

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

SHRI S.S. GODARA, JM AND DR. DIPAK P. RIPOTE, AM

ITA No. 1035 & 1036/PUN/2018 with Cross Objections in

C.O. No. 07 and 08/PUN/2022

A.Y. 2013-14 & 2014-15

The Jt. C.I.T. (OSD) Cir.1 Solapur

Appellant

Vs.

M/s. Lokmangal Sugar Ethenol & Co-
Generation Industries Ltd.

8536-A/11, Lokmangal House,
Murarji Peth,

Near Old Poona Naka,
Solapur – 413 001

PAN; AACL 9193 J

Respondent
(cross objector)

Assessee by : Shri Krishna V. Gujarathi

Department by : Shri S.P. Walimbe

Date of Hearing : 28-06-2022

Date of Pronouncement : 30-06-2022

ORDER

PER S.S. GODARA, JM :

These Revenue's twin appeals in ITA No. 1035 and 1036/PUN/2018 and assessee's as many cross objections C.O. Nos. 07 & 08/PUN/2022 therein for A.Y. 2013-14 and 2014-15 arise from the CIT(A)-9, Pune's separate orders, both dated 23-03-2018, passed in case No. PN/CIT(A)-7/Cir.1/10406/2016-17/126 and No. PN/CIT(A)-7/Cir.1/10776/2016-17, respectively involving proceedings u/s 143(3) of the Income-tax Act, 1961, in short "the Act".

Heard both the parties. Case files perused.

2. The Revenue's identical sole substantive ground in former ITA No. 1035/PUN/2018 for A.Y. 2013-14 and former grievance in latter assessment year 2014-15's appeal ITA No. 1036/PUN/2018 seek to revise section 14A r.w. rule 8D disallowance(s) of Rs. 3,17,01,372/- and Rs. 2,44,30,742/-; casewise, respectively.

3. It emerges at the outset that there is hardly any need at all for us to derive deeper in the relevant factual matrix regarding the instant section 14A r.w. rule 8D disallowance in principle. The Revenue fails to rebut the clinching fact that the assessee has not derived any exempt income in former A.Y. 2013-14. Case laws PCIT Vs. Ballarpur Industries Ltd. Tax Appeal No. 51/2016 (Bom), PCIT Vs. Kohinoor Projects Ltd. (2020) 121 taxman.com 177 (Bom) holds that section 14A r.w. rule 8D applies only in "relation to" an assessee's exempt income than having any independent exigibility. We thus reject Revenue's sole substantial ground as well as main appeal ITA No. 1035/PUN/2019 for this precise reason alone.

4. Coming to the issue of sec. 14A r/w rule 8D disallowance in latter assessment year i.e. 2014-15 involving Revenue's appeal ITA No. 1036/PUN/2018, both the parties conceded very fairly that the assessee had indeed derived exempt income of Rs. 12000/- in the relevant previous year. Faced with this situation, we follow Joint Investments Pvt. Ltd. Vs. CIT (2015) 372 ITR 694 (Del) to restrict the impugned disallowance to the extent of exempt income only. The Assessing Officer shall frame his consequential computation on very lines accordingly. The Revenue's former substantive ground in its second appeal i.e. ITA No. 1036/PUN/2018 is partly allowed to the limited extent.

5. The Revenue's latter substantive ground in ITA No. 1036/PUN/2018 is that the CIT(A) had erred in law and on facts in reversing sec. 36(1)(va) r.w.s. 2(24)(x) disallowance/addition of Rs. 6,03,820/- pertaining to assessee's employees' contribution to ESI/PF which had not been paid before the due date under the relevant statute. Suffice to say, it transpires during the course of hearing that the legislature has amended both sections 36(v)(va) and 43B of the Act by inserting Explanation 2 and 5 therein, respectively vide Finance Act

2021 that they apply in case of employees' and employer's respectively. The same has been made applicable w.e.f. 1-4-2021 only whereas we are in assessment year 2014-15. That being the case, we take note of the foregoing legislature developments to conclude that the CIT(A) has rightly deleted the impugned sec. 36(1)(va) disallowance of employees provident fund which had been paid before the due date of filing the return. The Revenue fails in its latter substantive grievance. Its latter appeal ITA No. 1036/PUN/2018 is partly allowed.

6. Coming to assessee's Cross Objection being C.O No. 07 and 08/PUN/202022, in the Revenue's foregoing twin appeals, learned Counsel stated very fairly that they are only supportive to the CIT(A)'s findings which are not pressed. Rejected accordingly.

7. No other grounds have been raised before us.

8. To sum up, Revenue's former appeal ITA No. 1035/PUN/2018 is dismissed and latter case ITA No. 1036/PUN/2018 is partly allowed whereas assessee's cross objections thereto CO Nos. 07 and 08/PUN/2022 stand dismissed as not pressed in above terms. A copy of this common order be placed in the respective case files.

Order pronounced in the open Court on this 30th day of June 2022.

Sd/-
(DR. DIPAK P. RIPOTE)
ACCOUNTANT MEMBER

sd/-
(SATBEER SINGH GODARA)
JUDICIAL MEMBER

Pune; Dated, this 30th day of June 2022
Ankam

ITA No. 1035 & 1036/PUN/2018 and
C.O No. 07 & 08/PUN/2022
Lokmangal Sugar Ethenol
A.Y. 2013-14 & 2014-15

Copy of the Order forwarded to :

1. The Appellant.
2. The Respondent.
3. The CIT (A)-7, Pune.
4. The Pr. CIT – 6, Pune
5. The D.R. ITAT A' Bench, Pune.
5. Guard File

BY ORDER,

Sr. Private Secretary
ITAT, Pune.

		Date	
1	Draft dictated on	28-06-2022	Sr.PS
2	Draft placed before author	29-06-2022	Sr.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		Sr.PS
6	Kept for pronouncement on		Sr.PS
7	Date of uploading of order		Sr.PS
8	File sent to Bench Clerk		Sr.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		