

IN THE INCOME TAX APPELLATE TRIBUNAL 'B' BENCH, PUNE

**SHRI R.S. SYAL, VICE PRESIDENT
AND
PARTHA SARATHI CHAUDHURY, JM**

ITA No. 564/PUN/2020 : Assessment Year : 2016-17

Suyash Auto Press Components
And Assemblys Pvt. Ltd.
215-216 Decision Tower,
Satara Road, Pune-411 009
PAN; AACCS 5937 P

Appellant

Vs.

The Asswtt. C.I.T. Cir. 6, Pune.

Respondent

Appellant by : Shri Rohit Tapadia
Respondent by : Shri M.G. Jasanani

Date of Hearing : 13-06-2022
Date of Pronouncement : 13-06-2022

ORDER

PER PARTHA SARATHI CHAUDHURY, JM :

This appeal preferred by the assessee emanates from the order of the Id. Commissioner of Income Tax (Appeals)-4, Pune, dated 25-03-2020 for the Assessment Year 2016-17 as per the following grounds of appeal.

1.1 *The Id. A.O erred in and Id. CIT(A) erred in disallowing an amount of Rs. 6,00,273/- u/s14A r.w. rule 8D.*

1.2 *The Id. A.O erred in and Id. CIT(A) erred in disregarding the fact that assessee have huge internal accruals and therefore no interest expenses can be disallowed u/s 14A r.w. rule 8D.*

1.3 *Without prejudice to the above grounds, the Id. A.O erred in and Id. CIT(A) erred in considering investments made in partnership firm from which no exempt income has been earned during the FY 2015-16 (relevant to AY 2015-17), while computing disallowance u/s14A.*

1.4 *Without prejudice to the above grounds, the Id. A.O erred in and Id. CIT(A) erred in not considering net interest for calculating disallowance as per Rule 8D(2)(ii).*

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.*

2. The Id. Counsel submitted that the assessee is aggrieved with disallowance u/s 14A r.w. Rule 8D. The Id. Counsel further submitted that the assessee's interest accrual income was more than the investments made. That further, the assessee has not earned any exempt income during the year. The Id. Counsel demonstrated through details of investments and shareholders' funds annexed in the paper book at page 1 and page 9 filed before us. We observe on perusal of the relevant documents on record that investments by the assessee are from its own funds as evident from the balance sheet dated 31-3-2016 where the share capital is Rs. 31,88,000/- and the reserve and surplus is Rs. 25,25,74,483/-. Whereas the investments made in mutual funds is Rs. 28,56,552/- and investments in partnership firms Rs. 2,89,93,574/-.

3. We find that on identical facts and circumstances in assessee's own case in ITA No. 1554/PUN/2017 for A.Y. 2013-14, order dated 09-09-2019, it was observed and held by the Tribunal as follows.

4. We have heard both the sides and gone through the relevant material on record. The disallowance has been made in two parts. The first component of disallowance amounting to Rs.8,29,597/- is on account of interest u/s.14A r.w. Rule 8D(2)(ii). It has been brought to our notice that the Shareholders fund of the assessee including Reserve and Surplus as on 31-03-2013 stands at Rs.342,85,75,403/- as against the total amount of Investments standing at Rs.3.54 crore.

5. This issue is now no more res integra in view of the judgment delivered by the Hon'ble Supreme Court in Godrej & Boyce Manufacturing Company Ltd. vs. DCIT (2017) 394 ITR 449 (SC), upholding the view of the lower authorities that when interest free funds in the form of share capital and reserves etc. are more than the amount of investment, then no disallowance of interest can be made u/s 14A. Similar view has been taken by the Hon'ble Bombay High Court in CIT vs. HDFC Bank Ltd. (2014) 366 ITR 515 (Bom). The Hon'ble Karnataka High Court in CIT & Anr vs. Microlabs (2016) 383 ITR 490 (Kar) has also held that when investments are made from a common pool and non-interest bearing funds are more than the investment in tax free securities, no disallowance of interest expenditure u/s 14A can be made. Respectfully following the precedents, we order to delete the disallowance under Rule 8D(2)(ii) to the tune of Rs.8,29,597/-.

