

आयकर अपीलिय 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.1952/PUN/2018
निर्धारण वर्ष / Assessment Year : 2014-15

S M Auto Engineering Pvt. Ltd.,
12, Bhosale Nagar,
Near Godavari Apt.,
Pune - 411007

PAN : AACCS9239E

.....अपीलार्थी / Appellant

बनाम / V/s.

DCIT, Circle - 2(3),
Pune

.....प्रत्यर्थी / Respondent

Assessee by : Shri Kishor Phadke
Revenue by : Shri Kalika Singh

सुनवाई की तारीख / Date of Hearing : 12-01-2022
घोषणा की तारीख / Date of Pronouncement : 17-03-2022

आदेश / ORDER

PER S.S. VISWANETHRA RAVI, JM :

This appeal by the assessee against the order dated 28-09-2018 passed by the Commissioner of Income Tax (Appeals)-12, Pune [‘CIT(A)'] for assessment year 2014-15.

2. The assessee raised ground Nos. 1 to 4 challenging the action of CIT(A) in confirming the addition made by the AO u/s. 14A r.w. Rule 8D(2)(iii) to an extent of Rs.14,73,543/- without recording satisfaction envisaged u/s. 14A of the Act.

3. Heard both the parties and perused the material available on record. During the course of assessment proceedings, the AO found that the assessee was holding shares and claimed income thereon is exempt from tax. The AO asked the assessee to give a working of the disallowance u/s. 14A of the Act. The assessee in his reply stated that it earned dividend income from listed shares of public limited companies but has not incurred any expenditure, supporting the same the assessee also given details of investments as standing on the date of Balance sheet and year prior to, which is reproduced by the AO in Para No. 4 of the assessment order. Having stating so, the assessee also submitted working of disallowance before the AO, basing on which the AO disallowed Rs.25,71,313/- concerning the Rule 8D(2)(iii) of the Rules. During the First Appellate proceedings before the CIT(A) it was contended that the assessee had interest free funds and the disallowance made under Rule 8D(2)(ii) is not maintainable in terms of decision of Hon'ble High Court of Bombay in the case of CIT Vs. HDFC Bank Ltd. reported in 383 ITR 529 (Bom). The CIT(A) considering the same deleted the disallowance of Rs.10,97,770/- made under Rule 8D(2)(ii) but however confirmed the disallowance made under Rule 8D(2)(iii) to an extent of Rs.14,73,543/- holding that the assessee failed to point out any error in the working of disallowance concerning the said disallowance. Aggrieved the said disallowance, the assessee is before us.

4. The ld. AR raised a point of consideration regarding recording of satisfaction of non-acceptance of accounts of assessee before the invocation of Rule 8D of the Rules. The ld. AR vehemently argued that it was explained to the AO that no expenditure incurred in earning exempt income, inspite of which, without recording satisfaction with regard to the accounts of the assessee proceeded to compute the disallowance under Rule 8D of the Rules which is bad under law. The ld. AR drew our attention to the decision of Hon'ble High Court of Bombay in the case of PCIT Vs. Bajaj Finance Ltd. reported in 110 taxmann.com 303 (Bom) and by referring to Para No. 9 argued that the satisfaction of AO about the correctness of the expenditure offered for disallowance by the assessee is a pre-condition and without rejecting the explanation offered by the assessee by merely proceeding to make disallowance by invoking section 14A and Rule 8D is not correct. The ld. DR stated that the facts in the present case as be that of Hon'ble High Court of Bombay are different and it cannot be followed. The ld. AR further placed reliance on the order of this Tribunal in the case of Deven Supercriticals Pvt. Ltd. Vs. DCIT in ITA No. 176/PUN/2016 for A.Y. 2009-10 and argued that the Co-ordinate Bench of this Tribunal held the assessment is bad when there is no recording of satisfaction before invoking the provisions of section 14A of the Act. On perusal of decision of Hon'ble High Court of Bombay in the case of Bajaj Finance Ltd. (supra), we note that the Hon'ble High Court was pleased to hold the order of Tribunal correct in deleting the disallowance on the ground that the AO has not recorded necessary satisfaction for not accepting the disallowance offered by the assessee. In the present case, as discussed above, the AO asked the assessee requested to give a working of disallowance u/s. 14A of the Act and the assessee vide its letter dated 21-

03-2016 contended that no expenditure incurred by the assessee in earning exempt income, but however, given working of disallowance basing on which the AO disallowed under Rule 8D(2)(iii) of the Rules. The CIT(A) also referred the same at Para No. 5.1 in the impugned order that the assessee accepted in principle the applicability of the provision of section 14A submitted working of disallowance as per its understanding of Rule 8D. Therefore, there was no occasion to AO to record satisfaction for not accepting the accounts before invocation of Rule 8D of the Rules. In our opinion, when the assessee itself submitted its working before the AO accepting in principle that the disallowance is required to be made under Rule 8D and accordingly the AO made disallowance under Rule 8D(2)(iii). We note that a contention was raised before the CIT(A) regarding having surplus fund making investments from its own funds and it was accepted by the CIT(A) resulted into deletion of disallowance under Rule 8D(2)(ii). Further, the CIT(A) also held that the assessee failed to point out any error in respect of disallowance under Rule 8D(2)(iii) of the Rules, if that is so, a ground raising challenging the action of AO for non-recording of satisfaction concerning the accounts before us, is untenable. Therefore, we reject the arguments of ld. AR in respect of contentions raised in ground Nos. 1 to 4. Thus, ground Nos. 1 to 4 raised by the assessee are dismissed.

5. Further, we note, alternatively, the assessee raised ground No. 5 seeking a direction to restrict the disallowance in respect of those investments which yielded exempt income. It is a settled principle to restrict the disallowance to the investment earned dividend income and this Tribunal has been following in directing the AO to compute the

expenditure for the purpose of section 14A in respect of those investments yielded exempt income. Following the same we direct the AO to compute the disallowance taking into consideration those investments which yielded exempt income. The assessee is liberty to file evidences, if any, in this regard. Thus, the ground No. 5 raised by the assessee is allowed.

6. In the result, the appeal of assessee is partly allowed.

Order pronounced in the open court on 17th March, 2022.

Sd/-
(Inturi Rama Rao)
ACCOUNTANT MEMBER

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

पुणे / Pune; दिनांक / Dated : 17th 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)-12, Pune
4. The Pr. CIT, Central, 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