

IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE BENCH, 'A' PUNE

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

आयकर अपील सं. / ITA No.3060/PUN/2017

निर्धारण वर्ष / Assessment Year : 2013-14

Maharashtra Scooters Limited, C/o. Bajaj Auto Limited, Akurdi, Pune – 411 035 PAN : AABCM1799E	Vs.	ACIT, Circle-9, Pune
Appellant		Respondent

आयकर अपील सं. / ITA No.182/PUN/2018

निर्धारण वर्ष / Assessment Year : 2014-15

Maharashtra Scooters Limited, C/o. Bajaj Auto Limited, Akurdi, Pune – 411 035 PAN : AABCM1799E	Vs.	ITO, Ward-9(3), Pune
Appellant		Respondent

Assessee by

Shri Kirit Kamdar &

Shri Nikhil Mutha

Revenue by

Shri A.M. Mahadevan Krishnan

Date of hearing

16-09-2021

Date of pronouncement

17-09-2021

आदेश / ORDER

These two appeals by the assessee relate to the assessment years 2013-14 & 2014-15. Since a common issue has been raised in these appeals, we are, ergo, proceeding to dispose them off by this consolidated order for the sake of convenience.

A.Y.2013-14 :

2. The issue projected in this appeal is against the confirmation of disallowance of Rs.65,14,825/- under section 14A of the Income-tax Act, 1961 (hereinafter also called 'the Act').

3. Briefly stated, the facts of the case are that the assessee received dividend income of Rs.41,43,79,834/- during the year which was claimed as exempt u/s.10(34) of the Act. The assessee was called upon to explain as to why part of the expenses should not be treated as incurred in relation to the exempt income. The assessee tendered its explanation submitting that a *suo motu* disallowance of Rs.5,055/- was offered by the assessee u/s.14A of the Act. It was further stated that for the assessment year 2000-2001, the disallowance made u/s.14A by the AO was restricted by the Id. CIT(A) to Rs.1.00 lakh, which came to be approved by the Tribunal. The disallowance, if any, was urged before the AO to be restricted to this extent only. The AO rejected the assessee's contention and computed the disallowance u/s.14A read with rule 8D(2)(iii) of the Income-tax Rules, 1962 at Rs.65,14,825/-. The Id. CIT(A) accorded his imprimatur to the AO's decision on this score, against which the assessee has come up in appeal before the Tribunal.

4. We have heard the rival submissions and gone through the relevant material on record. The assessee is engaged in manufacture and sale of scooters and parts and also dies for Pressure Die Casting. It made certain investments. Balance sheet of the assessee

company has been placed at page 25 of the paper book, which indicates total investments of Rs.222.66 crore. The claim of the assessee is that the exempt income of Rs.41.43 crore was earned in respect of shares of five companies with investment worth Rs.155.10 crore. The main emphasis of the Id. AR was on the point that the AO failed to record proper satisfaction in terms of section 14A(2) of the Act and hence no disallowance was called for. This provision categorically provides that the AO shall determine the amount of expenditure incurred in relation to exempt income, if he, *“having regard to the accounts of the assessee, is not satisfied with the correctness of the claim of the assessee in respect of such expenditure in relation to income which does not form of the total under this Act”*.

5. Adverting to the assessment order, it is seen that the AO recorded that the assessee earned exempt dividend income of Rs.41.43 crore in para 5.1. He called upon the assessee to furnish reasons for not making disallowance in respect of expenses incurred for earning the exempt income. After taking note of the assessee's explanation, the AO, in para nos. 5.2 and 5.3, concluded as under:

*“5.2 On perusal of the profit and loss of the assessee company it is seen that the assessee had total revenues of Rs.5992.32 lakhs and total expenses at Rs.1108.19 lakhs. The ratio of the*

dividend income to the total revenue is 69.15%. Therefore at the most part of 69.15% of the indirect expenditure of Rs.803.49 lakhs can be said to be attributable to earning the income from dividend. The above submissions of A.R. of the assessee company have been considered carefully *but his plea stating that the assessee company had not incurred any expense in relation to earning exempt income cannot found to be acceptable as maintaining portfolios do require constant monitoring and control and incidental expenses are incurred and expenditure has been debited to the profit and loss account.*

5.3 Therefore in view of the above facts and circumstances and *in the absence of a one-to-one correlation with regard to the expenditure vis-a-vis the exempt income, i.e. dividend, disallowance under section 14A of the Act is being computed in accordance with the formula given under Rule 8D of the Income Tax Rules as the mandatory provisions of Rule 8D of the I.T. Rules, 1961 are applicable to the facts and circumstances of the case.*”

Thereafter, he invoked Rule 8D and computed the disallowance under sub-clause (iii) of Rule 8D (2) at Rs.65.14 lakh.

