

आयकर अपीलीय अधिकरण "बी" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "B" 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.787/PUN/2017
निर्धारण वर्ष / Assessment Year : 2011-12

Kirloskar Industries Ltd.,
13/A, Karve Road, Kothrud,
Pune – 411038

PAN : AAACP3590P

.....अपीलार्थी / Appellant

बनाम / V/s.

Deputy Commissioner of Income Tax,
Circle – 9, Pune

.....प्रत्यर्थी / Respondent

आयकर अपील सं. / ITA No.1383/PUN/2017
निर्धारण वर्ष / Assessment Year : 2012-13

Kirloskar Industries Ltd.,
13/A, Karve Road, Kothrud,
Pune – 411038

PAN : AAACP3590P

.....अपीलार्थी / Appellant

बनाम / V/s.

Assistant Commissioner of Income Tax,
Circle – 14, Pune

.....प्रत्यर्थी / Respondent

आयकर अपील सं. / ITA No.267/PUN/2018
निर्धारण वर्ष / Assessment Year : 2013-14

Kirloskar Industries Ltd.,
13/A, Karve Road, Kothrud,
Pune – 411038

PAN : AAACP3590P

.....अपीलार्थी / Appellant

बनाम / V/s.

Deputy Commissioner of Income Tax,
Circle – 14, Pune

.....प्रत्यर्थी / Respondent

आयकर अपील सं. / ITA No.268/PUN/2018
निर्धारण वर्ष / Assessment Year : 2014-15

Kirloskar Industries Ltd.,
13/A, Karve Road, Kothrud,
Pune – 411038

PAN : AAACP3590P

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer,
Ward – 14(5), Pune

.....प्रत्यर्थी / Respondent

Assessee by : Shri C.H. Naniwadekar
Revenue by : Shri Piyush Kumar Singh Yadav

सुनवाई की तारीख / Date of Hearing : 20-12-2021

घोषणा की तारीख / Date of Pronouncement : 11-03-2022

आदेश / ORDER

PER S.S. VISWANETHRA RAVI, JM :

These four appeals by the assessee against the separate order dated 30-11-2016, 02-02-2017, 27-11-2017 and 10-11-2017 passed by the

Commissioner of Income Tax (Appeals)-7, Pune [‘CIT(A)’] for assessment years 2011-12, 2012-13, 2013-14 and 2014-15, respectively.

2. Since, the issues raised in all the four appeals are similar basing on the same identical facts. Therefore, with the consent of both the parties, we proceed to hear all the four appeals together and to pass a consolidated order for the sake of convenience.

3. First, we shall take up appeal in ITA No.787/PUN/2017 for A.Y. 2011-12.

4. The ground No. 1 raised by the assessee challenging the action of CIT(A) in confirming the disallowance made Rule 8D r.w.s. 14A of the Act in the facts and circumstances of the case.

5. Heard both the parties and perused the material available on record. We note that the assessee is a company engaged in the business of generation of power from non-conventional resources including wind power. During the year under consideration, the assessee earned dividend income of Rs.21,45,22,509/- and claimed the same as exempt u/s. 10(34) of the Act. The assessee on its own disallowed expenses of Rs.1,18,53,570/- relating to earning of the above said exempt income. The AO asked the assessee to explain why a part of administrative expenses should not be held to be incurred for earning the said exempt income. The assessee explained the expenditure disallowed by the assessee is reasonable and the said disallowance was worked out on the basis of ratio of exempt income to the total income. Most of the investments have been

