

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "E", MUMBAI**

**BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER
AND MS. KAVITHA RAJAGOPAL, JUDICIAL MEMBER**

**MA Nos. 72 & 73/Mum/2019
(ITA No. 7595/Mum/2013)
(ITA No. 1855/Mum/2015)**

Assessment Years: 2010-11 & 2012-13

Tata Industries Ltd., 24, Bombay House, Homi Modi Street, Fort, Mumbai – 400001 PAN: AAAC4058L	Vs.	The ACIT, Range-2(3) Mumbai - 400020
(Appellant)		(Respondent)

**MA Nos. 74 & 75/Mum/2019
(ITA No.612/Mum/2014)
(ITA No.1763/Mum/2015)**

Assessment Years: 2010-11 & 2012-13

The ACIT, Range-2(3) Mumbai – 400020	Vs.	Tata Industries Ltd., 24, Bombay House, Homi Modi Street, Fort, Mumbai – 400001 PAN: AAAC4058L
(Appellant)		(Respondent)

Present for:

Assessee by : Smt. Arati Vissanji &
Ms. Astha Shah

Revenue by : Shri Rajkumar R. Makwana, Sr. AR

Date of Hearing : 13.12.2024

Date of Pronouncement : 17.12.2024

ORDER

PER AMARJIT SINGH, ACCOUNTANT MEMBER:

All the miscellaneous applications filed by the assessee are related to Assessment Years 2010-11 & 2011-12 arising out of the order of ITAT for the Assessment Year 2010-11 vide ITA No. 7595/Mum/2013 and ITA No.

612/Mum/2014 vide dated 28.09.2018 and for the Assessment Year 2011-12 vide ITA No.1855/Mum/2015 and ITA No.1763/Mum/2015 dated 28.09.2018. Since, common issue on identical facts are involved in all these miscellaneous applications, therefore, for the sake convenience all these miscellaneous applications are adjudicated together by taking ITA No. 7595/Mum/2013 and ITA No.612/Mum/2014 for the Assessment Year 2010-11 and its finding will be applied mutatis mutandis to the other miscellaneous applications wherever it is applicable.

2. the assessee has filed miscellaneous application vide ITA No.74/Mum/2019 on 01.02.2019 on the issue of working of disallowance under Rule 8D(2)(iii) in respect of claim of the assessee on exclusion of investment that had not yielded dividend income during the year and share application money from the average value of investment. However, the miscellaneous application filed by the assessee was dismissed by the ITAT vide order dated 09.12.2019 holding that when assessee on its own made suo moto disallowance towards said expenditure then making a fresh claim by filing additional ground cannot be accepted. Against the order of ITAT dated 09.12.2019 the assessee has filed writ petition before the Hon'ble jurisdictional High Court of Bombay. The Hon'ble Bombay High Court vide Writ Petition No. 745 of 2021 dated 24.07.2023 has quashed the order dated 09.12.2019 and remanded the matter to the Tribunal to consider the exclusion claimed by the assessee in respect of investment that had not yielded dividend income during the year and share application money from the average value of investment.

3. Heard both the parties and perused the material on record. The ITAT in its order dated 28.09.2018 at page 10 of the order referred the submission of the assessee on the point that while computing average value of investment, investment made in share application money and investment which did not yielded any income during the year needs to be excluded. The ITAT has also mentioned that assessee has relied upon the decision of ITAT Delhi Special Bench in the case of ACIT vs. Vireet Investment Pvt. Ltd. (2017) 165 ITD 27 (Delhi). The ITAT stated that although the assessee has taken additional

ground of appeal for exclusion of share application money and investment which did not yielded exempt income for the purpose of computation of average value of investment for the first time before the CIT(A), the fact remains that the assessee on its own determined average value of investment and computed disallowance of Rs.672,11,103/-. The ITAT discussed at page 15 of the order although the assessee has computed average value of investment after taking into account share application money and investment which did not yield any income. However, the various Courts' and Tribunal held that same are to be excluded while computing disallowance under Section 14A of the Act r.w.Rule 8D(2)(iii) of the I.T Rule 1962. The ITAT at para 16 of the order did not agree with the submission of the assessee stating that the assessee on its own computed average value of investment by including share application money and investment on which exempt income earned for the purpose of computing disallowance under Section 14A of the Act. The ITAT held that there is no reason that the assessee to seek a revision of its own computation. The ITAT has also referred the findings of the Ld. CIT(A) for exclusion of share application money for the purpose of computation of average value of investment. In the miscellaneous application vide ITA No. 74/Mum/2019 on 01.12.2019 the assessee referred the conclusion drawn by the ITAT on the above issue that assessee cannot seek revision on its own computation and also referred the decision of Hon'ble High Court in the case of CIT Vs. Pruthvi Brokers and Shareholders Pvt. Ltd. (2012) 349 ITR 366 (Bom) and the decision of Hon'ble Supreme Court in the case of NTPC Vs. CIT, 229 ITR 383 (SC).

4. Heard both the sides and perused the material available on record. Before us the Ld. Counsel has also referred the decision of the ITAT, Mumbai in the case of Strides Pharma Science Ltd. (2024) 205 ITD 421/159 taxmann.com 33 (Mum) wherein after following the decision of the ITAT in the case of Strides Shasan Ltd. Vs. PCIT (ITA No. 1992/Mum/2016) for exclusion of investment on which no exempt income was yielded irrespective of suo moto disallowance made by the assessee. In the light of the decision of the ITAT Delhi Special Bench in the case of ACIT vs. Vireet Investment Pvt. Ltd. (2017) 165 ITD 27 (Delhi) and the decision of various Courts' and Tribunal and after

considering the direction of the Hon'ble Bombay High Court in Writ Petition No. 745 of 2021 as referred supra, we direct the AO to exclude share application money and investment which did not yield any exempt income for the purpose of computing disallowance under Section 14A r.w.rule 8D(2)(iii) of the I.T. Rule 1962 after examination and verification of the relevant details and materials to be furnished from the side of the assessee. Accordingly, the miscellaneous applications filed by the assessee and additional grounds of appeals of the assessee on this issue are allowed for statistical purposes.

5. In the result, the miscellaneous applications and appeals are allowed for statistical purposes.

Order pronounced in the open court on 17.12.2024

Sd/-
(Kavitha Rajagopal)
Judicial Member

Sd/-
(Amarjit Singh)
Accountant Member

Place: Mumbai

Date 17.12.2024

Rohit: PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,
Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण/ ITAT, Bench,
Mumbai.