

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

BEFORE SHRI R.S.SYAL, VP AND  
SHRI PARTHA SARATHI CHAUDHURY, JM

आयकर अपील सं. / ITA No.407/PUN/2015

निर्धारण वर्ष / Assessment Year : 2011-12

Kirloskar Oil Engines Limited.  
Laxmanrao Kirloskar Road,  
Khadki, Pune-411 003.  
PAN: AADCK5714H

.....अपीलार्थी / Appellant

**बनाम / V/s.**

The Deputy Commissioner of Income Tax,  
Circle-9, Pune.

.....प्रत्यर्थी / Respondent

आयकर अपील सं. / ITA No. 605/PUN/2015

निर्धारण वर्ष / Assessment Year : 2011-12

The Assistant Commissioner of Income Tax,  
Circle-14, Pune.

.....अपीलार्थी / Appellant

**बनाम / V/s.**

Kirloskar Oil Engines Limited.  
13, Laxmanrao Kirloskar Road,  
Khadki, Pune-411 003.  
PAN: AADCK5714H

.....प्रत्यर्थी / Respondent

Assessee by : Shri C.H. Naniwadekar  
Revenue by : Mrs. Nandita Kanchan

सुनवाई की तारीख / Date of Hearing : 12.12.2019  
घोषणा की तारीख / Date of Pronouncement : 12.12.2019

### **आदेश / ORDER**

#### **PER PARTHA SARATHI CHAUDHURY, JM :**

These cross appeals preferred by the assessee and Revenue emanates from the order of the Ld.CIT(Appeals)-7, Pune dated 09.02.2015 for the assessment year 2011-12 as per the grounds of appeal hereinafter reproduced in the order.

2. These cases were heard together. Since facts common and issues are similar, these cases are being disposed of vide this consolidated order. First, we would take up the assessee's appeal in ITA No.407/PUN/2015 for the assessment year 2011-12 for adjudication.

#### **ITA No.407/PUN/2015 ( By Assessee)** **A.Y.2011-12**

3. In ITA No.407/PUN/2015, the assessee has raised following grounds of appeal:

**“1. Disallowance out of Aircraft Expenses – Rs.83,85,796/-.**

*The learned CIT(A) erred in holding that the aircraft were used for non-business purposes when it was averred before him that the aircrafts are used for business purposes and there is no element of personal use at all.*

**2. Disallowance of Expenses u/s. 14A – Rs.6,92,39,354/-.**

*The learned CIT(A) erred on facts and in law in upholding disallowance of Rs.6,92,39,354/- u/s. 14A r.w.r. 8D in Principle. He ought to have deleted the disallowance in its entirety. In any case, the learned CIT(A) erred in not appreciating assessee's contentions, factual background and settled case law in respect of disallowance of interest expenditure u/s. 14A. The Disallowance of interest is totally wrong. The assessee has sufficient interest free fund available. The AO considered finance*

*charges for disallowance. There are calculation mistakes while arriving disallowance under rule 8D.*

*3. The assessee craves leave, to add, to alter, and to modify any of the above grounds of appeal.”*

4. **Ground No.1** pertains to the disallowance out of Aircraft Expenses of Rs.83,85,796/-.

5. The facts with regard to this issue are that the assessee company has incurred an amount of Rs.2,48,10,000/- as aircraft expenses and a further amount of Rs.87,33,183/- towards depreciation on the aircrafts. The assessee company was asked to furnish details and documentary evidences with respect to these expenses. Thereafter, the assessee filed detailed reply before the Assessing Officer which is on record. The Assessing Officer at Para 8.2 of his order has stated that the submission of the assessee was considered but was not found tenable. The assessee has not furnished details of all flights and persons who travelled along with the purpose of visits. The assessee has not been able to contradict the non business and personal use of the aircrafts. Accordingly the Assessing Officer disallowed 1/3<sup>rd</sup> of aircraft expenses and depreciation and added back to the total income of the assessee. The disallowance works out to Rs.78,47,728/-. The Ld. AR of the assessee submitted that this disallowance works out to Rs. 33%.

6. The Ld.CIT(Appeals) as per Para 7.2 of his order had restricted the disallowance to 25% of the total aircraft expense and corresponding depreciation.