held for the considerable period of time and the expenses disallowed on its own were on sound and reasonable basis. The AO recorded that the method of working out of disallowance on the basis of ratio of exempt income held to total income is not the appropriate method and under Rule 8D has been prescribed under Income Tax Rules which is objective method in calculation of disallowance u/s. 14A of the Act. The AO proceeded to disallow expenditure under Rule 8D(2)(iii) vide Para No. 3.3 to 3.5 of the assessment order and he worked out expenditure of Rs.1,00,90,193/- (Rs.2,19,43,763/- - Rs.1,18,53,570/-) being 0.5% of average value of investments. The CIT(A) observed that the assessee has shown corporate overhead allocation of Rs.1,13,01,195/- for property income which requires to be disallowed and the computation does not reflect the correct allocation of the expenses were exempt income. According to the CIT(A), the disallowance of Rs.2,19,43,763/- is less than the allocable expenditure of Rs.2,54,41,706/-, if overhead allocation for property is taken into consideration for disallowance then also disallowance under Rule 8D(2)(iii) could be less than the total disallowance required to have been made. By holding so held the AO has rightly invoked the methodology under Rule 8D and confirmed the disallowance made by the AO for the purpose of Section 14A of the Act.

6. The ld. AR, Shri C.H. Naniwadekar submits that the AO did not record its satisfaction with regard to accounts of the assessee relating to the expenditure in earning dividend income. The AO should have recorded its satisfaction before applying the procedure under Rule 8D and without there being its satisfaction, further, disallowance under Rule 8D(2)(iii) is not maintainable and referred to order of this Tribunal for A.Y. 2011-12.

The Id. AR argued by referring to Para No. 17 that this Tribunal in the case of Capgemini Technology Services India Ltd. in ITA No. 74/PUN/2016 for A.Y. 2011-12 considering the decision of Hon'ble Supreme Court in the case of Godrej & Boyce Manufacturing Co. Ltd. Vs. DCIT & Anr. reported in 394 ITR 449 (SC) held the disallowance in the absence of any satisfaction by the AO is not maintainable. The Id. AR further referred to Para Nos. 37 and 38 of the decision of Hon'ble Supreme Court and argued that the disallowance made by the AO as confirmed by the CIT(A) is bad under law. The AO discussed the issue at Para No. 3 of the assessment order, on perusal of which we note that the AO asked the assessee to explain *why a part of administrative expenses should not be held to be incurred for earning this exempt income u/s. 14A r.w. Rule 8D*. In response to which the assessee filed submission vide letter dated 06-03-2014. The AO extracted the relevant query relating to disallowance u/s. 14A in its order in Para No. 3.2. We note that it was explained *the assessee has disallowed Rs.1,18,53,570/- u/s. 14A which is considered to be reasonable. The disallowance is worked out on the basis of ratio of exempt income to total income. The Company contends that most of the investments have been held for the considerable period of time and the expenses have been worked out on sound and reasonable basis. Considering the same the AO recorded as the method of working out the disallowance on the basis of ratio of exempt income held to total income is not the appropriate method adopted. To do away with subjective elements in the calculation of the disallowance u/s. 14A, Rule 8D has been prescribed under Income Tax Rules, which is objective method in calculation of disallowance under the section 14A of the Income Tax Act, 1961. In the working of disallowance u/s. 14A, it was seen that Clause (iii) of Sub-rule (2) of Rule 8D is primarily applicable in*

assessee's case, we find the observation of which made by the AO, in our opinion, is a satisfaction recorded by not accepting the disallowance made by the assessee on its own as it was not appropriate method. The AO arrived at such conclusion only on the examination of accounts of the assessee and held disallowance primarily under Rule 8D(2)(iii) is required to be made which clearly shows that the AO not satisfied with the accounts of assessee and proceeded to made disallowance only under Rule 8D(2)(iii) in addition to the disallowance made by the assessee, in our opinion, that the AO examined the accounts of the assessee and by recording its non-satisfaction vide Para No. 3.3 of the assessment order proceeded to further disallowance as required u/s. 14A of the Act. Therefore, the ratio laid down by the Hon'ble Supreme Court in the case of Godrej & Boyce Manufacturing Co. Ltd. (supra) which was followed by this Tribunal in the case of Caggemini Technology Services India Ltd. (supra) for A.Y. 2011-12. Thus, the arguments of ld. AR in respect of satisfaction by the AO are rejected. Thus, the order of CIT(A) is justified and the ground No. 1 raised by the assessee is dismissed.

7. The ground No. 2 raised by the assessee challenging the action of CIT(A) in upholding the disallowance of valid claim u/s. 80IA of the Act in the facts and circumstances of the case.

