

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

BEFORE SHRI R.S. SYAL, VICE PRESIDENT
AND SHRI VIKAS AWASTHY, JM

आयकर अपील सं. / ITA Nos.1988, 1989 & 1990/PUN/2016
निर्धारण वर्ष / Assessment Years : 2008-09, 2009-10 & 2010-11

Kirloskar Pneumatic Co. Ltd.,
Hadapsar Industries Estate,
Pune Solapur Road,
Hadapsar, Pune – 411013

PAN : AAACK2479C

.....अपीलार्थी / Appellant

बनाम / V/s.

Jt. Commissioner of Income Tax,
Range – 11, Pune

.....प्रत्यर्थी / Respondent

Assessee by : Shri C.H. Naniwadekar
Revenue by : Shri K.K. Ojha

सुनवाई की तारीख / Date of Hearing : 27-11-2018

घोषणा की तारीख / Date of Pronouncement : 30-11-2018

आदेश / ORDER

PER VIKAS AWASTHY, JM :

These three appeals by the assessee are directed against the order of Commissioner of Income Tax (Appeals)-7, Pune for the assessment years 2008-09, 2009-10 and 2010-11, respectively. All the impugned orders are of even date i.e. 27-06-2016.

Since, the issues raised in all these appeals are common and are arising from similar set of facts, these appeals are taken up together for adjudication and are being disposed of vide this common order.

ITA No. 1989/PUN/2016 (A.Y. 2008-09)

2. The assessee has assailed the order of Commissioner of Income Tax (Appeals) by raising following grounds of appeal :

- “1. The learned CIT (A) erred on facts and in law in upholding disallowance of Rs.16,83,000/- on account of commission expense treating the same as non genuine. He erred on not accepting the submissions made and evidences submitted during the assessment but relying only on survey information. The reasons assigned are without any basis.
2. The learned CIT (A) erred on facts and in law in upholding disallowance of Rs.5,27,884/- u/s. 14A r.w.r 80 without appreciating the facts and submissions made in this behalf and without giving any reasons and recording his dissatisfaction for assessee's claim.
3. The learned CIT(A) erred on facts and in law in upholding disallowance of Building Repairs Expense of Rs.53,08,434/- contending the same as Capital Expenditure as against Revenue Expenditure as claimed by the assessee. He failed to appreciate the nature of expenditure and submissions made in this behalf.
4. The learned CIT (A) erred on facts and in law in upholding disallowance of interest of Rs.2,60,612/- contending the same as not used for business purpose and without appreciating the facts and submissions made before the learned AO as well as learned CIT (A) in this behalf
5. The appellant craves leave to add, alter, delete or substitute all or any of the above grounds of appeal.”

3. Shri C.H. Naniwadekar appearing on behalf of the assessee submitted that the assessee is engaged in the business of manufacturing and sale of engineering goods and machinery like air and gas compressors. A scrutiny assessment for assessment year 2008-09 was completed vide order dated 23-12-2010 making additions of Rs.1,39,41,718/- and allowing depreciation of Rs.16,45,474/- on additions made. Thereafter,

assessment proceedings were reopened and notice u/s. 148 was issued to the assessee on 08-01-2013. The ld. AR submitted that a survey action u/s. 133A was carried out in the case of assessee on 09-01-2013. In the statement recorded during survey proceedings the assessee disclosed income of Rs.16,83,000/- on account of unsubstantiated expenditure on payment of commission. The ld. AR submitted that during Financial Year 2007-08 relevant to the assessment year 2008-09, the assessee had paid commission to Sachin Madanlal Kankani Rs.6,00,000/-, Sunil Shantilal Oswal Rs.5,13,000/-, Rajesh C. Shah Rs.4,40,000/- and Mukund Madanlal Kankani Rs.1,30,000/- totaling to Rs.16,83,000/- for the services rendered by them. The assessee had produced agreements with the aforesaid parties for the payment of commission and the commissions were paid by account payee cheque after deduction of tax at source. The Assessing Officer disbelieved the payment of commission as the assessee failed to substantiate the services rendered by the aforesaid parties and made the addition. The Commissioner of Income Tax (Appeals) confirmed disallowance of expenditure upholding the findings of Assessing Officer without appreciating the fact that the assessee had furnished necessary documents to show that the commission was actually paid to the aforementioned four persons. As per the agreement the commission was payable in two installments 1% at the time of release of initial additional advance and 1.5% at the time of dispatched. The commission was paid by the assessee as per the commission agreement.