7. The Ld. AR of the assessee submitted before us that with regard to this issue in assessee's own case for assessment year 2010-11 in ITA No.61 & 406/PUN/2015 & ITA No.79/PUN/2015 decided on 21.11.2019, the Tribunal has observed and held as follows:

*“6. The ground No. 2 of the appeal by the assessee is with respect to disallowance of Aircraft expenses. The assessee has claimed expenditure of Rs.2,99,33,417/- and depreciation of Rs.1,45,55,306/- on Aircraft. The Assessing Officer disallowed 1/3<sup>rd</sup> of expenditure and depreciation on the ground that the Aircraft has been used for non-business purposes. The Commissioner of Income Tax (Appeals) has restricted the expenditure to 25%. We observe that the issue of allowability of expenditure and depreciation on Aircraft was considered by the Tribunal in the past. The Tribunal in ITA No. 877/PN/2012 for assessment year 2004-05 has restricted the disallowance of expenditure on Aircraft to 15%. Since, the facts in assessment year under appeal and reason for disallowance is identical, respectfully following the order of Tribunal in assessee's own case, we deem it appropriate to modify the findings of Commissioner of Income Tax (Appeals) on this issue and restrict the disallowance to 15%. Accordingly, ground No. 2 of the appeal is partly allowed in the terms aforesaid.”*

Thereafter, the Ld. AR of the assessee prayed that the disallowance may be restricted to 15% as per the view taken by the Pune Bench of the Tribunal in the earlier year.

8. The Ld. DR fairly conceded to these facts on record.

9. We have perused the case records and heard the rival contentions. We find this issue is squarely covered by the decision of the Pune Bench of the Tribunal in assessee's own case (supra.) wherein this disallowance has been restricted to 15%. Both the parties agreed that facts and circumstances for this relevant assessment year is absolutely similar to assessment year 2010-11 and therefore, maintaining principle of consistency, we follow our decision on this issue and for this year also, this disallowance on account of aircraft expenses and corresponding depreciation is restricted to 15%. The order of

the Ld. CIT(Appeals) is therefore modified as indicated above. Thus, **ground No.1 raised in appeal by the assessee is partly allowed.**

10. **Ground No.2** pertains to disallowance of Expenses u/s.14A of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').

11. At the very outset the Ld. AR of the assessee submitted that with regard to this issue, there were mistakes in the computation of disallowance and hence, the Ld. CIT(Appeal) remitted back the matter to the Assessing Officer. The Assessing Officer while providing appeal effect deleted the interest disallowance based on the fact that investments were not made from borrowed funds and sufficient interest free funds were available. The Ld. CIT passed the order u/s.263 of the Act against this deletion of interest. As per the instructions in the order u/s.263, the Assessing Officer passed fresh order u/s.143(3) r.w.s.263 and recomputed the disallowance u/s.14A r.w.r.8D and restricted the disallowance to Rs.1,95,95,619/-. Therefore, the assessee filed fresh appeal against this order and the matter is still pending before the Ld. CIT(A). In view of the present scenario, this ground raised before the Tribunal becomes infructuous.

12. We have heard the submissions of the Ld. AR and on consideration of facts on record and submissions of the parties herein, we hold this ground to be infructuous and hence, dismissed. Thus, **ground No.2 raised in appeal by the assessee is dismissed.**

13. In the result, **appeal of the assessee in ITA No.407/PUN/2015 for the assessment year 2011-12 is partly allowed.**

**ITA No.605/PUN/2015 ( By Revenue)**  
**A.Y.2011-12**

14. In ITA No.605/PUN/2015, the Revenue has raised following grounds of appeal:

**“1. Depreciation on Printers, UPS & other allied items Rs.14,96,630/-**  
*Whether on the facts and circumstances of the case and in law, the CIT(A) was justified in holding that depreciation on printers, UPS and other allied items are allowable at higher rate of 60% i.e. rate applicable to computers without appreciating that the items do not fall within the definition of computers.*

**2. Disallowance u/s. 40A(2) – Commission paid to Directors Rs.4,82,56,000/-.**

*Whether on the facts and circumstances of the case and in law, the CIT(A) was justified in deleting the addition of Rs.4,82,55,000/- made u/s. 40A(2) out of the commission paid to Directors without justifying the reasonableness of the payment to Directors?*

**3. Addition to Capital Subsidy Rs.86,73,56,670/-.**

*Whether on the facts and circumstances of the case and in law, the CIT(A) was justified in holding that subsidy received from Maharashtra Govt. Under Package Scheme of Incentive, 2001 is capital receipt while during the course of scrutiny, the AO observed that major amount of the subsidy received by the assessee company is by way of reimbursement of taxes paid i.e. VAT to the State Govt. And hence taxable revenue receipt?*

**4. Disallowance out of Aircraft Expenses – restricted to 25% to Rs.83,85,796/-.**

*Whether on the facts and circumstances of the case and in law, the CIT(A) was justified in holding that the expenditure incurred by the assessee on aircraft running and depreciation would be restricted to 25% of the total Aircraft Expenses when no details have been provided by the assessee even during the appellate proceedings?*

**5. Disallowance of Provision for Warranty Rs.26,63,90,572/-.**

*Whether on the facts and circumstances of the case and in law, the CIT(A) was justified in holding that the provision of warranty during it is a covered issue for AY 2010-11 whereas no deduction is allowable under this head?*

*6. The appellant craves leave to add, to alter, or delete any of the above grounds of appeal during the course of appellate proceedings before the Hon'ble Tribunal.”*

15. **Ground No.1** pertains to the depreciation on Printers, UPS & Other allied items of Rs.14,96,630/-.

