

आयकर अपीलीय अधिकरण "बी" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, PUNE

(Through Virtual Court)

BEFORE SHRI R.S.SYAL, VICE PRESIDENT
AND
SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER

आयकर अपील सं. / ITA No. 1559/PUN/2017

निर्धारण वर्ष / Assessment Year : 2010-11

Shri Milind Pralhad Bhandarkar,
1717, Zenith Complex,
Shivajinagar, Opp. Krishi Bhavan,
Pune-411 005.
PAN : AAVPB4583E

.....अपीलार्थी / Appellant

बनाम / V/s.

The Deputy Commissioner of Income Tax,
Circle-2, Pune.

.....प्रत्यर्थी / Respondent

Assessee by : Shri Sarang Gudhate
Revenue by : Shri Prathamesh J. Lawand

सुनवाई की तारीख / Date of Hearing : 23.10.2020

घोषणा की तारीख / Date of Pronouncement : 26.10.2020

आदेश / ORDER

PER S.S. VISWANETHRA RAVI, JM :

This appeal by the assessee against the order dated 30.11.2016 passed by the Commissioner of Income Tax (Appeals)-3, Pune [‘CIT(A)'] for the assessment year 2010-11.

2. The assessee has raised two grounds of appeal amongst which only issue emanates challenging the action of CIT(A) in confirming the disallowance made by the Assessing Officer u/s.14A read with Rule 8D(2) of the Income Tax Rules, 1962 (hereinafter referred to as 'the Rules').

3. Apart from the main grounds of appeal mentioned above, the assessee has also raised additional ground of appeal pointing out that the Assessing Officer instead of taking total investment as denominator, taken total asset in computing disallowance under Rule 8D(2) of the Rules.

4. Heard both sides and perused the materials available on record. The assessee is an individual engaged in the business of resale of EMT machines and weighing scales. During the course of assessment proceedings, the Assessing Officer noted that the assessee had increased interest expenses and also secured loan in the opening balance on which the interest was paid. The Assessing Officer asked the assessee to explain why the provision under Rule 8D(2) should not be applied. It was explained that the assessee had not incurred any expenditure earning exempt income and there was no direct costs involved in funding the investment. The Assessing Officer found the submissions of the assessee not acceptable and proceeded to invoke the provision of Rule 8D(2) in computing disallowance for the purpose of Section 14A of the Income Tax Act, 1961 (hereinafter referred to as 'the Act'). Accordingly, he disallowed Rs.4,35,518/- under Rule 8D(2)(ii) and Rs.2,76,260/- under Rule 8D(2)(iii) of the Rules vide its order dated 15.02.2013.

5. We note that the assessee challenged the order of the Assessing Officer in respect of disallowance made u/s.14A before CIT(A) on the ground that without recording satisfaction in respect of accounts of the assessee, the Assessing Officer disallowed expenditure for the purpose of Section 14A of the Act which is bad in law. The CIT(A) confirmed the disallowance made by the Assessing Officer.

6. Before us, the Ld. AR referred to the additional ground raised and submitted that the Assessing Officer by mistake considered total asset as denominator for computing expenditure under Rule 8D(2) instead of total investment and referred to a chart annexed therein. On perusal of the same, we note that as rightly pointed out by the Ld. AR, the Assessing Officer has taken the total asset as denominator and it is a mistake apparent on record. Further, the Ld. AR contended that total investment as on 31.03.2009 and 31.03.2010 are Rs.6,28,19,223/- and Rs.4,76,84,968/- respectively which are below the total tax free funds of assessee. We note that in the chart supplied by the Ld. AR, which is on record, that the assessee's own funds Rs.7,37,05,514/- as on 31.03.2009 and Rs.9,15,06,853/- as on 31.03.2010 which clearly establishes that the assessee's own sufficient funds for making investment. Therefore, in our opinion, the disallowance of interest expenses made by the Assessing Officer and confirmed by the CIT(A) is liable to be deleted.

7. The Hon'ble Bombay High Court in the case of **Commissioner of Income Tax Vs. HDFC Bank Ltd. reported in 366 ITR 505** held that "*it would be presumed that the investment made by the assessee would be out of interest free funds available with the assessee.*" In the present case as

discussed above, the assessee's own funds were more than the investment made. Therefore, by applying the principle laid down by the Hon'ble High Court of Bombay, the disallowance as confirmed by the CIT(A) under Rule 8D(2)(ii) is deleted. Regarding the disallowance made under Rule 8D(2)(iii), we do not find any infirmity with the findings of the CIT(A) and therefore, the same is confirmed. Thus, **Ground Nos. 1 and 2 along with additional ground of appeal are partly allowed.**

8. In the result, **appeal of the assessee is partly allowed.**

Order pronounced on 26th day of October, 2020.

Sd/-
R.S.SYAL
VICE PRESIDENT

Sd/-
S.S. VISWANETHRA RAVI
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 26th October, 2020.
SB

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals)-3, Pune.
4. The Pr. CIT-2, Pune.
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, "बी" बेंच,
पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

निजी सचिव / Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.

		Date	
1	Draft dictated on	23.10.2020	Sr.PS/PS
2	Draft placed before author	23.10.2020	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		Sr.PS/PS
7	Date of uploading of order		Sr.PS/PS
8	File sent to Bench Clerk		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		