3.1 In respect of ground No. 2 of the appeal relating to disallowance of Rs.5,27,884/- u/s. 14A r.w.r. 8D the ld. AR submitted that the assessee in first round of appellate proceedings arising from assessment order u/s. 143(3) dated 23-12-2010 had filed appeal before the Tribunal in ITA No.

497/PN/2012 for the assessment year 2008-09. The assessee inter alia had challenged invoking of Rule 8D without recording satisfaction. The Tribunal vide order dated 25-06-2013 restored the issue back to the file of Assessing Officer to re-adjudicate the issue after recording satisfaction. The Assessing Officer while passing the order u/s. 143(3) r.w.s. 147 gave effect to the order of Tribunal. However, the Assessing Officer failed to comply with the directions of Tribunal and has again made addition u/s. 14A r.w.r. 8D without recording satisfaction as envisaged under sub-section (2) to section 14A. The ld. AR submitted that the Hon'ble Supreme Court of India in the case of Godrej & Boyce Manufacturing Company Limited Vs. Deputy Commissioner of Income Tax & Anr. reported as 394 ITR 449 has emphasized that recording of satisfaction is must before making disallowance under Rule 8D. The ld. AR submitted that in the absence of any satisfaction no disallowance u/s. 14A r.w.r. 8D is sustainable.

3.2 The ld. AR made an alternate submission that while making disallowance under Rule 8D(2) the Assessing Officer has made disallowance under Clause (ii) of Rule 8D(2) in respect of interest. The assessee has not utilized borrowed funds for investment purposes. The ld. AR referred to Balance sheet of the assessee company for the Financial Year 2007-08 to contend that own funds of assessee including share capital and reserves and surplus are to the tune of Rs.104.24 crores as against investment of Rs.3.61 crores. Thus, own funds of assessee are much more than the investment made. The ld. AR submitted that the disallowance in respect of interest part should be deleted in the light of decision of Hon'ble Bombay High Court in the case of Commissioner of Income Tax Vs. HDFC Bank Ltd. reported as 366 ITR 505.

3.3 In respect of ground No. 3 the ld. AR submitted that the Assessing Officer has made disallowance of Rs.53,08,434/- in respect of repairs to building. The assessee has claimed expenditure as revenue. The Assessing Officer has held the same to be capital in nature. The Commissioner of Income Tax (Appeals) has upheld the same.

3.4 In ground No. 4 of the appeal the assessee assailed disallowance of interest expenditure Rs.2,60,612/-. The assessee had paid interest to its customer M/s. Mazgaon Dock Ltd. against advance of Rs.2.88 crores. The assessee paid interest of Rs.16,53,820/- as per terms and conditions of the order. The advance was received by the assessee in normal course of business. The Assessing Officer has alleged that the advances were not being used for business purposes without there being any material on record. The onus was on the Assessing Officer to show that the advances received by the assessee on which interest was paid was utilized by the assessee for none business purposes. The advances received were used exclusively for the purpose of business only. The authorities below have failed to appreciate the fact that balance outstanding from the sister concerns represent net balance of sales-purchase transactions for material sold and services provided in ordinary course of business. The ld. AR further placed reliance on the decision of Hon'ble Bombay High Court in the case of Commissioner of Income Tax Vs. Reliance Utilities & Power Ltd. reported as 313 ITR 340 to contend that own funds of the assessee were sufficient to cover the loans advanced by the assessee to its sister concern. Therefore, it cannot be held that borrowed funds were utilized by the assessee for advancing to the sister concern. The ld. AR further pointed that this issue was also restored to the file of Assessing Officer by the Tribunal in ITA No. 497/PN/2012 (supra). The Tribunal had categorically

observed that the issue is remanded back to the file of Assessing Officer to be decided in the light of judgment of Hon'ble Bombay High Court in the case of Commissioner of Income Tax Vs. Reliance Utilities & Power Ltd. (supra).