16. With regard to this issue, the Assessing Officer was of the opinion that the provision was ad-hoc and excessive and has also considered the utilization of the provision in subsequent years. Based on these facts, the Assessing Officer disallowed the provisions. This issue has been discussed in detail in Para 4 of the assessment order.

17. During the Appellate Proceedings before the Ld. CIT(Appeal), the Ld. AR of the assessee submitted that this issue has been decided in favour of the assessee for earlier assessment years. The Ld. CIT(Appeals) at Para 3.3 of his order observed and held that this issue is covered in favour of the assessee which has been elaborately discussed in the appellate order for A.Y. 2009-10 passed by Ld. CIT(A)-II, Nashik on 01.08.2014 and was also followed in A.Y. 2010-11. Therefore, the Ld. CIT(Appeal) stated that the issue involved being pari materia similar to that for the earlier assessment years and therefore, he deleted the addition.

18. The Ld. AR of the assessee at the time of hearing appraised the Bench that this issue has been allowed in favour of the assessee by the Tribunal for assessment year 2010-11 (supra.) vide Para 15 of the Tribunal's order wherein it was held and observed as follows:

*“15. The ground No. 2 of the appeal is with respect to allowability of depreciation @ 60% on UPS and other allied items. We observe that in assessment year 2009-10 the Co-ordinate Bench has upheld the findings of Commissioner of Income Tax (Appeals) in allowing depreciation @ 60% on UPS and other allied items. The Commissioner of Income Tax (Appeals) in assessment year under appeal has granted relief to the assessee by following its own order in assessment year 2009-10. We find no infirmity in the findings of Commissioner of Income Tax (Appeals) on this issue. Accordingly, the same is upheld and ground No. 2 of the appeal is dismissed.”*

19. The Ld. DR fairly conceded that the issue is covered in favour of the assessee.

20. We have perused the case records and heard the rival contentions. We have also considered the judicial pronouncements placed before us on record. We observe that this issue has been consistently decided in favour of the assessee from A.Y. 2009-10 onwards and the Ld.CIT(Appeal) for this year gave relief to the assessee in view of these facts on records. That further, for assessment year 2010-11 in assessee's own case, the Tribunal had upheld the findings of the Ld. CIT(Appeal) on this issue giving relief to the assessee. Therefore, respectfully following our findings and on similarity of facts and circumstances, we sustain the relief granted to the assessee by the Ld.CIT(Appeal). Thus, **ground No.1 raised in appeal by the Revenue is dismissed.**

21. **Ground No.2** pertains to disallowance u/s.40A(2) in respect of commission paid to Directors of Rs.4,82,55,000/-

22. The Assessing Officer has discussed this issue vide Para 6 onwards and finally at Para 6.4, has concluded that the commission paid to the Directors are unreasonably high and are not fully allowable as assessee company could not give any specific basis for increase in commission and therefore, the Assessing Officer disallowed 50% of the amount of commission paid as per provisions of Section 40A(2) of the Act and accordingly, added Rs.4,82,55,000/- to the total income of the assessee.

23. The Ld. CIT(Appeal) has discussed this issue at Para 5 onwards in his order and as per detailed reasoning therein, has decided this issue in favour of the assessee. The crux of the decision in respect of the Ld. CIT(Appeal) while allowing this ground is based on the decision of the Hon'ble Delhi High Court in the case of CIT Vs. Shriram Pistons & Rings Ltd. (1990) 181 ITR 230 (Del.) wherein it has been held that *"once the remuneration and commission is approved by the company law Board then it should not ordinarily be opened to the I.T. Authorities to regard such fixation as unreasonable unless there are some other factors which can lead to the conclusion that there was no proper application of mind by the Company Law Board or full and true disclosure had not been made before the Board at the time of fixing the remuneration."* That further during the earlier years the claim of deduction of remuneration /commission paid to the Directors has been allowed by the CIT(Appeals), Nashik for A.Ys. 2005-06 to 2009-10 except for A.Y.2010-11 when the claim was partly allowed as one of the Directors was found to have been appointed on the last day of the financial year, however, during the current year no such feature is noticed on perusal of material on record by the Ld. CIT(Appeal) and in view of these factors, the Ld. CIT(Appeal) granted relief to the assessee.

