the order of AO, assessee carried the matter before Ld.CIT(A), who by following the Tribunal's decision in assessee's own case (in ITA Nos.1318 to 1324/PN/13 for A.Y. 2004-05 to 2006-07 order dated 02.05.2016) directed the AO to allow the claim of additional depreciation. Aggrieved by the order of Ld.CIT(A), Revenue is now before us.

9. Before us, Ld. D.R. fairly submitted that Ld.CIT(A) has allowed the claim of depreciation by following the ITAT's order in assessee's own case order dated 02.05.2016 (supra). He further placed on record letter dated 09.08.2019 from the office of Addl.Commissioner of I.T. (Central) Range - 1, Pune bearing Ref.No.(Pn/Addl.CIT/CR-1/SCR.Rep/DIL/2019-20/416) wherein it was stated that on similar issue, the assessee has already got a favourable ruling from Hon'ble Bombay High Court in ITA No.275 of 2017 (order dated 914/2019) and the decision of Hon'ble High Court has been accepted by the Department. He therefore submitted that the issue be decided accordingly.

10. We have heard the Ld. D.R. and perused the material on record. The issue in the present ground is with respect to the claim of additional depreciation on windmills. We find that the Co-ordinate Bench of the Tribunal in assessee's own case for earlier years in ITA Nos.1318 to 1324/PN/13 order dated 02.05.2016 (supra) has decided the issue in assessee's favour by following the decision of Hon'ble Madras High Court in the case of CIT Vs. M/s. Hitech Arai Ltd., reported in 373 TIR 477 and other decisions and allowed assessee's claim of additional depreciation. Before us, Ld. D.R. has also placed on record a communication received from the office of Addl.CIT, Pune wherein it is stated that on similar issue, assessee has already got a favourable ruling from Hon'ble Bombay High Court vide order dated 09.04.2019 (ITA No.275 of 2017) and the decision of Hon'ble Bombay High Court has been accepted by the Department. In view of the aforesaid facts, we find no reason to interfere with the order of Ld.CIT(A) and **thus the ground of Revenue is dismissed.**

11. **In the result, the appeal of Revenue is partly allowed for statistical purposes.**

Order pronounced on 30<sup>th</sup> day of October, 2019.

**Sd/-**  
**(S.S. VISWANETHRA RAVI)**  
न्यायिक सदस्य / JUDICIAL MEMBER

**Sd/-**  
**(ANIL CHATURVEDI)**  
लेखा सदस्य / ACCOUNTANT MEMBER

पुणे Pune; दिनांक Dated : 30<sup>th</sup> October, 2019.

Yamini

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. CIT(A)-11, Pune.
4. Pr. CIT(Central), Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" / DR,  
ITAT, "A" Pune;
6. गार्ड फाईल / Guard file.

**आदेशानुसार/ BY ORDER**

// True Copy //

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