

आयकर अपीलीय अधिकरण “एक सदस्य मामला” न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH, PUNE

श्री एस.एस. विश्वनेत्र रवि, न्यायिक सदस्य के समक्ष ।
BEFORE SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.239/PUN/2022
निर्धारण वर्ष / Assessment Year : 2013-14

Deven Supercriticals Pvt. Ltd.,
16, Phatak Baug, Navi Peth,
Pune – 411030

PAN : AABCD0298B

.....अपीलार्थी / Appellant

बनाम / V/s.

The DCIT, Circle – 1(2),
Pune

.....प्रत्यर्थी / Respondent

Assessee by : Shri Kishor B. Phadke

Revenue by : Shri M.G. Jasnani

सुनवाई की तारीख / Date of Hearing : 19-09-2022

घोषणा की तारीख / Date of Pronouncement : 27-09-2022

आदेश / ORDER

PER S.S. VISWANETHRA RAVI, JM :

This appeal by the assessee against the order dated 29-06-2017 passed by the Commissioner of Income Tax (Appeals)-1, Pune [‘CIT(A)’] for assessment year 2013-14.

2. I find this appeal was filed with a delay of 972 days. The assessee filed notarized affidavit dated 18-04-2022 stating that the assessee realized

that the appeal to be filed before this Tribunal against the order passed by the CIT(A) through Income Tax port. The delay involved was not intentional nor deliberate but due to old age and physical limitation of the Director of assessee by name Ashok Nandlal Baser. The ld. AR submits that the assessee was in compliance of all the procedures but however due to old age of Director the delay of 972 days crept unfortunately. Further, he submits that the age of said Director is around 80 years and contesting the similar issue for A.Y. 2009-10 and drew our attention to the order dated 17-05-2018 in ITA No. 176/PUN/2016 in assessee's own case at page 8 of the paper book. The ld. AR argued that the assessee has no deliberate intention in filing the appeal belatedly but however the age concerning of Director the delay of 972 days was caused. He prayed to condone the said delay in the interest of justice.

3. The ld. DR, Shri M.G. Jasnani vehemently argued that no valid reasons for delay stated in the notarized affidavit and the reasons stated therein is not convincing. By referring to order of this Tribunal in A.Y. 2009-10 he argued that the assessee was contesting the similar issue before this Tribunal, but however negligent enough to file appeal concerning A.Y. 2013-14. The assessee intentionally did not file appeal in time and prayed to reject the reasons stated by the assessee in notarized affidavit.

4. Upon hearing both the parties and on perusal of the notarized affidavit along with order passed by this Tribunal in assessee's own case and the issue involved therein in the interest of justice taking into

consideration the facts and circumstances of the case, I deem it proper to condone the delay. Hence, the delay of 972 days is condoned.

5. Ground No. 1 raised by the assessee challenging the action of CIT(A) in confirming the disallowance made by the AO under Rule 8D r.w.s. 14A of the Act in the absence of recording of satisfaction by the AO.

6. I note that the AO discussed the issue regarding the computation of disallowance as required u/s. 14A of the Act at para 4 of the assessment order. The assessee received dividend income of Rs.49,73,372/-. The assessee on its own disallowed Rs.10,000/- on ad hoc basis. The AO on an examination of accounts of the assessee was of the opinion that the assessee did not apportion any expenditure relating to the exempt income and not satisfied with the claim of assessee that no expenses were incurred to earn its exempt income, proceeded to work out by applying Rule 8D, disallowed expenditure of Rs.1,78,490/- and Rs.5,40,395/- under Rule 8D(ii) & (iii), respectively. The AO clearly recorded its non-satisfaction with regard to accounts of assessee in para 4 of the assessment order. The CIT(A) confirmed the view of AO recording of non-satisfaction regarding the accounts of assessee. On perusal of finding of AO regarding recording of non-satisfaction with regard to accounts of assessee relating to exempt income, I do not find any infirmity in the order of CIT(A) in holding that the AO recorded its satisfaction vide para 6 of the impugned order. Therefore, the submissions of ld. AR are rejected and ground No. 1 raised by the assessee is dismissed.

7. In view of my decision in ground No. 1, the issue raised in ground No. 2 becomes academic and requiring no adjudication.

8. Ground No. 3 raised by the assessee, alternatively seeking direction to AO to restrict the disallowance under Rule 8D concerning the investments yielded exempt income.

9. Admittedly, the assessee has its own funds under Capital and Reserve to an extent of Rs.15.62 crores which is not disputed by the AO nor the CIT(A). Further, there is no dispute with regard to investments made to an extent of Rs.11.40 crores as on 31-03-2014 by the AO and the CIT(A). It is clearly established that the Capital and Reserve of assessee are more than the investments made under the year under consideration. Therefore, It is to be presumed that the assessee made investments from its own funds but not from borrowed funds. If that is the case the disallowance under interest is not warranted. Therefore, disallowance under Rule 8D(ii) to an extent of Rs.1,78,490/- is not maintainable. Therefore, the order of CIT(A) is not justified in confirming the disallowance under Rule 8D(2)(ii) on account of interest expenditure and to that extent the order of CIT(A) is set aside. Coming to the disallowance under Rule 8D(2)(iii) to an extent of Rs.5,40,395/-, I note that the ld. AR contended to remand the issue to the file of AO for computation of disallowance concerning the investments which yielded exempt income. I note that the AO did not examine the said disallowance on this aspect and proceeded to disallow at 0.5% on an average value of investments concerning the first day and last day of previous year to an extent of Rs.10,80,79,007/-. It is settled principle to restrict the disallowance to those investments earned

dividend income. Therefore, following the same I direct the AO to compute the disallowance taking into consideration those investments which yielded exempt income. The assessee is liberty to file evidence, if any, in this regard. Thus, alternative ground No. 3 raised by the assessee is allowed for statistical purpose.

10. In the result, the appeal of assessee is partly allowed for statistical purpose.

Order pronounced in the open court on 27th September, 2022.

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

पुणे / Pune; दिनांक / Dated : 27th September, 2022.
रवि

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

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