8. Heard both the parties and perused the material available on record. We note that the assessee claimed deduction u/s. 80IA of the Act to an extent of Rs.2,81,90,095/- having income from windmills. According to the AO, the assessee started windmills business from A.Y. 2007-08 and showing profits from 2009-10. The AO denied the claim u/s. 80IA(4) of the

Act considering each of the unit as a separate business on stand-alone basis which did not have any profit entitled for the said deduction in the year under consideration. Further, he mentioned that the similar disallowance was made in the hands of the assessee for earlier year i.e. in A.Y. 2010-11 also. It was explained by the assessee that all the units have huge brought forward losses as on 01-04-2009 and if profit and loss of each windmill should not be considered on stand-alone basis otherwise windmill business has no positive income entitled to deduction u/s. 80IA of the Act. The AO rejected the said explanation and by considering each windmill as a separate unit and deduction for the year under consideration was denied. The CIT(A) following earlier year confirmed the disallowance made by the AO. A similar issue came up before the Tribunal in assessee's own case for A.Y. 2010-11 in ITA No. 1722/PUN/2016 vide its order dated 30-01-2019 remanded the issue to the file of AO to decide the issue in terms of the ratio laid down by the Hon'ble High Court of Bombay in the case of CIT Vs. Hercules Hoists Ltd. The relevant portion of the Tribunal's order in assessee's own case for A.Y. 2010-11 is reproduced here-in-below for ready reference :

"8. We have heard the rival contentions and perused the orders of the authorities below on this solitary issue of deduction u/s.80IA. We find that, during the course of assessment proceedings, the AO noticed the claim of deduction u/s.80IA amounting to Rs.3.18 crore is not allowable if the profits are set off against the brought forward losses of the earlier assessment years. Assessee claimed such deduction for the first time in the A.Y. 2009-10. Assessee has the option to choose the initial year for 10 consecutive assessment years out of 15 years beginning the year from which the undertaking starts generating the power. Accordingly, assessee chose the A.Y. 2009-10 as the initial year. AO denied the claim of deduction for this year too. The claim of such deduction in the current year is the second year. To maintain consistency, the AO disallowed the claim of the assessee in the instant year too on the ground that the notional losses of the windmill undertaken must be first set off against the profits of the windmill. We find the CIT(A) discussed the issue of deduction u/s.80IA vide Para No.7.11 and 7.12 of his order and confirmed the order of AO relying on the judgment of Hon'ble Karnataka High Court in the case of Microlabs Ltd. Vs. ACIT (supra).

8.1 Assessee contested the same holding that the provisions of section 80IA(4) and 80IA(5) allows the computation on standalone basis. If the conclusions of the AO is considered favourably, it defeats the purpose of provisions of section 80IA(4) and 80IA(5) read with umpteen decisions on this subject including the Tribunal's decision in the case of Poonawala Estate Stud & Agro Farm (P) Ltd. Vs. ACIT 136 TTJ 236 (Pune).

8.2 We find that there is no dispute on the fact that the assessment year 2009-10 is the initial assessment year in the hands of Kirloskar Oil Ltd. The dispute is only with respect to the manner of computation of deduction qua the set off of carry forward of losses. Further, we find there is no clarity as to the outcome of appeal by the Revenue for the A.Y. 2009-10 in the hands of Kirloskar Oil Ltd. who is the owner of the unit before demerger.

8.3 In this case, assessee acquired windmill undertaking from the Kirloskar Oil Ltd. A.Y. 2009-10 is the initial assessment year in the hands of Kirloskar Oil Ltd. Hence, the A.Y. 2010-11 is the 2nd year in the hands of the assessee. Otherwise, there is no clarity in the orders of the AO on the amount of loss validly quantified in the hands of undertaking at the time of demerger to the assessee. Therefore, there is requirement of basic details on the said issue qua the figures of losses and profits over the years of the undertaking.

