

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "A", MUMBAI**

**BEFORE SHRI RAJESH KUMAR, ACCOUNTANT MEMBER AND
SHRI AMARJIT SINGH, JUDICIAL MEMBER**

**ITA Nos.7126 & 7127/M/2017
Assessment Years: 2012-13 & 2013-14**

The Dy. CIT 15(1)(1), Room No.470, 4 th Floor, Aayakar Bhavan, Maharshi Karve Road, Mumbai - 400020	Vs.	M/s. Aarti Industries Ltd., 71, Udyog Kshetra, 2 nd Floor, Mulund Goregaon Link Road, Mulund (W), Mumbai - 400 080 PAN: AABCA2787L
(Appellant)		(Respondent)

**CO Nos.24 & 25/M/2019
(Arising out of ITA Nos.7126 & 7127/M/2017)
Assessment Years: 2012-13 & 2013-14**

M/s. Aarti Industries Ltd., 2 nd Floor, Udyog Kshetra, Mulund-Goregaon Link Road, Mulund (W), Mumbai - 400 080 PAN: AABCA2787L	Vs.	The Dy. CIT 15(1)(1), Room No.459, 4 th Floor, Aayakar Bhavan, Maharshi Karve Road, Mumbai - 400020
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Vijay Mehta, A.R.
Shri Anuj Kisnadwala, A.R.

Revenue by : Shri Brajendra Kumar, D.R.

Date of Hearing : 01.10.2021

Date of Pronouncement : 25.11.2021

ORDER

Per Rajesh Kumar, Accountant Member:

The above titled appeals by the Revenue and the cross objections by the assessee have been preferred against the evern order dated 19.09.2017 of the Commissioner of Income Tax

(Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2012-13 & 20103-14.

ITA No:7126/Mum/2017 & CO No.24/Mum/2019:

2. The grounds raised by the Revenue are as under .

“1.On the facts and in the circumstances of the case and in law, the Ld.CIT(A) erred in deleting the addition on account of disallowance of depreciation claimed under Rule 5(2) amounting to Rs.41,85,150/-, ignoring that the assessee has not produced the certificate issued by Department of Scientific and Industry Research (DSIR) and also failed to fulfill the prescribed conditions to claim depreciation under Rule 5(2).”

2. On the facts and in the circumstances of the case and in law, the Ld.CIT(A) erred in deleting the addition on account of disallowance of weighted deduction u/s 35(2AB) amounting to Rs.3,60,92,087/-, ignoring that the assessee has failed to produce the copies of agreement entered with the prescribed authority and the report in Form 3CL was also incomplete.”

3. On the facts and in the circumstances of the case and in law, the Ld.CIT(A) erred in deleting the addition on account of disallowance of interest on advances given to Subsidiary M/s. Aarti Healthcare Ltd. amounting to Rs.1,99,34,904/-, ignoring that mere existence of some interest free funds cannot justify the assessee’s claim that interest free loans given were not out of interest bearing funds.”

4. On the facts and in the circumstances of the case and in law, the Ld.CIT(A) erred in deleting the addition made u/s 14A of the Act r.w.r. 8D of the I T Rules by merely relying on the decisions in the case of Reliance Utilities Ltd. vs. CIT [313 ITR 340 (Bom)], ignoring the facts stated in the assessment order.”

5. On the facts and in the circumstances of the case and in law, the Ld.CIT(A) erred in allowing the depreciation in respect of unrealized Foreign Exchange Loss of earlier years, ignoring that as the forex loss was unrealized the upward adjustment made by the assessee company to the block of plant and machinery was not allowable as per the provisions of Section 43A of the Act.

6. On the facts and in the circumstances of the case and in law, the Ld.CIT(A) erred in allowing the additional depreciation u/s 32(1)(ia) of Rs.1,89,51,631/-, ignoring that section 32(1)(ia) lays down that the benefit of additional depreciation shall be given only on the assets in the year of purchase only and not in the next financial year.

7. The appellant prays that the order of the CIT(A), Mumbai on the above directions be set-aside and that of the assessing officer be restored.”

8. The appellant craves leave to amend or alter any of the aforesaid grounds or add a new ground of appeal, which may be necessary, at any time before or at the time of hearing of appeal.”

