

आयकर अपीलीय अधिकरण "बी" न्यायपीठ पुणेमें।  
IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE BENCHES "B" :: PUNE

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

आयकरअपीलसं. / ITA No.300/PUN/2023  
निर्धारणवर्ष / Assessment Year :2013-14

Pushpak Steel Industries Private Limited, Gat No.119, Alandi Markal Road, Alandi Markal Road, Vill-Dhanore, Pune – 412105.  PAN: AABCP 0081 C	V s	The Income Tax Officer, Cricle-10, Pune.
Assessee / Appellant		Respondent / Revenue

Assessee by	Shri Sarvesh Khandelwal – AR
Revenue by	Shri M.G.Jasnani – DR
Date of hearing	16/05/2023
Date of pronouncement	27/06/2023

**आदेश/ ORDER**

**PER DR. DIPAK P. RIPOTE, AM:**

This appeal filed by the Assessee is directed against the order of Id.Commissioner of Income Tax(Appeal)-11, Pune dated 27.01.2023 for A.Y.2013-14 emanating from the order under section 143(3) of the Act, dated 13.12.2016. The Assessee has raised the following grounds of appeal:

“1. On the facts and circumstances prevailing in the case and as per the provisions and the scheme of the Act it be held that the

*disallowance of donation made to M/s Iskcon Food Relief Foundation amounting to Rs.11,00,000/- is not in accordance with the provisions of the Act and the same be deleted.*

*2. The appellant prays to be allowed to add, amend, modify, rectify, delete, and raise any grounds of appeal at the time of hearing.”*

*Additional Grounds :*

*“1. On the facts and circumstances prevailing in the case and as per the provisions and the scheme of the Act it be held that the disallowance of Rs.1,21,498/- made u/s 14A r.w.Rule 8D is not in accordance with the provisions of the Act and the same be deleted. Just and proper relief be granted.*

*2. Without prejudice to the additional ground no. 1 raised, on the facts and circumstances prevailing in the case and as per the provisions and scheme of the Act it be held that the disallowance u/s 14A r.w. Rule 8D is to be restricted to the exempt income earned by the assessee. Just and proper relief be granted.”*

**Brief facts of the case :**

2. The assessee had filed original return of income for Assessment Year 2013-14 on 27.09.2013 declaring total income of Rs.5,08,15,300/-. The assessee's case was selected for scrutiny. During the scrutiny proceedings, the Assessing Officer(AO) noted that assessee had claimed expenditure of Rs.18,26,250/- being donation paid in the Profit and Loss Account. The AO noted that assessee had claimed these donations as expenditure under section 37 of the Act. However, during the assessment proceedings, on a specific query raised by

the AO, the assessee submitted that amount of Rs.11 lacs was paid to ISCKON Food Relief Foundation and it is eligible under section 35AC of the Act. However, assessee admitted that assessee has not claimed it separately as deduction under section 35AC in the computation of income and return of income. Therefore, AO disallowed Rs.11 lacs following the Hon'ble Supreme Court's decision in the case of Goetze India Limited Vs. CIT. The AO also noted that assessee has earned exempt income of Rs.2,000/- during the year. The AO also made addition under section 14A r.w.rule 8D. Aggrieved by the order of the AO, assessee filed appeal before the Id.CIT(A). The Id.CIT(A) held as under in para 9.2 of the order :

*“9.2 Thus, as per section 35AC (2) of the Act, in order to claim deduction u/s 35AC of the Act for the donations made to an approved association or institution, an assessee is required to file a certificate in the prescribed form. As per Rule 11-0(1) of Income Tax Rules, such certificate is required to be filed in Form 58A. In the present case, the appellant has simply filed the copies of donation receipts and has not filed Form 58A which is a mandatory condition for claiming deduction u/s 35AC of the Act. Since, the appellant has not filed Form 58A, no deduction under section 35AC can be allowed, in view of sub-section (2) of section 35AC of the Act. Considering the totality of facts of the case, the disallowance of Rs.11,00,000/- made by the assessing officer is upheld. The ground No. 1 raised by the appellant is DISMISSED.”*

3. Similarly, regarding 14A disallowance Id.CIT(A) allowed the appeal of the assessee for Rs.14,11,830/- which was disallowance made by the AO under Rule 8D(2)(ii). The Id.CIT(A) sustained the addition under Rule 8D(2)(iii) of Rs.1,21,498/-. Aggrieved by the order of the Id.CIT(A), the assessee filed appeal before this Tribunal.