4. On the other hand Shri K.K. Ojha representing the Department vehemently defended the order of Commissioner of Income Tax (Appeals) in confirming the additions that have been assailed by the assessee in present appeal. The ld. DR prayed for dismissing the appeal of assessee and affirming the order of Commissioner of Income Tax (Appeals).

5. We have heard the submissions made by representatives of rival sides and have perused the orders of authorities below. We have also considered various decisions on which the ld. AR of the assessee has placed reliance.

6. The first ground of appeal is with respect to disallowance of Rs.16,83,000/- on account of commission paid to four persons namely Sachin Madanlal Kankani Rs.6,00,000/-, Sunil Shantilal Oswal Rs.5,13,000/-, Rajesh C. Shah Rs.4,40,000/- and Mukund Madanlal Kankani Rs.1,30,000/- aggregating to Rs.16,83,000/-. The authorities below have disallowed assessee's claim of commission expenditure on the ground that the assessee has failed to substantiate the services rendered by the aforesaid persons. Mere payment of commission through banking channel after deducting tax at source is not sufficient to discharge the onus of proving the services rendered. The assessee was required to substantiate the services rendered by the aforesaid persons. We observe that VP Finance of the assessee company in his statement during survey

had accepted that he was not in possession of conclusive evidence in order to justify claim of commission. The assessee has failed to do show before the authorities below and even before the Tribunal the nature of services and the services received by assessee in lieu of commission payments. We do not find any infirmity in the order of Commissioner of Income Tax (Appeals) confirming the disallowance of commission. Accordingly, ground No. 1 raised in the appeal by the assessee is dismissed.

7. The ground No. 2 of appeal is with respect to disallowance of Rs.5,27,884/- made u/s. 14A r.w.r. 8D. This matter has travelled to the Tribunal earlier in appeal by the assessee in ITA No 497/PN/2012 (supra). The Tribunal vide order dated 25-06-2013 res ored the issue back to the file of Assessing Officer with following observations :

“6. Section 14A(1) of the Act prescribes that any expenditure incurred in relation to an income which does not form part of the total income under the provisions of the Act has to be disallowed. In other words, the implication of Section 14A(1) of the Act is that no deduction can be allowed in respect of any expenditure incurred by an assessee in relation to an income which is exempt from tax. Sub-section 2 of Section 14A of the Act contain provisions which require the Assessing Officer to determine the amount of expenditure incurred by an assessee in relation to exempt income in accordance with method prescribed. Sub-section 2 of the Act provides the uniform method to compute the disallowance, but it is applicable only in a situation when the Assessing Officer is not satisfied with the correctness of the claim of the assessee. In the present case, right from the level of the Assessing Officer, assessee is claiming that it has not incurred any expenditure in relation to the impugned exempt income. Therefore, the Assessing Officer was bound to proceed in the manner prescribed in Sub-section (2) of Section 14A of the Act. Sub-section (2) of Section 14A prescribes that Assessing Officer ought to be satisfied that the claim of the assessee was not correct and thereafter proceed with the determination of disallowance as per the prescribed method. Such a satisfaction is conspicuous by its absence in the impugned assessment order and the Assessing Officer has proceeded to apply rule 8D of the Rules to determine the disallowance under Section 14A of the Act. Considering the aforesaid, we therefore deem it fit and proper to remand the matter back to the file of the Assessing Officer who shall revisit the controversy in the manner indicated above. Of course, the Assessing Officer shall allow the assessee a reasonable opportunity to putforth his submission in support of its stand and thereafter the Assessing Officer shall pass an order afresh on this aspect in accordance with law. On this aspect, assessee succeeds for statistical purposes.”