Further, we find the law is more or less settled on this issue on the issue of manner of set off of notional losses of earlier assessment years which was already set off against the profits of the other undertakings. The judgmental law does not permit the set off of notional losses by the AO for eating away the eligible profits for the year under consideration. Apart from others, the jurisdictional High Court judgment in the case of CIT Vs. Hercules Hoists Ltd. (supra) is one such judgment which is required to be regarded and applied to the facts of the present case. In our considered opinion, this issue required fresh consideration at the level of CIT(A) for applying the binding judgments on the issue. Ld. Counsel for the assessee is also directed to supply necessary judgments on the specific issue of the manner of computation of deduction u/s.80IA(4) of the Act in the second year of the block of assessment years specified in the law. With these directions, we allow Ground No.3 for statistical purposes."

9. In view of the above, following the same, we deem it proper to remand the issue to the file of AO for its fresh consideration and the AO shall pass order in accordance with the direction of this Tribunal in assessee's own case for A.Y. 2010-11 as reproduced above. Thus, the ground No. 2 raised by the assessee is allowed for statistical purpose.

10. The ground No. 3 raised by the assessee challenging the action of CIT(A) in upholding the disallowance of Rs.1,12,99,932/- and

Rs.31,48,759/- on account of Security Expenses and Gardening Expenses, respectively as part of annual value under Income from House Property.

11. Heard both the parties and perused the material available on record. We note that the AO observed the assessee claimed security and garden expenses under the income from house property. The AO asked the assessee to justify the claim. The assessee explained *the said expenses are pertaining to the property located at Laxmanrao Kirloskar Road, Khadki, Pune which was let out to Kirloskar Oil Engines Ltd., under a Leave and License agreement. As per the terms of the agreement, security and garden maintenance expenses are part and parcel of the services provided as per Clause 5(c)(iv) of the Leave and License agreement. The consideration agreed in the agreement is a "Composite Compensation" towards license fees and security and garden maintenance services provided by the assessee. Since, the Licensing fees considered from calculation of Income from House Property include the compensation for the said services, while calculating the annual value and the rent for the purpose of Section 23, the said amount ought to be reduced from the gross rent to arrive at the annual value.* The AO opined that the standard deduction of 30% allowed u/s. 24 is for all expenses including maintenance of property, no separate deduction can be allowed for any other expense, thereby, he disallowed security charges and garden maintenance and added to the total income of the assessee. Before the CIT(A), the assessee reiterated the said submissions in support of its claim in reducing the security charges and garden expenses to gross rent to arrive at the annual value. The CIT(A) discussed the issue in Para No. 7.3 of the impugned order and observed the composite compensation the receipt from ancillary services rendered is

taxable under the head of business income or income from other sources. The assessee did not give any bifurcation in respect of receipt with reference to ancillary services provided and expenditure required to be made with actual services furnished documentary evidences. The CIT(A) held the contention of the assessee that lease rental received is composite compensation as the license fees and security and garden maintenance services are not supported with documentary evidences. We note that in the absence of such evidences as required the CIT(A) proceeded to confirm the order of AO by holding no separate deduction is allowable from house property income. The ld. AR referred to Page No. 27 of the paper book and pointed at Clause (3) in Page No. 28 of the paper book and submitted that the licensee (assessee) shall pay to the licensor a license fee of Rs.1,50,00,000/- per month for the use and occupation of the scheduled property and submitted that it is a composite license fee and for calculation of annual letting value the security charges and gardening charges ought to be deduction to arrive at the annual value. We note that the said leave and license agreement dated 30-03-2010 at Page No. 27 of the paper book entered into Kirloskar Oil Engines Limited as licensor and Kirloskar Engines India Limited as licensee which clearly explains in Clause (B) in Page No. 2 of the said agreement that the licensor (Kirloskar Oil Engines Limited) is the owner of the premises more particularly described in Schedule A and Clause (D) describes licensee (Kirloskar Engines India Limited) has approached the licensor in leave and license of scheduled property to allow use and to occupy for its manufacturing operation. It is evident that the Kirloskar Oil Engines Limited is the owner of property whereas, the assessee before us is M/s. Kirloskar Industries Ltd. claimed to have let out to Kirloskar Oil Engines Limited vide its

