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

श्री डी. करुणाकरा राव,लेखा सदस्य, एवं श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष
BEFORE SHRI D. KARUNAKARA RAO, AM AND SHRI VIKAS AWASTHY, JM

आयकर अपील सं. / ITA Nos.1205 & 1206/PUN/2016
निर्धारण वर्ष / Assessment Years : 2010-11 and 2011-12

Force Motors Limited,
Mumbai Pune Road,
Akurdi, Pune – 35
PAN : AAACB7066L .....अपीलार्थी / Appellant

बनाम / V/s.

DCIT, Circle-9,
Pune .....प्रत्यर्थी / Respondent

आयकर अपील सं. / ITA Nos.1412 & 1413/PUN/2016
निर्धारण वर्ष / Assessment Years : 2010-11 and 2011-12

DCIT, Circle-9,
Pune .....अपीलार्थी / Appellant

बनाम / V/s.

Force Motors Limited,
Mumbai Pune Road,
Akurdi, Pune – 35
PAN : AAACB7066L .....प्रत्यर्थी / Respondent

Assessee by : Shri Mukesh M. Patel
Revenue by : Dr. Vivek Aggarwal

सुनवाई की तारीख / Date of Hearing : 25.06.2018
घोषणा की तारीख / Date of Pronouncement : 18.07.2018

आदेश / ORDER

PER D. KARUNAKARA RAO, AM:

There are 2 sets of cross appeals filed by the Assessee and the Revenue. ITA Nos. 1205 & 1206/PUN/2016 are filed by the assessee and ITA Nos. 1412 & 1413/PUN/2016 are filed by the Revenue against the separate orders of CIT(A)-6, Pune commonly dated 30-03-2016 for

the A.Yrs. 2010-11 and 2011-12. Assessee raised similar grounds of appeal for both the assessment years under consideration.

We shall first take up the cross appeals for the A.Y. 2010-11.

ITA No.1205/PUN/2016 – By Assessee
A.Y. 2010-11

2. Assessee raised grounds on couple of issues, i.e.(1) disallowance of Amortization of lease charges; and (2) Disallowance u/s.14A of the Act.

3. Before us, the first issue relating to amortization of lease charges amounting to Rs.4,29,835/- was not pressed by the Ld. Counsel for the assessee. Accordingly, the said ground No.1 is dismissed as 'not pressed'. Ground No.3 being general in nature is dismissed.

4. The ground raised by the assessee with regard to disallowance of expenditure of Rs.1,33,82,121/- u/s.14A of the Act reads as under :

"2. Disallowance u/s.14A of the Act.

(a) The Ld.CIT(A) erred in disallowing the expenditure of Rs.1,33,82,121/- u/s.14A by applying rule 8D, without establishing any nexus between the exempt income and expenditure in relation to such income.

(b) The Ld.CIT(A) ought to have appreciated that only such investment which have resulted in earning of exempt income should be considered for calculation of disallowance under Rule 8D. Therefore, it is prayed that the Ld. AO be directed to exclude the following investments for the purpose of computing "average value of investments" as required in Rule 8D(ii) of the Rules.

- *Investments on which no dividend has been earned during the year under consideration or capable of giving any dividend income.*

- *Investment on which taxable income has been earned.*

- *Strategic investments in allied line of business, the intention of investment wherein was not to earn dividend income.*

5. Relevant facts include that assessee is a company and engaged in the business of manufacture and sale of LCV, utility vehicles, three wheelers, tractors and spare parts thereof. Assessee filed the return of income on 29-09-2010 declaring total income of Rs.42,75,76,770/- u/s.115JB of the Act. Assessee earned exempt income of Rs.6,94,375/- from sale of shares of ICICI Bank Ltd. valuing Rs.26,96,250/- and claimed the said income as exempt u/s.10(34) of the Act. Assessee claimed expenditure of Rs.20,999/- for earning the said exempt income. Assessee made strategic investment and did not earn any dividend income from the said strategic investments. However, the AO applying the provisions of section 14A r.w. Rule 8D2(ii) of the Act made addition of Rs.1,33,82,121/-. In the First Appellate proceedings, the CIT(A) sustained the addition made by the AO.

6. Aggrieved with the order of CIT(A) the assessee is in appeal before the Tribunal with the ground extracted above.

7. At the outset, Ld. Counsel for the assessee submitted that the assessee made a suo moto disallowance of Rs.20,999/- and followed a analytical method in quantifying the same. However, AO did not appreciate the fact that the exempt income is only Rs.6,94,375/- and however, AO quantified the disallowance at a very high figure of Rs.1.34 crore relying on various decisions. The same is not sustainable. Ld. Counsel for the assessee relied on the decision of Pune Bench of the Tribunal in the case of Rajmal Lakhichand Vs. JCIT, dated 28-02-2018 reported as (2018) 92 taxmann.com 94 (Pune. Trib) – (where both of us are parties to it), and submitted that disallowance u/s.14A r.w. Rule 8D(2) should not exceed the exempt income earned by the assessee.

