

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

(Through Virtual Court)

BEFORE SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER
AND
DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.1902/PUN/2018
निर्धारण वर्ष / Assessment Year : 2015-16

Lumax Auto Technologies Ltd.,
Plot 70, Sector 10, PNCDTA,
Bhosari, Pune

PAN : AAACD4090Q

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer,
Ward – 9(5), Pune

.....प्रत्यर्थी / Respondent

Assessee by : Ms. Shweta Bansal
Revenue by : Shri M.G. Jasnani

सुनवाई की तारीख / Date of Hearing : 11-02-2022
घोषणा की तारीख / Date of Pronouncement : 11-04-2022

आदेश / ORDER

PER S.S. VISWANETHRA RAVI, JM :

This appeal by the assessee against the order dated 12-10-2018 passed by the Commissioner of Income Tax (Appeals)-6, Pune [‘CIT(A)'] for assessment year 2015-16.

2. The assessee raised ground Nos. 1 to 6 amongst which the only issue emanates for our consideration is as to whether the CIT(A) is justified in

confirming the addition made by the AO u/s. 14A r.w. Rule 8D in the facts and circumstances of the case.

3. Heard both the parties and perused the material available on record. We note that the assessee is a company engaged in the business of manufacturing of automotive components like Head Lamps, Tail Lamps, Blinkers, Chassis, Petrol Tank etc. The assessee declared total income of Rs.42,33,20,430/- and the AO determined the same at Rs.42,41,31,850/- inter alia making addition u/s. 14A of the Act. The CIT(A) confirmed the addition made by the AO.

4. The ld. AR submits that the assessee derived exempt income of Rs.18,37,500/- and on its own disallowed Rs.91,875/- being 5% of the exempt income. The AO by applying the method under Rule 8D(2)(iii) made further disallowance of Rs.8,11,416/-. She submits that the assessee did not make investments in the year under consideration and earned dividend income from the investments made in earlier years. She argued when there is no investments made in the year under consideration the disallowance made by the AO under Rule 8D(2)(iii) is not maintainable. She placed on record order of this Tribunal in assessee's own case for A.Y. 2012-13 in ITA No. 3088/PUN/2017 and argued that by applying the same the disallowance as confirmed by the CIT(A) may be deleted. The ld. DR did not dispute that the assessee made investments only in earlier years but not in the year under consideration. The relevant portion of order of Tribunal in A.Y. 2012-13 in assessee's own case is reproduced here-in-under for ready reference :

“6. We heard the rival submissions and perused the material on record. The only issue in the present appeal relates to the computation of amount of disallowance u/s 14A of the Act. It is a matter of record that the assessee offered a suo-motu disallowance of Rs.1,57,500/- towards the expenditure to

earn dividend income. It was specifically contended before the Assessing Officer and the ld. CIT(A) that no borrowed funds were utilized for the purpose of making the investments which yielded the dividend income for the year under consideration. The lower authorities without considering the submissions made in proper perspective had proceeded to make the disallowance. On perusal of the material placed at page no.3 of the Paper Book filed before us, it is clear that no borrowings were utilized for the purpose of making the investments which yielded the dividend income. The borrowings shown in the books of account were made for specific purpose. In the absence of evidence to the contrary, it cannot be presumed that the borrowed funds have been utilized for the purpose of making the investments which yielded the dividend income. Therefore, we are of the considered opinion that no further disallowance u/s 14A of the Act is warranted. Accordingly, we direct the Assessing Officer to delete the addition of Rs.11,34,302/- made u/s 14A of the Act.”

5. On perusal of the above finding concerning A.Y. 2012-13, we note that the AO made disallowance under Rule 8D(2) which was deleted by the Tribunal in view of the fact that the reserves and surplus fund held by the assessee are more than the investments made by assuming that the said investments made out of own funds but not from borrowed funds. In the present case, the AO made disallowance only under Rule 8D(2)(iii) being 0.5% of average investments. Admittedly, the said investments were not made in the year under consideration. Thus, the question remains is as to whether the disallowance made under Rule 8D(2)(iii) to an extent of Rs.8,11,416/- is justified? and by rejecting the assessee own disallowance being 5% of the dividend income. The assessee filed financials for A.Ys. 2011-12, 2012-13 and 2015-16. On perusal of Balance sheet for A.Y. 2011-12 as on 31-03-2011 at Page No. 1 of the paper book where investments were shown at Rs.24,29,77,826/-, the details of which are given in Schedule 7 at Page No. 5 of the paper book.

6. It is noted from the Balance sheet concerning A.Y. 2012-13 as on 31-03-2012 that no fresh investments were shown which is at Page No. 11, at Page No. 19, the assessee shown share investments as on 31-03-2011 as non-current investments at Note No. 12 of the paper book. Further, the

financials concerning the year under consideration are at Page Nos. 32 to 52 of the paper book, wherein in Balance sheet at Page No. 30 current investments were shown at Nil, the details in Note No. 14 at Page No. 43 supports the same. Therefore, the contention of ld. AR is correct to that extent that there were no investments made in the year under consideration and the exempt income earned from the investments made in the earlier years. As discussed above from the financials for A.Y. 2011-12 the assessee made investments to an extent of Rs.24,29,77,826/- which were shown as non-current investments for A.Y. 2012-13. Admittedly, the disallowance made by the AO in the year under consideration is only under Rule 8D(2)(iii) but not only Rule 8D(2)(ii). Therefore, the finding of Tribunal in assessee's own case for A.Y. 2012-13 is not applicable to the year under consideration for the reason that the Co-ordinate Bench of Tribunal deleted the disallowance made under Rule 8D(2)(ii) by assuming that the investments made from own funds but not from borrowed funds thereby, deleted the disallowance under Rule 8D(2). Sub-section (2) of section 14 clearly explains that the AO is empowered to determine the expenditure in accordance with such method as contemplated under Rule 8D, if it is satisfied with the correctness of the claim of assessee in respect of such expenditure. In the present case, the assessee made disallowance on its own at 5% of exempt income to an extent of Rs.91,875/-. The AO did not accept the same and proceeded to invoke Rule 8D(2)(iii) of Rules which resulted disallowance of Rs.8,11,416/-. The AO has also empowered to determine the amount of expenditure if no claim of expenditure incurred in relation to exempt income under sub-section (3) of section 14. Therefore, the method adopted by the assessee by disallowing at 5% of exempt income has no basis. Therefore, the AO is correct in invoking Rule 8D(2)(iii) which was confirmed by the CIT(A) by holding that the AO is justified in not

accepting the disallowance made by the assessee on its own at 0.5% of average investments.

7. Further, there is no such provision in the statute that no disallowance of expenditure could be made on investments made in the earlier years. Admittedly, the exempt income of Rs.18,37,500/- was earned on the investments made in the earlier years and the exempt income was earned in the year under consideration. Therefore, the disallowance made by the AO which was confirmed by the CIT(A) under Rule 8D(2)(iii) is justified. Thus, we find no infirmity in the order of CIT(A). Accordingly, the grounds raised by the assessee are dismissed.

8. In the result, the appeal of assessee is dismissed.

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

Sd/-
(Dr. Dipak P. Ripote)
ACCOUNTANT MEMBER

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

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

रवि

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

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