6. From the above extracted portions of the assessment order, it is manifest seen that the ratio of dividend income to the total revenue was 69.15%. The AO noted the assessee's explanation that the “*company had not incurred any expense in relation to earning exempt income and found the same to be unacceptable*” by finding that maintaining portfolios do require constant monitoring and control and incidental expenses are incurred. Thereafter, the AO observed that there was no “*one to one correlation with regard to the expenditure vis-a-vis the exempt income, i.e. dividend*”. In view

of the above overwhelming satisfaction recorded by the AO as to the correctness of the assessee's claim in this regard, we are not impressed with the Id. AR's submission that the AO did not record satisfaction in terms of section 14A(2) of the Act.

7. Now coming to the merits of the addition, it has been brought to our notice that similar issue came up for consideration before the Tribunal in the assessee's own case for the immediately preceding assessment year 2012-13. Vide order dated 15-11-2018, the Tribunal in ITA No.3059/PUN/2017 has restored the matter of section 14A disallowance to the file of AO with certain directions. In reaching this conclusion, the Tribunal relied upon its order in the assessee's own case for the assessment years 2008-09 to 2011-12. A copy of such order for the four assessment years has also been placed on record. Relevant directions have been given in para 10 of the Tribunal order, that have been adopted by the Tribunal in its order for the immediately preceding assessment year. Nothing has been brought to our notice for demonstrating that the Tribunal orders have been reversed or modified by the Hon'ble High Court in any manner. Respectfully following the consistent view of the Tribunal on this issue, we set-aside the impugned order and remit the matter to the file of the AO for deciding this issue afresh as per law after complying with the afore referred directions given by it in

the earlier orders. Needless to say, the assessee will be allowed adequate opportunity of hearing.

8. In the result, the appeal is partly allowed for statistical purposes.

A.Y. 2014-15 :

9. In this appeal, the assessee is aggrieved by the confirmation of addition of Rs.77,66,770/- made by the AO u/s.14A of the Act read with rule 8D(2)(iii). Both the sides are in agreement that the facts and circumstances of this appeal are *mutatis mutandis* similar to those of the immediately preceding assessment year 2013-14.

10. We have gone through the assessment order passed by the AO. In this year, the assessee earned exempt dividend income of Rs.42,35,59,740/-. In the same manner as for the preceding year, the AO required the assessee to explain the reasons as to why part of the expenses should not be disallowed. The assessee tendered explanation on similar lines by stating that it made *suo motu* disallowance of Rs.5,558/- and further that the disallowance of Rs.1.00 lakh was upheld by the Tribunal u/s.14A for the assessment year 2000-01. The assessee further urged that the disallowance for the instant year should also be restricted to the same level. The AO recorded his satisfaction in para nos. 5.3 and 5.4 in the same manner as done in his order for the assessment year 2013-14, reproduced

above. Following the *raison d`etre* assigned hereinabove for the preceding year, we hold that the AO recorded proper satisfaction before making disallowance u/s.14A.

11. On merits, we set-aside the impugned order and remit the matter to the file of AO for computing the disallowance u/s.14A in the hue of the directions given by the Tribunal in its order for the assessment years 2008-09 to 2011-12.

12. In the result, the appeal is partly allowed for statistical purposes.

Order pronounced in the Open Court on 17<sup>th</sup> September, 2021.

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

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

पुणे Pune; दिनांक Dated : 17<sup>th</sup> September, 2021  
सतीश

**आदेश की प्रतिलिपि □ प्रेषित/Copy of the Order is forwarded to:**

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. The CIT(A)-6, Pune
4. The Pr. CIT-5, Pune
5. DR, ITAT, 'A' Bench, 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	16-09-2021	Sr.PS
2.	Draft placed before author	16-09-2021	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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