8. On hearing both the sides on the limited legal issue, we find the case of the assessee is covered by virtue of the decision of Pune Bench of the Tribunal in the case of Rajmal Lakhichand (supra). The said ratio of the Tribunal is relevant to the facts of the present case for the proposition that "where the assessee had not received any tax free income during assessment year under appeal, no disallowance u/s.14A read with Rule 8D was called for. The contents of Para No.32 of the order of Tribunal are relevant and the same are extracted as follows :

> *"32. Now we proceed on to decide the remaining grounds raised in appeal by the Revenue.*
>
> *In ground No. 2 of the appeal, the Revenue has assailed the deletion of disallowance Rs.6,21,87,028/- made u/s. 14A r.w.Rule 8D of the Act. As per the contention of the assessee, the assessee had invested Rs.1,00,44,15,900/- over a period of time in its group companies. The assessee has not received any dividend from the said companies in the period relevant to the assessment years under appeal. This fact has not been re-butted by the Revenue.* ***The Special Bench of the Tribunal in the case of ACIT Vs. Vireet Investment (P) Ltd.(supra) has held that no disallowance u/s.14A r.w. Rule 8D(2)(iii) can be made where no exempt income from investment is received during the year.*** *In other words, only those investments are to be considered for computing average value of investments under Rule 8D(2)(iii) which yield exempt income during the year. Similar view has been taken by Pune Bench of the Tribunal in the case of Shri Goyal Ishwarchand Kishorilal Vs. JCIT in ITA No. 422/PN/2013 decided on 26.06.2014. The Tribunal after placing reliance on the decisions in the case of CIT Vs. Shivam Motors Pvt. Ltd. in ITA No.88/2014 decided on 05.05.2014 by Hon'ble Allahabad High Court and CIT Vs. Lakhani Marketing in ITA No.970/2008 decided on 02.09.2014 by the Hon'ble Punjab & Haryana High Court, held as under:*
>
> > *"9.4 Since in the instant case the assessee has not received any dividend income out of the shares held as investment and since no disallowance u/s. 14A has been made in the preceding as well as succeeding assessment years, therefore, we agree with the contention of the Ld. Counsel for the assessee that no disallowance u/s.14A can be made under the facts and circumstances of the case. Accordingly, the order of the CIT(A) is set aside and the Assessing Officer is directed to delete the disallowance of Rs.5,86,962/- made u/s.14A. Ground raised by the assessee is accordingly allowed."*
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> *Thus, in view of the undisputed fact that the assessee has not received any tax free income during the assessment year under appeal and decisions referred above, we hold that no disallowance u/s. 14A r.w.Rule 8D is called for during the assessment year under appeal. We do not see any infirmity in the findings of Commissioner of Income Tax (Appeal) in*

deleting the said disallowance. Accordingly, ground No. 2 raised in appeal by the Department is dismissed."

9. Considering the same, we are of the opinion that the matter should be remanded to the file of CIT(A) for deciding the applicability of relevant law and restrict the disallowance to the exempt income which formed part of the total income of the assessee. Accordingly, the Ground No.2 raised by the assessee is allowed protanto.

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

ITA No.1412/PUN/2016 – By Revenue
A.Y. 2010-11

11. Grounds raised by the Revenue read as under :

"1. Whether on the facts and in the circumstances of the case and in law, the Ld.CIT(A) was justified in accepting assessee's claim of Rs.55,97,541/- being expenditure pertaining to year under consideration which was not claimed by the assessee at the time of filing of return of income.

2. Whether on the facts and in the circumstances of the case and in law, the Ld.CIT(A) was justified in deleting the addition on account of underestimate of sale of scrap".

3. The appellant craves leave to add, amend or alter any of the above grounds of appeal."

12. Ground No.1 relates to claim of expenditure amounting to Rs.55,97,541/- for the year under consideration but accounted for in the subsequent years. Relevant facts include that assessee claimed expenses of Rs.49,24,466/- and Rs.11,20,980/- pertaining to the year under consideration but accounted in F.Yrs. 2010-11 and 2011-12 in the year of receipt. Assessee claimed that these bills were received subsequently after the year end of the relevant preceding year and

hence, the same could not be accounted in the relevant accounting year. He also stated that the same is not even reflected through the revised returns. These expenditures have not been debited to the profit and loss account of the year under consideration but booked as prior period expenses in the subsequent accounting years. AO denied the said claim of the assessee relying on the judgment of Hon'ble Supreme Court in the case of Goetz India Ltd. Vs. CIT 284 ITR 323 (SC).

