

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

(Through Virtual Court)

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER
AND
SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER

आयकर अपील सं. / ITA No. 391/PUN/2018
निर्धारण वर्ष / Assessment Year : 2013-14

Poonawalla Shares & Securities Pvt. Ltd.
Sarosh Bhavan, 16-B/1, Dr. Ambedkar
Road, Pune-411 001
PAN : AAACP6087H

.....अपीलार्थी / Appellant

बनाम / V/s.

The Deputy Commissioner of Income Tax,
Circle-4, Pune.

.....प्रत्यर्थी / Respondent

Assessee by : Shri Rajshekhar Abhyankar
Revenue by : Shri S.P Walimbe

सुनवाई की तारीख / Date of Hearing : 08.06.2021
घोषणा की तारीख / Date of Pronouncement : 08.06.2021

आदेश / ORDER

PER INTURI RAMA RAO, AM :

This is an appeal filed by the assessee company directed against the order of the ld. Commissioner of Income Tax (Appeal), Pune-3 dated 12.01.2018 for the assessment year 2013-14.

2. The appellant company raised the following grounds of appeal:-

“On the facts and circumstances of the case and in law, the learned CIT(A) :

- 1. erred in concluding that the Assessing Officer had considered facts of the case and recorded his satisfaction about application of Rule 8D.*
- 2. erred confirming the disallowance of Rs.11,87,427/- made by the Assessing Officer u/s.14A read with Rule 8D.*
- 3. Without prejudice to Ground No.1, the learned CIT(Appeals) erred in not considering the submissions of the appellant company including the alternate methods to compute the disallowance u/s.14A as suggested by the Appellant Company.*

The appellant craves leave to add, alter and withdraw any ground of appeal at the time of hearing.”

3. The brief facts in this case are that the appellant is a company incorporated under the Companies Act, 1956 and engaged in the business of investment in shares and securities and brokerage. The return of income for the assessment year 2013-14 was filed on 28.09.2013 declaring total income of Rs.1,36,49,310/-. The scrutiny assessment was completed u/s.143(3) of the Income Tax Act, 1961 (hereinafter referred to as ‘the Act’) by the Deputy Commissioner of Income Tax, Circle-4, Pune (in short ‘the AO’) vide order dated 29.01.2016 at total income of Rs.1,47,77,369/-. While doing so, the Assessing Officer made addition of Rs.11,87,427/- u/s.14A of the Act rejecting the contention of the appellant that no indirect expenditure was incurred to earn exempt income. While accepting the disallowance offered by the appellant as direct cost of Rs.2,81,422/-, the Assessing Officer made addition of Rs.11,87,427/- as indirect expenditure.

4. Being aggrieved by the above assessment order, an appeal was preferred before the ld. Commissioner of Income Tax (Appeal) contending that no indirect expenditure was incurred to earn exempt income. In absence of recording satisfaction and as to whether of the claim of the assessee that no

disallowance should be made. Alternatively, it was contended that for the purpose of computing average value of investment, value of investment which yields exempt income alone has to be considered. However, this contention was rejected by the Id. Commissioner of Income Tax (Appeal) vide his impugned order.

5. Being aggrieved by the order of the Id. Commissioner of Income Tax (Appeal), the assessee company is before us in the present appeal.

6. Before us, Ld. Counsel-Authorized Representative stated that the ground of appeal relating to the recording of satisfaction that no indirect expenditure was incurred to earn exempt income was not pressed during the course of hearing of appeal. Alternatively, however, he submitted that for the purpose of computing the disallowance under sub clause (iii) of sub-rule (2) of Rule 8D only the average value of investment which yielded no exempt income has to be excluded while computing average value of investment. In this regard, he placed reliance on the decision of the Hon'ble Delhi High Court in the case of ACB India Ltd. Vs. Assistant Commissioner of Income Tax, 374 ITR 108 (Delhi).

7. On the other hand, the Id. CIT-DR placed strong reliance on the order of the Id. Commissioner of Income Tax (Appeal).

8. We have heard the rival contentions and perused the materials available on record. The only issue that arises for consideration is manner of computing the amount of disallowance under sub clause (iii) of sub-rule (2) of Rule 8D of the Rule. The issue as regards to the applicability of provision of section 14A of the Act is not under challenge before us. The Hon'ble Special Bench of Income Tax Appellate Tribunal, Delhi in the case of Asstt. CIT Vs. Vireet Investment (P) Ltd., 188 TTJ (Del)(SB) 1 has held that while computing

the amount of disallowance under sub clause (iii) of sub-rule (2) of Rule 8D of the Rule, the value of investment which yielded exempt income alone has to be considered for the purpose of arriving at average value of investment, on the similar lines, the decision of the Hon'ble Delhi High Court in the case of ACB India Ltd. Vs. Assistant Commissioner of Income Tax (supra.) and the decision of the Madras High Court in the case of Marg Ltd. Vs. CIT, 318 CTR (Mad.) 148 and followed subsequently by the Hon'ble Madras High Court in the case of CIT Vs. Shriram Ownership Trust 318 CTR (Mad.) 233 and also by the Karnataka High Court in the case of Pragathi Krishna Gramin Bank Vs. Jt. CIT , 95 Taxman.com 41 (Kar.).

9. In light of the above decisions, we find merit in the submissions made on behalf of the appellant that the amount of investment which yielded exempt income alone should be taken into consideration for the purpose of arriving at average value of investment as envisaged under sub clause (iii) of sub-rule (2) of Rule 8D of the Rule. Accordingly, we restore the matter back to the file of Assessing Officer for the purpose of computing the amount of disallowance in the above mentioned manner.

10. In the result, **appeal of the assessee is partly allowed for statistical purposes.**

Order pronounced on 08th day of June, 2021.

Sd/-
S.S. VISWANETHRA RAVI
JUDICIAL MEMBER

Sd/-
INTURI RAMA RAO
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 08th June, 2021
SB

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

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

आदेशानुसार / BY ORDER,

// True Copy //

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

		Date	
1	Draft dictated on	08.06.2021	Sr.PS/PS
2	Draft placed before author	08.06.2021	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		