

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH “B”, PUNE – VIRTUAL COURT

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

ITA No.2370/PUN/2017
निर्धारण वर्ष / Assessment Year : 2012-13

Mahavir Steel Industries Ltd.,
Khandelwal Jain & Associates,
Alankar Cinema Building,
First Floor, Above United Bank,
Pune – 411001

PAN : AABCM1744K

.....अपीलार्थी / Appellant

बनाम / V/s.

The Asst. Commissioner of Income Tax,
Circle 9, Pune

.....प्रत्यर्थी / Respondent

Assessee by : Shri Sarvesh Khandelwal
Revenue by : Shri Ajay Dhoke, Addl.CIT

सुनवाई की तारीख / Date of Hearing : 17-07-2020
घोषणा की तारीख / Date of Pronouncement : 17-07-2020

आदेश / ORDER

PER S.S. VISWANETHRA RAVI, JM :

This appeal by the assessee is against the order dated 02.08.2017 passed by the Commissioner of Income-tax (Appeals)-6, Pune for assessment year 2012-13.

2. The only issue to be decided is as to whether the CIT(A) is justified in confirming the disallowance made by the Assessing Officer by invoking Rule 8D(2)(ii) & (iii) of the Income-tax Rules, 1962 (hereinafter referred to as ‘the Rules’) in the facts and circumstances of the case.

3. The brief facts relating to the issue are that the assessee is a company and engaged in the business of manufacturing of rolled structural steel products and machinery. The assessee filed return of income declaring a total income of Rs.17,59,79,870/- and under scrutiny, the Assessing Officer determined the same at Rs.17,68,15,790/-, *inter-alia*, making disallowance for the purpose of section 14A of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') by invoking Rule 8D(2) of the Rules to an extent of Rs.6,12,379/- vide his order dated 12.03.2015. The CIT(A) confirmed the same.

4. Heard both the parties and perused the material available on record. The contention of Ld. AR Shri Sarvesh Khandelwal is that the assessee has sufficient Reserves funds to an extent of Rs.92,84,26,657/- as on 31.03.2012 and the investments made only at Rs.2,76,79,111/- and argued that the investments made thereon are less than the Reserve funds and the disallowance made under Rule 8D(2)(ii) of the Rules is to be deleted. The Ld. AR placed reliance on the decision of Hon'ble High Court of Bombay in the case of CIT Vs. HDFC Bank Ltd. reported as 366 ITR 505 (Bom) and referred to the order of this Tribunal dated 22.07.2016 in ITA No.1437/PUN/2014 for A.Y. 2009-10 in assessee's own case. We find the facts of the present case are similar to the facts of the appeal in A.Y. 2009-10, wherein this Tribunal by placing reliance on the decision of Hon'ble High Court of Bombay in the case of CIT Vs. HDFC Bank Ltd. (supra) held that if the interest free funds were sufficient to meet the investments, then presumption would arise that investments would be out of interest free funds. As discussed above, the Balance Sheet as on 31.03.2012 clearly shows Share Capital and Reserves & Surpluses Fund of Rs.92,84,26,657/-

and investments are only at Rs.2,76,79,111/-. Therefore, it is clearly established the investments are far below the Reserves & Surpluses and thus, a presumption can safely be drawn that the assessee made investments out of Reserves & Surpluses in terms of decision of the Hon'ble High Court of Bombay in the case of CIT Vs. HDFC Bank Ltd. (supra). Thus, the disallowance made under Rule 8D(2) of the Rules is deleted.

5. Regarding Rule 8D(2)(iii) of the Rules, there was nothing on record that the assessee made disallowance on its own in earning the exempt income. Therefore, in our opinion, that the disallowance made by the Assessing Officer as confirmed by the CIT(A) is to be sustained. The Ld. DR Shri Ajay Dhole, Addl.CIT submitted that the assessee itself stated that no expenditure has incurred towards making the investments and the addition made under Rule 8D(2)(iii) of the Rules is to be upheld and supported the order of CIT(A). As discussed above and in view of the submissions of Ld. DR, we hold that the disallowance made under Rule 8D(2)(iii) of the Rules to an extent of Rs.1,17,760/- is sustained. Thus, sole ground raised by the assessee is partly allowed.

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

Order pronounced in the open court on 17th July, 2020.

Sd/-
R.S. SYAL
VICE PRESIDENT

Sd/-
S.S. VISWANETHRA RAVI
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 17th July, 2020
GCVSR

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. DR, ITAT, "B" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

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

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