

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

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER
AND
SHRI S. S. VISWANETHRA RAVI, JUDICIAL MEMBER

आयकर अपील सं. / ITA Nos.1195 to 1199/PUN/2019
Assessment Years: 2008-09 to 2011-12 & 2016-17

Aurangabad Electricals Ltd., Plot No.B-7, MIDC, Village- Mahalunge, Tal- Khed, Pune - 410501 PAN : AACCA2867L	Vs.	DCIT, Circle-8, Pune.
Appellant		Respondent

Assessee by : Shri Rohit Tapadiya
Shri Sharad Shah
Revenue by : Shri Arvind Desai
Date of hearing : 19.05.2022
Date of pronouncement : 20.05.2022

आदेश / ORDER

PER BENCH :

These are the appeals filed by the assessee directed against the common order of Id. Commissioner of Income Tax (Appeals)- 6, Pune ['the CIT(A)'] dated 17.05.2019 for the assessment years 2008-09 to 2011-12 and 2016-17.

2. Since the identical facts and common issues are involved in the above captioned five appeals, we proceed to dispose of the same by this common order.

3. For the sake of convenience and clarity, the facts relevant to the appeal in ITA No.1195/PUN/2019 for the assessment year 2008-09 are stated herein.

4. The appellant raised the following grounds of appeal :-

- “1. The learned A.O. erred in (and CIT(A)) in making disallowing under section 14A r.w.s. Rule 8D of Rs. 4,53,959/-*
- 1.1 The learned AO (and CIT(A)) erred in*
- 1) Not excluding the investments has not yielded any exempt income while computing disallowance u/s 14A r.w. Rule 8D.*
 - 2) Not restricting the disallowance to the extent of exempt income earned during the year.*
- 2. The appellant craves its right to add to or alter the Grounds of Appeal at any time before or during the course of hearing of the case.”*

5. Briefly, the facts of the case are as under :

The appellant is a company incorporated under the provisions of the Companies Act, 1956. It is engaged in the business of manufacturing of automobile and brake system components including auto electrical components, aluminium die casting components, wheel assembly and fasteners and generation of power through windmill. The return of income for the assessment year 2008-09 was filed on 10.10.2008 declaring total loss of Rs.7,53,07,820/-. Against the said return of income, the assessment was completed by the Dy. Commissioner of Income Tax, Circle-8, Pune (‘the Assessing Officer) vide order dated 31.12.2010 passed u/s 143(3) of the Income Tax Act, 1961 (‘the Act’) at loss of

Rs.5,33,68,231/- after making certain disallowances. The disallowance, *inter-alia*, includes addition u/s 14A of Rs.4,53,959/-.

6. Being Aggrieved by the above assessment order, an appeal was preferred before the Id. CIT(A), who vide order dated 08.01.2016 had dismissed the appeal. On further appeal before the Tribunal, the issue of addition u/s 14A was restored to the file of the Assessing Officer for fresh adjudication and consequential order to the Tribunal, order was passed vide order dated 28.09.2018 passed u/s 143(3) r.w.s. 254 of the Act reiterating the same addition.

7. Being aggrieved, an appeal was preferred before the Id. CIT(A) contending *inter-alia* that while calculating the average value of investments for the purpose of computing the disallowance under Rule 8D(2)(iii) of the Income Tax Rules, 1962 ('the Rules), the value of investments which has not yielded exempt income should be excluded. This contention was not adjudicated by the Id. CIT(A).

8. Being aggrieved, the appellant is in appeal before us.

9. The Id. AR contended before us that for the purpose of computing the average value of investment which yielded the exempt income alone has to be considered. Thus, it was pleaded that the matter be remanded to the file of the Assessing Officer for re-computation of disallowance by considering the value of

investments which yielded the exempt income alone while computing the average value of investments.

10. On the other hand, ld. Sr. DR had no serious objection to remand the matter to the file of the Assessing Officer.

11. We have heard the rival contentions and perused the materials available on record. The only issue that arises for consideration is manner of computing the amount of disallowance under sub clause (iii) of sub-rule (2) of Rule 8D of the Rule. The issue as regards to the applicability of provision of section 14A of the Act is not under challenge before us. The Hon'ble Special Bench of Income Tax Appellate Tribunal, Delhi in the case of Asstt. CIT Vs. Vireet Investment (P) Ltd., 188 TTJ (Del)(SB) 1 has held that while computing the amount of disallowance under sub clause (iii) of sub-rule (2) of Rule 8D of the Rule, the value of investment which yielded exempt income alone has to be considered for the purpose of arriving at average value of investment, on the similar lines, the decision of the Hon'ble Delhi High Court in the case of ACB India Ltd. Vs. Assistant Commissioner of Income Tax, 374 ITR 108 and the decision of the Madras High Court in the case of Marg Ltd. Vs. CIT, 318 CTR (Mad.) 148 and followed subsequently by the Hon'ble Madras High Court in the case of CIT Vs. Shriram Ownership Trust 318 CTR (Mad.) 233 and also by the Karnataka

High Court in the case of Pragathi Krishna Gramin Bank Vs. Jt. CIT, 95 Taxman.com 41 (Kar.).

12. In light of the above decisions, we find merit in the submissions made on behalf of the appellant that the amount of investment which yielded exempt income alone should be taken into consideration for the purpose of arriving at average value of investment as envisaged under sub clause (iii) of sub-rule (2) of Rule 8D of the Rule. Accordingly, we restore the matter back to the file of Assessing Officer for the purpose of computing the amount of disallowance in the above mentioned manner.

13. In the result, the appeal filed by the assessee in ITA No.1195/PUN/2019 for A.Y. 2008-08 stands partly allowed.

ITA Nos.1196 to 1199/PUN/2019,
A.Y. 2009-10 to 2011-12 & 2016-17

14. Since the facts and issues involved in all the above four appeals are identical, therefore, our decision in ITA No.1195/PUN/2019 for the assessment year 2008-09 shall apply *mutatis mutandis* to the remaining four appeals of the assessee in ITA Nos. 1196 to 1199/PUN/2019 for A.Y. 2009-10 to 2011-12 & 2016-17. Accordingly, the appeals of the assessee in ITA Nos. 1196 to 1199/PUN/2019 for A.Y. 2009-10 to 2011-12 & 2016-17 are partly allowed.

15. Resultantly, all the above five appeals of the assessee are partly allowed.

Order pronounced on this 20th day of May, 2022.

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

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 20th May, 2022.

Sujeet

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, "A" बेंच, पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.