24. The Pune Bench of the Tribunal in assessee's own case for the assessment year 2010-11 (supra.) at Para 17 of the order has observed and held as follows:

*"17. The ground No. 4 of the appeal is with respect to disallowance of commission u/s. 40A(2) of the Act, paid to the Directors. We find that this issue was considered by the Tribunal in appeal by Revenue in assessee's case in assessment year 2009-10. The commission paid to the Directors was allowed by the Tribunal. Hence, we do not find any reason to interfere with the findings of Commissioner of Income Tax (Appeals) on this issue. Accordingly, the same is upheld and ground No. 4 of the appeal is dismissed."*

25. The Ld. DR fairly conceded that this issue is covered in favour of the assessee by the decision of Pune Bench of the Tribunal in assessee's own case (supra.)

26. We have perused the case records and heard the rival contentions. We find this issue has been consistently decided in favour of the assessee in the earlier assessment years and in this present year also, the facts being similar, we do not find any infirmity with the findings of the Ld. CIT(Appeal) and the relief provided to the assessee by the Ld. CIT(Appeals) is sustained. Thus, **ground No.2 raised in appeal by the Revenue is dismissed.**

27. **Ground No.3** pertains to addition to capital subsidy of Rs.86,73,56,670/-

28. The Assessing Officer has discussed this issue at Para 7 onwards of his order. That as per the detailed reasoning given therein, finally at Para 7.4, the Assessing Officer holds that the subsidy received under Government of Maharashtra Package Scheme of Incentive, 2001 is revenue in nature and therefore, added the entire amount to the total income of the assessee.

29. That when the matter travelled before the Ld. CIT(Appeals), at Para 6.1 of his order the Ld. CIT(Appeal) observed that the issue is covered in favour of the assessee in its own case in the appellate order for A.Y.2009-10 passed by the Ld. CIT(A)-II, Nashik on 01.08.2014 and the same decision has been followed while deciding the issue in assessee's favour during appellate proceedings for assessment year 2010-11. Thereafter, the Ld. CIT(Appeals) at

Para 6.2 observed that the facts in respect of the issue being similar for the year under consideration, there is no need to take different view from the view taken by the Ld. CIT(Appeal)-II, Nashik for assessment year 2009-10 and accordingly, the entire addition was deleted.

30. We find that in assessee's own case in ITA No.1831/PUN/2014 & ITA No.1919/PUN/2014 for assessment year 2009-10 decided on 17.07.2019, the Pune Bench of the Tribunal on this issue has held as follows:

*“17. The ground No. 8 of the appeal is with respect to subsidy received by the assessee under Government of Maharashtra Package Scheme of Incentive, 2001. The assessee has claimed subsidy received under the aforesaid scheme as capital receipt, whereas, the Department has held the subsidy to be on revenue account. The Co-ordinate Bench of Tribunal in the case of Innovative Industries Limited Vs. DCIT (supra) has considered the issue of subsidy received under Package Scheme of Incentive in detail. After considering catena of judgments the Tribunal held that the **incentive received by the assessee under Package Scheme of Incentive, 2007 is in the form of refund of Sales Tax and is a capital receipt not liable to tax.** The Commissioner of Income Tax (Appeals) has granted relief to the assessee by following the aforesaid decision of Tribunal. We find no reason to interfere with the findings of Commissioner of Income Tax (Appeals). Accordingly, the same is upheld and the ground No. 8 of the appeal is dismissed.”*

31. That on perusal of the entire documents on record and the findings of the Tribunal in assessee's own case in earlier years, we do not find any infirmity with the findings of the Id. CIT(Appeal) and the relief provided to the assessee is sustained. Thus, **ground No.3 raised in appeal by the Revenue is dismissed.**

32. **Ground No.4** pertains to disallowance of Aircraft expenses- restricted to 25% to Rs.83,85,796/-. This issue is similar to the **ground No.1** raised in assessee's appeal in ITA No.407/PUN/2015. Both the parties agreed that the facts and circumstances for both these appeals are similar and identical.

Therefore, our decision rendered in ITA No.407/PUN/2015 while adjudicating Ground No.1 shall apply mutatis-mutandis on this issue also. Thus, **ground No.4 raised in appeal by the Revenue is partly allowed.**

33. **Ground No.5** is with regard to disallowance of provision for warranty of Rs.26,63,90,572/-.