The ld. AR has made two fold submissions before us. The first submission of assessee is that since no satisfaction has been recorded by the Assessing Officer as envisaged u/s. 14A(2) of the Act therefore, disallowance under Rule 8D(2) cannot be made. We do not concur with the submission of assessee. The provisions of section 14A(2) apply where the assessee has made suo-moto disallowance and the Assessing Officer having regard to the accounts of assessee is not satisfied with correctness of the claim. In the present case, it is an admitted fact that the assessee has not suo-moto disallowed any expenditure with regard to exempt income earned. Accordingly, the first submission of assessee is rejected.

The ld. AR has made an alternate submission that the disallowance of interest expenditure under Rule 8D(2)(ii) be deleted as own interest free funds of assessee are much more than the borrowed funds. To support his contentions the ld. AR has drawn our attention to the Balance Sheet as on 31-03-2008 (i.e. for the period relevant to the assessment year 2008-09). An examination of Balance Sheet shows that own interest free funds of assessee (including Capital and Reserves and Surplus) are to the tune of Rs.104.24 crores as against the investment of Rs.3.61 crores. The Hon'ble Bombay High Court in the case of Commissioner of Income Tax Vs. HDFC Bank Ltd. (supra) has held that where assessee's own funds are in excess of investments made it shall be presumed that the investments are made out of interest free funds available with the assessee. The fact that the assessee is having own interest free funds much more than the investment made has not been disputed by the Revenue. Thus, in view of the facts of the case and the law laid down by the Hon'ble Jurisdictional High Court we accept the alternate prayer of the assessee and hold that disallowance of

interest expenditure under Rule 8D(2)(ii) deserves to be deleted. We hold and direct accordingly.

In the result, the ground No. 2 of appeal is allowed pro tanto.

8. In ground No. 3 of the appeal the assessee has assailed disallowance of expenditure incurred on repairs of building Rs.53,08,434/-. A perusal of the impugned order shows that the assessee has incurred expenditure to the tune of Rs.1,11,50,665/- on the repairs of building and has claimed the same as revenue in nature. The Assessing Officer after examining the nature of expenditure held that the expenditure amounting to Rs.58,42,231/- is on revenue account and disallowed the remaining expenditure of Rs.53,08,434/- being capital in nature. The Commissioner of Income Tax (Appeals) has upheld the findings of Assessing Officer. After examining the nature of work as tabulated in the impugned order we find that the expenditure is towards construction of foundation, civil work for ancillary shed, fabrication and erection of shed, etc. We concur with the findings of authorities below that the expenditure is purely capital in nature. We do not see any reason to interfere with the well reasoned findings of First Appellate Authority. Accordingly, ground No. 3 raised in the appeal by the assessee is dismissed.

9. In ground No. 4 of the appeal the assessee has assailed disallowance of interest expenditure Rs.2,60,612/-. The assessee has paid interest of Rs.16,53,820/- on the advances of Rs.2.88 crores received from Mazgaon Dock Ltd. The interest paid has been disallowed by the authorities below

on the ground that the assessee has further advanced the amount received from Mazgaon Dock Ltd. to its subsidiary Kirloskar Macquay Pvt. Ltd. without charging any interest. The contention of the assessee is that the advance received from Mazgaon Dock Ltd. was in the normal course of business and was exclusively used for business purposes only. The amount outstanding from sister concern was on account of sale of material services rendered in the ordinary course of business.