3. The issue raised in ground no. 1 is against the order of ld. CIT(A) deleting the addition of Rs.41,85,150/- on account of depreciation claimed under rule 5(2).

4. At the outset, the ld Counsel of the assessee submitted issue is fully covered by the decision of the coordinate bench in assessee own case in ITA No. 4943/Mum/2017 A.Y. 2011-12 & others and prayed that ground no. 1 raised by the revenue may be dismissed.

5. The ld DR on the other hand fairly agreed that the issue is covered in assessee's own case but relied on the ground of appeal.

6. After perusing the facts of the assessee case and order of coordinate bench in AY 2011-12 as stated above we find that identical issue has been decided vide para no. 3 to 6 in ITA No. 4943/Mum/2017 A.Y. 2011-12 & others. Following the said decision of the coordinate bench we inclined to uphold the order of CIT(A) by dismissing the ground no.1 of revenue appeal.

7. The issue raised in ground no. 2 is against the order of ld. CIT(A) deleting the addition as made by the AO on account of weighted deduction u/s 35(2AB) of Rs.3,60,92,087/-.

8. At the outset, the ld Counsel of the assessee submitted issue is fully covered by the decision of the coordinate bench in assessee own case in ITA No. 4943/Mum/2017 A.Y. 2011-12 &

others and prayed that ground no. 2 raised by the revenue may be dismissed. The ld DR on the other hand fairly agreed that the issue is covered in assessee's own case but relied on the ground of appeal.

9. After perusing the facts of the assessee case and order of coordinate bench in AY 2011-12 as stated above we find that identical issue has been decided vide para no. 7 to 10 in ITA No. 4943/Mum/2017. Following the said decision of the coordinate bench we inclined to uphold the order of CIT(A) by dismissing the ground no. 2 of revenue appeal.

10. The issue raised in ground no. 3 is against the order of ld. CIT(A) deleting the addition as made by the AO on account of interest on loans to subsidiary M/s. Arti Healthcare amounting to Rs.1,99,34,904/-

11. At the outset, the ld Counsel of the assessee submitted issue is fully covered by the decision of the coordinate bench in assessee own case in ITA No. 4943/Mum/2017 A.Y. 2011-12 & others and prayed that ground no. 3 raised by the revenue may be dismissed.

12. The ld DR on the other hand fairly agreed that the issue is covered in assessee's own case but relied on the ground of appeal.

13. After perusing the facts of the assessee case and order of coordinate bench in AY 2011-12 as stated above we find that identical issue has been decided vide para no. 11 to 14 in ITA No. 4943/Mum/2017. Following the said decision of the

coordinate bench we inclined to uphold the order of CIT(A) by dismissing the ground no. 3 of revenue appeal.

14. The issue in ground no 4 is against the deletion of addition as made by the AO u/s 14A r.w.r.8D.

15. The facts in brief are that the assessee has earned exempt income of Rs.59,62,086/-.The assessee suo motto disallowed Rs.1,14,622/- @2% of exempt income by following the decision of the coordinate bench in assessee own case in A.Y.2009-10. However was not convinced with the disallowance as made by the assessee and he invoked rule 8D and calculated the disallowance at Rs.84,67,006/-

16. The ld. CIT(A) allowed the appeal of the assessee by holding that in assessee own case in AY 2008-09 and 2009-10, the coordinate bench has directed to disallow @2% of exempt income wherein it has been held that assessee's own funds are more than the amount of investments in the tax free securities and no disallowance can be made in respect of interest in view of the decision of the Hon'ble Bombay high court in the case of Reliance Utilities Ltd Vs CIT(313 ITR 340 Bom) and HDFC Bank Ltd. (366 ITR 505 Bom).

17. After hearing the rival contentions and perusing the materials on records we find that the assessee own funds are far more than the investments in tax free securities. We note that assessee own funds were Rs.512.65 Cr whereas the investments in tax free securities were 17.27 Cr. The ld CIT(A) has passed the order after following the decisions of jurisdictional High

Court in the case of Reliance Utilities Ltd Vs CIT(Supra) and HDFC Bank Ltd. (supra).Therefore, we do not find any infirmity in the order of ld CIT(A) and accordingly the ground no. 4 is dismissed by upholding the order of ld CIT(A) on this issue.