13. In the First Appellate proceedings, the CIT(A) allowed the claim of the assessee by holding as under :

> *"5.9.2 In the present case, the expenditure pertaining to the current year has been accounted in the subsequent years but not claimed as a expense in the returns filed for those years as prior period expense. The claim for allowing these expenditure was made before the AO who could not admit the same, in view of the Supreme Court decision.* ***However, in view of the decision of the Bombay High Court in the case of Pruthvi Borkers and Shareholders Pvt. Ltd. such claims can be entertained by the appellate authorities.*** *Following the jurisdictional High Court decision, the claim made by the appellant is admitted and the same is allowed as expenditure for the current year, as the expenses relate to the current year though accounted in the subsequent years. The AO is directed to ensure that these expenses have not been claimed in the returns filed for the subsequent years. Subject to this, the ground is allowed."*

14. Aggrieved with the order of CIT(A), the Revenue is in appeal before the Tribunal.

15. Ld. DR for the Revenue relied on the order of the AO.

16. At the outset, Ld. Counsel for the assessee filed the details of expenses incurred in the year under consideration but accounted in the subsequent years. Page 4 of the paper book contains the said details. Ld. Counsel submitted that the assessee is a big company and the bills for certain expenses could not be received in the year under consideration. Hence, they are neither debited in the profit and loss

account nor shown in the return of income/revised returns of income. Ld. Counsel for the assessee submitted that the books of account of the assessee company are audited u/s.44AB of the Act. The expenses are accounted for in the subsequent account years as prior period expenses. Therefore, the claim of the assessee should be allowed by virtue of the judgment in the case of CIT Vs. Pruthvi Brokers and Shareholders Pvt. Ltd. 23 taxman.com 23 (Bom.) which was rightly considered by the CIT(A). Thus, Ld. Counsel prayed for confirming the order of CIT(A).

17. After hearing both the sides on this issue of allowing prior period expenses accounted in the subsequent years, we find the CIT(A) has rightly applied the ratio laid down in the case of CIT Vs. Pruthvi Brokers and Shareholders Pvt. Ltd. 23 taxman.com 23 (Bom.). Therefore, considering the binding judgment of the Hon'ble Bombay High Court, we are of the view that this issue should be remanded to file of AO. AO is directed to examine the details furnished by the assessee at page 4 of the paper book regarding the genuineness of expenditure and the reasons for not receiving the bills in time, and not including the expenses in the returns of income for the A.Yrs. 2010-11 and 2011-12, as the case may be. Needless to say, the AO shall grant reasonable opportunity of being heard to the assessee in accordance with the set principles of natural justice. Accordingly, Ground No.1 raised by the Revenue is allowed for statistical purposes.

18. Ground No.2 raised by the Revenue relates deletion of addition made by the AO on account of sale of scrap. Relevant facts include that the assessee during the year under consideration sold scrap of 6157.48 MT valuing Rs.8,13,56,983/-. The scrap includes ferrous and non-

ferrous items and the average realization of Rs.13,212/- per MT. AO worked out the scrap which led to an average price of Rs.12,389/- as against Rs.13,212/- claimed by the assessee. ventually, the AO considering the market value of the scrap, profit margin, transport charges, burning loss etc. concluded that the assessee understated the sale of scrap by Rs.4/- per kg which works out to Rs.2,22,45,680/-.

19. In the First Appellate proceedings, the CIT(A) found fault with the manner of his calculation. The CIT(A) concluded that the AO did not read the tables in the Indian Minerals year book, 2011 where the prices of Steel bars, MS Angles, MS Squares, Scrap, Induction Ingots etc. are mentioned for each of the items. He opined that income on sale of scrap of such ferrous and non-ferrous items cannot be estimation on such presumption. AO did not compare the scrap dealers who are into the similar business. AO also has not proper analysis rates at which the assessee purchases the scrap with the rates with the other manufacturers. Eventually, the CIT(A) deleted the addition in the hands of the assessee.