De hors use of advance for business purpose as has been contended by the assessee, we find that own interest free funds of the assessee are much more than the alleged advance given to the subsidiary by the assessee. The Hon'ble Bombay High Court in the case of Commissioner of Income Tax Vs. Reliance Utilities & Power Ltd. (supra) has held that where both interest free funds and interest bearing funds are available and the interest free funds are more than investment made, the presumption is that the investment made would have been out of interest free funds available with the assessee. It is an undisputed fact that own funds of assessee are to the tune of Rs.104.24 crores which are much more than the outstanding balance receivable from the subsidiary. Thus, in the light of facts of the case and the decision of Hon'ble Jurisdictional High Court, ground No. 4 raised in the appeal deserves to be allowed. We hold and direct accordingly.

10. The ground No. 5 raised in the appeal is general in nature, hence, requires no adjudication.

11. In the result, the appeal of the assessee in ITA No. 1988/PUN/2016 is partly allowed in the terms aforesaid.

ITA No. 1989/PUN/2016 (A.Y. 2009-10)

12. The assessee in appeal has raised solitary ground of disallowance of Rs.50,000/- on account of commission payment. The grounds raised by the assessee reads as under :

“1. The learned CIT (A) erred on facts and in law in upholding disallowance of Rs.50,000/- on account of commission expense treating the same as non genuine. He erred on not accepting the submissions made and evidences submitted during the assessment but relying only on survey information. The reasons assigned are without any basis.”

13. The ld. AR submitted that the assessee has paid commission to Shri Uma Sharma in the period relevant to the assessment year under appeal. The purpose of commission paid is identical to the one as is discussed in assessment year 2008-09. The reasons for disallowing the payment of commission in assessment year 2009-10 are also same.

14. Both the sides are unanimous in stating that the disallowance of payment of commission in assessment year 2009-10 is identical to the one as was in assessment year 2008-09. The assessee has failed to substantiate the services rendered in lieu of the commission paid. The detailed findings given by us while deciding the ground No. 1 of the appeal in assessment year 2008-09 would mutatis mutandis apply to the present assessment year, as well. For the reasons aforesaid, the ground No. 1 raised in the present appeal is dismissed.

15. The ground No. 2 of the appeal is general in nature, hence, requires no adjudication.

16. In the result, the appeal of assessee in ITA No. 1989/PUN/2016 is dismissed being devoid of any merit.

ITA No. 1990/PUN/2016 (A.Y. 2010-11)

17. The assessee in appeal has raised following grounds :

- “1. The learned CIT (A) erred on facts and in law in upholding disallowance of Rs.7,22,700/- on account of commission expense treating the same as non genuine. He erred on not accepting the submissions made and evidences submitted during the assessment but relying only on survey information. The reasons assigned are without any basis.
2. The learned CIT (A) erred on facts and in law in upholding disallowance of Rs.23,21,637/- u/s. 14A r.w.r. 80 without appreciating the facts and submissions made in this behalf and without giving any reasons and recording his dissatisfaction for assessee's claim.
3. The learned CIT(A) erred on facts and in law in upholding disallowance of Building Repairs Expense of Rs.31,76,360/- contending the same as Capital Expenditure as against Revenue Expenditure as claimed by the assessee. He failed to appreciate the nature of expenditure and submissions made in this behalf.
4. The appellant craves leave to add, alter, delete or substitute all or any of the above grounds of appeal.”

18. The ld. AR submitted that the ground No. 1 raised in the appeal is identical to the appeal in assessment year 2008-09.

19. In respect of ground No. 2 of the appeal the ld. AR submitted that disallowance of Rs.23,21,637/- has been made u/s. 14A r.w.r. 8D. The ld. AR submitted that the disallowance of interest under clause (ii) of Rule 8D(2) has been made without appreciating the fact that own funds of the assessee are much more than the investment made. The ld. AR brought our attention to the Balance Sheet of the assessee as on 31-03-2010 and pointed that own funds of assessee comprising of share capital and Reserves and Surplus are to the tune of Rs.160.81 crores, as against the investment of Rs.27.21 crores. Thus, the case of the assessee is squarely

covered by the decision of Hon'ble Bombay High Court in the case of Commissioner of Income Tax Vs. HDFC Bank Ltd. (supra).