18. The issue raised in ground no. 5 is against the order of ld. CIT(A) allowing the depreciation in respect of unrealized foreign exchange loss.

19. At the outset, the ld Counsel of the assessee submitted issue is fully covered by the decision of the coordinate bench in assessee own case in ITA No. 4943/Mum/2017 A.Y. 2011-12 & others and prayed that ground no. 5 raised by the revenue may be dismissed.

20. The ld DR on the other hand fairly agreed that the issue is covered in assessee's own case but relied on the ground of appeal.

21. After perusing the facts of the assessee case and order of coordinate bench in AY 2011-12 as stated above we find that identical issue has been decided vide para no. 15 to 17 in ITA No. 4943/Mum/2017. Following the said decision of the coordinate bench we inclined to uphold the order of CIT(A) by dismissing the ground no. 5 of revenue appeal.

22. The issue raised in ground no. 6 is against the order of ld. CIT(A) allowing additional depreciation u/s 32(1)(ia) of Rs.1,89,51,631/-.

23. At the outset, the ld Counsel of the assessee submitted that issue is fully covered by the decision of the coordinate bench in assessee own case in ITA No. 5077/Mum/2017 A.Y. 2011-12 & others and prayed that ground no. 6 raised by the revenue may be dismissed.

24. The ld DR on the other hand fairly agreed that the issue is covered in assessee's own case but relied on the ground of appeal.

25. After perusing the facts of the assessee case and order of coordinate bench in AY 2011-12 as stated above we find that identical issue has been decided vide para no. 10 to 12 in ITA No. 5077/Mum/2017. Since the facts before us are similar to one as decided by the coordinated bench and therefore following the said decision of the coordinate bench we inclined to uphold the order of CIT(A) by dismissing the ground no.6 of revenue appeal.

26. The appeal of the revenue is dismissed.

CO No. 24/Mum/2018

27. The issue raised in ground no. 1 is against the order of ld CIT(A) upholding the order of AO on the issue that disallowance made u/s 14A r.w.r. 8D has to be added to the book profit u/s 115JB.

28. At the outset the ld counsel of the assessee submitted that the issue is squarely covered by the order of coordinate bench in assessee own case wherein the identical issue has been decided in favour of the assessee in ITA No. 5077/Mum/2017 A.Y. 2011-

12 & others vide para no.3 to 5 and therefore the ground no. 1 may be allowed. The ld DR on the other hand relied on the order of ld CIT(A) on this issue.

29. We have perused the facts on records and the impugned order of the co-ordinate bench in ITA No 5077/Mum/2017 A.Y. 2011-12 & others and find the identical issue has been decided by the bench vide para no. 3 to 5 by allowing the issue in favour of the assessee. Since the facts before us are same, we therefore respectfully following the order of the coordinate bench set aside the order of ld CIT(A) on this issue by allowing the ground no.1.

30. The ground no. 2 is not pressed at the time of hearing and therefore ground no 2 is dismissed as not pressed.

31. The issue raised in ground no. 3 is against the order of ld CIT(A) upholding the disallowance as made u/s 14A of the Act r.w.r 8D(2)(iii).

32. The ld AR submitted before the bench the issue is fully covered in favour of the assessee by the decision of the coordinate bench in assessee own case in ITA No. 4398/Mum/2016 AY 2010-11 wherein the coordinate bench has held in para 7 that for the purpose of disallowance u/s 8(2)(D)(iii) only those investments are to be taken which have yielded exempt income during the year.

33. We have perused the facts on records and also the decision of the coordinate bench in ITA No. 4398/Mum/2016 AY 2010-11 wherein the coordinate bench has held in para 7 that for the purpose of disallowance u/s 8(2)(D)(iii) only those investments

are to be taken which have yielded exempt income during the year. Following the decision of the coordinate bench we set aside the order ld CIT(A) and allow ground no. 3.

34. The issue raised in ground no 4 is not pressed and is accordingly dismissed as not pressed.

35. The issue raised in ground no. 5 is against the order of ld CIT(A) not allowing the deduction of u/s 80-IA in respect of profits and gains derived from undertaking engaged in generation of power in the form of steam.