20. Aggrieved with the order of CIT(A) the Revenue is in appeal before the Tribunal.

21. Ld. DR for the Revenue relied on the order of the AO.

22. We heard both the sides and perused the reasoning given by the CIT(A) on this issue and find it relevant to extract the same. The said finding is reproduced as under :

> *"5.10.2 The scrap is generally melted in either the induction furnace or in the Arc furnace to make steel ingots. These ingots are then rolled into billets which are further rolled or forged to make angles, squares etc., which are actually marketed. The Indian Mineral book indicates melting scrap to be Rs.18,121/- per MT and the induction ingot to be of the price of Rs.23,244/- in the Mumbai market (i.e. closest to the appellant company in Pune). The appellant had sold ferrous scrap an average price of Rs.12,389/- per MT. Considering the margins for the scrap dealers and the transportation involved there is not much difference between the price sold by the appellant company and the value in the Mumbai market.*
>
> *5.10.3 In the matters of taxation, the incomes have to be arrived based on the amounts received by the party and not on the amounts that ought to have been realized by the party. If there is any doubt regarding the genuineness of the transactions entered by the party, it is incumbent on the AO to make further inquiries and reasonably arrive that the party had received amounts more than specified in the contract. Only in such cases, the additional amounts so received can be brought to tax. The AO cannot sit in judgment over the manner in which the assessee should carry his business. He also cannot sit in judgment that the assessee should sell the goods at certain rates. There could be hundreds of reasons as to why the assessee had to sell the goods at the price which he feels appropriate. The AO can only interfere in the transaction entered by the assessee, if he finds it to be collusive transaction. In the present case the AO has not established it to be collusive transaction between the appellate company and the scrap purchasers, so as to alter the transactions saying that the company should have sold it for a higher price. The AO has also not established that the appellant company or its directors/employees have received money more than what is mentioned in the books of accounts. So the addition made by the AO on conjectures and surmises cannot be sustained. The addition made on this ground is deleted."*

23. We find the reasoning given by the CIT(A) is based on proper appreciation of facts. We also perused the ledger extract furnished by the assessee which are placed at pages 8 to 24 as well as pages 59 to 84 of the paper book. We have also perused the Metallurgical Guidelines issues by the Ministry of Mines in the Indian Minerals Yearbook, 2011 where the melting scrap for the year 2009-10 is indicated as 19133 per tonne. Considering the same, the rates of scrap per Metric Tonne shown by the assessee are within the prescribed limits. We also perused the comparative chart on sale of scrap (Page 88 of the paper book) by United Steel, R. M. Pathak, Gems Enterprises, Pathak Steel Industries, Geeta Steels and Nageshwar Steels as well as the comparative quotes of various scrap dealers placed at pages 88 to 112 of the paper book.

Considering all the above evidences placed by the assessee, We hold that assessee has not understated the sale of scrap in any manner and AO failed to establish with cogent evidences. AO only proceeded to make addition on surmises and conjectures. Therefore, we uphold the order of CIT(A) deleting the addition on this issue. Accordingly, the Ground No.2 raised by the Revenue is dismissed.

24. In the result, the appeal of the Revenue is partly allowed for statistical purposes.

Now we shall take up the cross appeals for A.Y. 2011-12.

ITA No.1206/PUN/2016 – By Assessee
A.Y. 2011-12

25. We find the grounds, issues, decision of AO/CIT(A), arguments of the parties are common to the appeal of the assessee for A.Y. 2010-11. Therefore, our decisions in appeal No.1205/PUN/2016 shall apply to this assessment year as well. Accordingly, the Ground No.1 raised by the assessee is dismissed as 'not pressed'. Ground No.2 raised by the assessee is allowed pro tanto.

26. In the result, appeal of the assessee is partly allowed.

ITA No.1413/PUN/2016 – By Revenue
A.Y. 2011-12

27. We find the grounds, issues, decision of AO/CIT(A), arguments of the parties are common to the appeal of the Revenue for A.Y. 2010-11. Therefore, our decisions in appeal No.1412/PUN/2016 shall apply to this assessment year as well. Accordingly, the Ground No.1 raised by

the Revenue is allowed for statistical purposes. Ground No.2 raised by the Revenue dismissed.

28. In the result, appeal of the Revenue is partly allowed for statistical purposes.

29. To sum up, the appeals of the assessee are partly allowed and the appeals of the Revenue are also partly allowed for statistical purposes.

Order pronounced on 18th day of July, 2018.

Sd/-	Sd/-
(विकास अवस्थी /VIKAS AWASTHY)	**(डी. करुणाकरा राव/D. KARUNAKARA RAO)**
न्यायिक सदस्य/JUDICIAL MEMBER	**लेखा सदस्य/ACCOUNTANT MEMBER**

पुणे / Pune; दिनांक / Dated : 18th July, 2018.
Satish

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

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

आदेशानुसार / BY ORDER,

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