34. The Assessing Officer discussed this issue elaborately in assessment order vide Para 9 and inferred that based on historical trends the provision created was more than the actual warranty claims which can be seen from the opening accumulated provision of Rs.31.70 crores when in fact there was no need to create any such provision for the year under consideration. It is further contended that if the warranty was inextricably linked to the sales made during the period, the accumulated provision should have been reversed considering the warranty period offered however, a very small portion of warranty provisions accumulated was written back. It was, therefore held by the Assessing Officer that the aforesaid warranty provision made by the assessee had no strong scientific basis and the case law relied upon was also found to be not applicable to the facts of the assessee companies case, hence, was disallowed being excessive after setting off current year's warranty claim expenses.

35. During the appellate proceedings before the Ld. CIT(Appeal), the Ld. AR of the assessee submitted that this issue has been allowed in assessee's own case for A.Ys. 2005-06, 2006-07, 2007-08 and 2010-11. The Ld. CIT(Appeal) thereafter observed that this issue is covered in favour of the assessee in its own case in the appellate order dated 01.08.2014 for A.Y.2009-10 passed by

the Ld. CIT(Appeal)-II, Nashik which has been followed while deciding the issue in assessee's favour for A.Y.2010-11. Thereafter, the Ld. CIT(Appeal) at Para 8.2 observed that since the factual matrix of the issue involved is similar the view taken by the Ld. CIT(A)-II, Nashik in A.Y.2009-10 and subsequently, in A.Y.2010-11 is not interfered with and therefore, for A.Y.2011-12 also, the Ld. CIT(Appeal) deleted the addition on this count.

36. The Tribunal in assessee's own case for assessment year 2010-11 (supra.) at Para 20 of the order has held and observed as follows:

*“20. The ground No. 7 of the appeal is against allowing provision for warranty. The ld. AR stated at the Bar that in assessment year 2009-10 provision was made on similar lines and the same was disallowed by the Assessing Officer. The assessee carried the issue in appeal. The Commissioner of Income Tax (Appeals) granted relief to the assessee holding that the provision was created on scientific basis. Further, reliance was placed on the decision of Hon'ble Supreme Court of India in the case of Rotork Contrals India Pvt. Ltd. reported as 314 ITR 62 and the decision of Tribunal in the case of ACIT Vs. Dana India Pvt. Ltd. in ITA No. 1805/PN/2012 for assessment year 2006-07 decided on 22-10-2013. The findings of Commissioner of Income Tax (Appeals) was accepted by the Department and were not agitated in appeal before the Tribunal. This factual position has not been controverted by the Department. The First Appellate Authority has granted relief to the assessee by following its order in assessment year 2009-10. The facts in assessment year under appeal are identical, we find no reason to interfere with the findings of Commissioner of Income Tax (Appeals) on this issue. Accordingly, the same are upheld and ground No. 7 of the appeal is dismissed.”*

37. We have perused case records and considered the judicial pronouncements placed before us. We find even for A.Y.2010-11 (supra.) also, the Tribunal has provided relief to the assessee on the issue. Therefore, respectfully, following the findings of the Tribunal for assessment year 2010-11 in assessee's own case, we sustain the relief granted to the assessee by the Ld. CIT(Appeal). Thus, **ground No.5 raised in appeal by the Revenue is dismissed.**

38. In the result, **appeal of the Revenue in ITA No.605/PUN/2015 is partly allowed.**

39. In the combined result, **both, the appeal of the assessee in ITA No.407/PUN/2015 and appeal of the Revenue in ITA No.605/PUN/2015 are partly allowed.**

Order pronounced on 12<sup>th</sup> day of December, 2019.

Sd/-  
**R.S.SYAL**  
**VICE PRESIDENT**

Sd/-  
**PARTHA SARATHI CHAUDHURY**  
**JUDICIAL MEMBER**

पुणे / Pune; दिनांक / Dated : 12<sup>th</sup> December, 2019.  
SB

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT (Appeals)-7, Pune.
4. The CIT-6, Pune.
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, "बी" बेंच,  
पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

// True Copy //

आदेशानुसार / BY ORDER,

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

		Date	
1	Draft dictated on	12.12.2019	Sr.PS/PS
2	Draft placed before author	12.12.2019	Sr.PS/PS
3	Draft proposed and placed before the second Member		JM/AM
4	Draft discussed/approved by second Member		AM/JM
5	Approved draft comes to the Sr. PS/PS		Sr.PS/PS
6	Kept for pronouncement on		Sr.PS/PS
7	Date of uploading of order		Sr.PS/PS
8	File sent to Bench Clerk		Sr.PS/PS
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R		
11	Date of dispatch of order		