20. In respect of ground No. 3 of the appeal the ld. AR submitted that the Assessing Officer has made disallowance of Rs.31,76,360/- in respect of building repairs. The assessee has claimed expenditure on repairs to the building revenue, whereas, the Assessing Officer has held the same to be capital in nature.

21. On the other hand ld. DR vehemently supported the findings of Commissioner of Income Tax (Appeals) and prayed for dismissing the appeal of assessee.

22. Both sides heard. Orders of the authorities below perused. Both the sides are unanimous in stating that the ground Nos. 1 raised in assessment year 2010-11 is identical to the ground No. 1 raised in assessment year 2008-09. The findings given by us while adjudicating ground No. 1 in ITA No. 1988/PUN/2016 would mutatis mutandis apply to ground No. 1 in ITA No. 1990/PUN/2016, as well. Accordingly, ground No. 1 is dismissed.

23. In ground No. 2 the assessee has assailed disallowance of Rs.23,21,637/- made u/s. 14A r.w.r. 8D. A perusal of the assessment order shows that the Assessing Officer has made disallowance in respect of interest expenditure, as well. The ld. AR has drawn our attention to the Balance Sheet as on 31-03-2010 for the period relevant to the assessment year under appeal. A perusal of the Balance Sheet shows that own interest free funds of the assessee are much more than the investment made. This

factual position has not been disputed by the Department. Therefore, following the decision of Hon'ble Bombay High Court in the case of Commissioner of Income Tax Vs. HDFC Bank Ltd. (supra) the disallowance made under Rule 8D(2)(ii) qua interest expenditure is deleted. Accordingly, ground No. 2 raised in the appeal is partly allowed in the terms aforesaid.

24. In ground No. 3 of the appeal the assessee has assailed disallowance of expenditure on repairs to building Rs.31,76,360/-. The expenditure disallowed on various items is as under :

Sr. No.	Details of expenditure	Amount
1	Renovation of Ganesh temple at Saswad	12,30,490
2	Renovation of manufacturing office at Saswad plant	6,42,218/-
3	Repairing of floor patch work, repairing of garden beds, brick wall & plaster work, repairing of paving block	6,62,319
4	Renovation work for DGM offices at Saswad plant	6,41,333
	Total	31,76,360

A perusal of above list of expenditure shows that the expenditure at Sr. No. 3 relates to repairs of floor patch work, garden beds, brick wall & plaster work, paving block etc. The nature of work carried out clearly falls with the meaning of repairs as no new asset has come into existence nor any enduring benefit is shown to have received by assessee. As far as the other expenditure at Sr. Nos. 1, 2 and 4 we concur with the findings of authorities below in holding the expenditure as capital in nature. Accordingly, we uphold the findings of authorities below qua addition of Rs.25,14,041/- (Rs.31,76,360/- - Rs.6,62,319/-). Thus, the assessee gets relief of Rs.6,62,319/-. The ground No. 3 raised in the appeal is partly allowed.

25. The ground No. 4 of the appeal is general in nature, hence, requires no adjudication.

26. In the result, the appeal of assessee in ITA No. 1990/PUN/2016 is partly allowed in the terms aforesaid.

27. To sum up, the appeal of the assessee in ITA No. 1988/PUN/2016 is partly allowed, ITA No. 1989/PUN/2016 is dismissed and ITA No. 1990/PUN/2016 is partly allowed.

Order pronounced on Friday, the 30th day of November, 2018.

Sd/-
(R.S. Syal)
VICE PRESIDENT

Sd/-
(Vikas Awasthy)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 30th November, 2018

RK

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त (अपील) / The CIT(A)-7, Pune
4. The Pr. C.I.T.-6, Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" बेंच,
पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति // True Copy//

आदेशानुसार / BY ORDER,

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