submissions reproduced in Para No. 5.1 of the assessment order, whereas, from the reading agreement that the Kirloskar Oil Engines Limited as a licensor let out its property to Kirloskar Engines India Limited. Therefore, the agreement filed before us does not convey anything that the assessee let out its property and in turn it shows contrary to the explanation offered to the AO which is reproduced in Para No. 5.1 of the AO's order. The assessee did not furnish any evidence showing that the license fee of Rs.1,50,00,000/- is inclusive of security and gardening expenses and no bifurcation given in support of its contention as rightly pointed out by the CIT(A). Therefore, in the absence of such valid evidences, we find no infirmity in the order of CIT(A). The ld. AR placed on record order of Delhi Tribunal in the case of Neelam Cable Manufacturing Co. Vs. ACIT reported in 63 ITD 1. On perusal of the same the Tribunal held no separate deduction for security service charges is provided u/s. 24 of the Act but the service charges is to be deductible while computing the annual value u/s. 23 of the Act. In the present case, as discussed above, there was no break up provided by the assessee as pointed out by the CIT(A) and also Leave and License agreement no such break up is reflected to claim gardening and security service charges for computing the annual value. Therefore, the order of Delhi Tribunal in the case of Neelam Cable Manufacturing Co. (supra) is not applicable. In view of the discussion made here-in-above, the impugned order passed by the CIT(A) is justified. Thus, ground No. 3 raised by the assessee is dismissed.

12. In the result, the appeal of assessee in ITA No. 787/PUN/2017 is partly allowed for statistical purpose.

ITA Nos. 1383/PUN/2017 (A.Y. 2012-13)

13. Both sides are unanimous in stating that the issue raised in the appeal and the facts in ITA No. 1383/PUN/2017 are identical to ITA No. 787/PUN/2017 except the variance in amount. Since, the facts in ITA No. 1383/PUN/2017 are similar to ITA No. 787/PUN/2017, the findings given by us while deciding the ground Nos. 1 to 3 of the appeal of assessee in ITA No. 787/PUN/2017 would *mutatis mutandis* apply to ITA No. 1383/PUN/2017, as well. The appeal of assessee is partly allowed for statistical purpose, accordingly.

ITA Nos. 267/PUN/2018 (A.Y. 2013-14)

14. Both sides are unanimous in stating that the issue raised in the appeal and the facts in ITA No.267/PUN/2018 are identical to ITA No. 787/PUN/2017 except the variance in amount. Since, the facts in ITA No. 267/PUN/2018 are similar to ITA No. 787/PUN/2017, the findings given by us while deciding the ground Nos. 1 and 3 of the appeal of assessee in ITA No. 787/PUN/2017 would *mutatis mutandis* apply to ITA No. 267/PUN/2018, as well. The appeal of assessee is dismissed, accordingly.

ITA Nos. 268/PUN/2018 (A.Y. 2014-15)

15. Both sides are unanimous in stating that the issue raised in the appeal and the facts in ITA No. 268/PUN/2018 are identical to ITA No. 787/PUN/2017 except the variance in amount. Since, the facts in ITA No. 268/PUN/2018 are similar to ITA No. 787/PUN/2017, the findings given by us while deciding the ground Nos. 1 to 3 of the appeal of assessee in ITA No. 787/PUN/2017 would *mutatis mutandis* apply to ITA No.

268/PUN/2018, as well. The appeal of assessee is partly allowed for statistical purpose, accordingly.

16. To sum up, the appeal of assessee in ITA Nos. 787 & 1383/PUN/2017 and 268/PUN/2018 are partly allowed for statistical purpose and appeal of assessee in ITA No. 267/PUN/2018 is dismissed.

Order pronounced in the open court on 11th March, 2022.

Sd/-
(Inturi Rama Rao)
ACCOUNTANT MEMBER

Sd/-
(S.S. Viswanethra Ravi)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 11th March, 2022.
रवि

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

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

//सत्यापित प्रति// True Copy//

आदेशानुसार / BY ORDER,

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