36. After hearing the rival contentions and perusing the materials on records we find that we have restored identical issue in M.A. 256/Mum/2020 arising out of ITA No. 5077/Mum/2017 A.Y. 2011-12 to the file of the AO to decide the same as the ground was raised for the first time before the Tribunal. Since the issue before is also identical, we are inclined to restore the same to the file of the AO to decide the same after affording a reasonable opportunity to the assessee. The ground no. 5 is allowed for statistical purpose.

37. The issue raised in ground no. 6 is against the order of ld CIT(A) not appreciating the fact that fertilizer subsidy and other incentives on export received by the appellant are capital receipt and not liable to tax.

38. After hearing the rival contentions and perusing the materials on records we find that we have restored identical issue in M.A. 256/Mum/2020 arising out of ITA No. 5077/Mum/2017 A.Y. 2011-12 to the file of the AO to decide the

same as the ground was raised for the first time before the Tribunal. Since the issue before is also identical, we are inclined to restore the same to the file of the AO to decide the same after affording a reasonable opportunity to the assessee. The ground no. 6 is allowed for statistical purpose.

39. The cross objection is allowed for statistical purpose.

ITA No. 7127/Mum/2017 & CO No.25/Mum/2019

40. The ground no.1 of the revenue appeal is similar to ground no. 2 in ITA No.7126/Mum/2017AY2012-13. Therefore our decision on ground no. 2 in ITA No. 7126/Mum/2017AY2012-13 would ,mutatis mutandis, apply to this ground as well. The ground no.1 in revenue appeal is dismissed.

41. The ground no.2 of the revenue appeal is similar to ground no. 4 in ITA No.7126/Mum/2017AY2012-13. Therefore our decision on ground no. 4 in ITA No. 7126/Mum/2017AY2012-13 would mutatis mutandis apply to this ground as well. The ground no. 2 in Revenue appeal is dismissed.

42. The ground no.3 of the revenue appeal is similar to ground no. 5 in ITA No.7126/Mum/2017AY2012-13. Therefore our decision on ground no. 5 in ITA No.7126/Mum/2017AY2012-13 would mutatis mutandis apply to this ground as well. The ground no.3 in revenue appeal is dismissed.

43. The ground no.4 of the revenue appeal is similar to ground no. 6 in ITA No: ITA No. 7126/Mum/2017AY2012-13. Therefore our decision on ground no.6 in ITA No.7126/Mum/2017AY2012-13 would mutatis mutandis apply

to this ground as well. The ground no.4 in revenue appeal is dismissed.

44. The appeal of the revenue is dismissed.

CO No.25/Mum/2019

45. The ground no.1 of the cross objection filed by the assessee is similar to ground no. 1 in CO:24/Mum/2018 AY 2012-13. Therefore our decision on ground no. 1 in CO:24/Mum/2018 AY 2012-13 would, mutatis mutandis, apply to this ground as well. The ground no.1 is allowed.

46. The ground no. 2 of the cross objection filed by the assessee is similar to ground no. 3 in CO:24/Mum/2018 AY 2012-13. Therefore our decision on ground no. 3 in CO:24/Mum/2018 AY 2012-13 would, mutatis mutandis, apply to this ground as well. The ground no.2 is allowed for statistical purpose.

47. The ground no. 3 of the cross objection filed by the assessee is similar to ground no. 5 in CO:24/Mum/2018 AY 2012-13. Therefore our decision on ground no. 5 in CO:24/Mum/2018 AY 2012-13 would, mutatis mutandis, apply to this ground as well. The ground no. 3 is allowed for statistical purpose.

48. The ground no.4 of the cross objection filed by the assessee is similar to ground no. 6 in CO No.24/Mum/2018 AY 2012-13. Therefore our decision on ground no. 6 in CO No.24/Mum/2018 AY 2012-13 would, mutatis mutandis, apply to this ground as well. The ground no.4 is allowed.

49. In the result, the appeals of the Revenue are dismissed and cross objections of the assessee are allowed for statistical purpose.

Order pronounced in the open court on 25.11.2021.

**Sd/-
(Amarjit Singh)
JUDICIAL MEMBER**

**Sd/-
(Rajesh Kumar)
ACCOUNTANT MEMBER**

Mumbai, Dated: 25.11.2021.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.