6. In so far as the second part of the disallowance under Rule 8D(2)(iii) amounting to Rs.1,77,470/- is concerned, it is seen that ordinarily the disallowance is made at 0.5% of the average value of investments, as has been done by the AO. However, in this regard, it is relevant to note that the Hon'ble Delhi High Court in ACB India Ltd. vs. CIT (2015) 374 ITR 108 (Del) has held that the average value of investments, for the purposes of Rule 8D(2)(iii), should be confined to those securities in respect of which exempt income is earned and not the total investments. Similar view has been taken by the Special Bench of the Tribunal in the case of ACIT vs. Vireet Investments (P) Ltd. (2017) 165 ITD 27 (Del) (SB) holding that only those investments should be considered

for computing average value of investments which yield exempt income during the year.

7. The Id. AR contended that the assessee did not earn any exempt income from the partnership firms and hence such investments should be excluded. Since the relevant facts for determining this issue are not available on record, we set-aside the impugned order and remit the matter to the file of AO for ascertaining if any exempt income was earned by the assessee from investments in partnership firms. In case, the assessee's capital contribution in the firms yielded some exempt income, then the amount of investments in the firms should be included for the purpose of calculating 0.5% of the average value of the investments for the disallowance under Rule 8D(2)(iii). In the otherwise scenario, the amount of such investments not yielding any exempt income, should be excluded for the purpose of calculation of the amount to be disallowed. It is further made clear that the resulting disallowance should be reduced by the amount suo motu disallowed by the assessee.

8. In the result, the appeal is partly allowed."

4. In the abovestated decision the Tribunal has relied on the decision of Hon'ble Supreme Court in Godrej & Boyce Manufacturing Company Ltd. vs. DCIT (2017) 394 ITR 449 (SC), upholding the view of lower authorities that when interest free funds in the form of share capital and reserves etc. are more than the amount of investment, then no disallowance of interest can be made u/s 14A of the Act. Similar view has been taken by the Hon'ble Bombay High Court in CIT vs. HDFC Bank Ltd. (2014) 366 ITR 515 (Bom). The Hon'ble Karnataka High Court in CIT & Anr vs. Microlabs (2016) 383 ITR 490 (Kar) has also held that when investments are made from a common pool and non-interest bearing funds are more than the investment in tax free securities, no disallowance of interest expenditure u/s 14A of the Act can be made. Therefore, the Tribunal placing reliance on the aforestated judicial decisions deleted the disallowance under Rule 8D(2)(ii) of Income-tax Rules 1962 (hereinafter referred to as "the Rules"). With respect to the second part of disallowance under Rule 8D(2)(iii) it was observed that the Hon'ble Delhi High Court in ACB India Ltd. vs. CIT (2015) 374 ITR 108 (Del) has held that the average value of investments, for the purposes of Rule 8D(2)(iii) of the Rules, should be confined to those securities in respect of which exempt income is earned and not the total investments. Thereafter the matter was remitted back

to the file of the A.O for ascertaining if exempt income is earned by the assessee. Respectfully following the view taken by the Tribunal in assessee's own case for A.Y. 2013-14 on the same facts and circumstances and on the same parity of reasoning, we set aside the impugned order and send the matters to the A.O for re-computing the disallowances accordingly after allowing reasonable opportunity to the assessee.

5. In the result, the appeal of the assessee is partly allowed for statistical purposes. .

Order pronounced in the open Court on this 13th June 2022

Sd/-
(R.S. SYAL)
VICE PRESIDENT

sd/-
(PARTHA SARATHI CHAUDHURY)
JUDICIAL MEMBER

Pune; Dated : 13th June 2022
Ankam

Copy of the Order forwarded to :

1. The Appellant.
2. The Respondent.
3. The Pr. CIT -3 Pune
4. The CIT(A)-4 Pune
5. The D.R. ITAT 'B' Bench Pune.
5. Guard File

BY ORDER,

Sr. Private Secretary
ITAT, Pune.

		Date	
1	Draft dictated on	13-06-2022	Sr.PS/PS
2	Draft placed before author	13-06-2022	Sr.PS/PS
3	Draft proposed and placed before the second Member		JM/AM
4	Draft discussed/approved by second Member		AM/JM
5	Approved draft comes to the Sr. PS/PS		Sr.PS/PS
6	Kept for pronouncement on	13-06-2022	Sr.PS/PS
7	Date of uploading of order	13-06-2022	Sr.PS/PS
8	File sent to Bench Clerk	13-06-2022	Sr.PS/PS
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R		
11	Date of dispatch of order		