**Submission of Id.Authorised Representative (Id.AR) :**

4. With reference to assessee's claim for deduction under section 35AC, the Id.Authorised Representative of the assessee submitted that assessee had submitted a copy of Form No.58A before the Id.CIT(A). The Id.AR submitted that Id.CIT(A) erroneously failed to consider the Form No.58A. Id.AR filed copy of Form No.58A in the paper book filed before the Tribunal. The Id.AR submitted that since assessee has complied all the conditions in section of 35AC, assessee is eligible for deduction of Rs.11 lacs.

4.1 Regarding 14A disallowance read with rule 8D(2)(iii), Id.AR submitted that assessee had earned exempt income of Rs.2,000/- only, therefore, the disallowance should have been restricted to

Rs.2,000/- only. The ld.AR relied on various case laws.

**Submission of ld.Departmental Representative (ld.DR) :**

5. The ld.Departmental Representative of the Revenue relied on the orders of Lower Authorities.

**Findings & Analysis :**

6. We have heard both the parties and perused the records.

**Disallowance of Rs.11 lacs (claimed under section 35AC) :**

6.1 The ld.CIT(A) has upheld the disallowance of Rs.11 lacs claimed under section 35AC only on the ground that assessee has not filed Form 58A which was required as per 'Rule 110'. It has been pleaded before us that assessee had filed copy of Form No.58A. Assessee submitted copy of Form No.58A in the paper book at page no.1 to 22. Since assessee has filed copy of Form No.58A and claimed that it was filed before ld.CIT(A) also, however, ld.CIT(A) has upheld the disallowance only on the ground that no Form No.58A was filed, therefore, in the interest of justice, we set-aside this issue to ld.CIT(A) for denovo adjudication in the light of submission made by the

assessee. The Id.CIT(A) shall provide opportunity to the assessee. Accordingly, Ground No.1 of the assessee is allowed for statistical purpose.

**Disallowance made under Rule 8D(2)(iii) r.w.section 14A:**

7. In this case, it is an admitted fact that assessee has earned exempt income of only Rs.2,000/-.

7.1 Hon'ble Bombay High Court in the case of Principal Commissioner of Income Tax, Panaji, Goa v. Ajit Ramakant Phatarpekar [2021] 124 taxmann.com 124 (Bombay) held as under :

*Quote , "9. There is no perversity in the orders passed by the Commissioner (Appeals) and the ITAT on this issue. Besides in Nirved Traders (P.) Ltd. (supra), this Court has held that disallowance under section 14A of the IT Act cannot be more than the exempt income earned by the Assessee during the assessment year in question. In this case, there is no dispute that the dividend i.e. the exempt income earned by the Assesseees during the relevant Assessment Year, was only Rs. 45,371/-. Accordingly, the disallowance in this case could not have exceeded Rs. 45,371/-. It is only because the Assesseees voluntarily offered a disallowance to the extent of Rs. 65,000/-, that the Commissioner (Appeals) made a disallowance to the extent of Rs. 65,000/-. Thus, the first substantial question of law is required to be answered against the Revenue and in favour of the Assesseees. " Unquote.*

8. We find that AO has rightly invoked Rule 8D(2)(iii). Respectfully following the Hon'ble Jurisdictional High Court, AO is directed to restrict the disallowance under section 14A read with rule 8D(2)(iii) to Rs.2,000/- only. Accordingly, Assessee's Additional Ground No.2 is allowed and Additional Ground No.1 is dismissed.

9. In the result, appeal of the assessee is Partly Allowed.

Order pronounced in the open Court on 27<sup>th</sup> June, 2023.

**Sd/-**  
**(S.S.GODARA)**  
**JUDICIAL MEMBER**

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

पुणे / Pune; दिनांक / Dated : 27<sup>th</sup> June, 2023/ SGR\*

**आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A), concerned.
4. The Pr. CIT, concerned.
5. विभागीयप्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" बेंच, पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्डफ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// TRUE COPY //

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