

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

आयकर अपील सं. / ITA No.405/PUN/2018

निर्धारण वर्ष / Assessment Year : 2013-14

Kopergaon Peoples Cop. Bank Ltd., Bank Road, Kopergaon, Ahmednagar – 423601 PAN : AAAAK2255J	Vs.	ACIT, Ahmednagar Circle, Ahmednagar
Appellant		Respondent

Assessee by Shri C.H. Naniwadekar
Revenue by Shri Sudhendu Das

Date of hearing 31-08-2021
Date of pronouncement 31-08-2021

आदेश / ORDER

PER R.S.SYAL, VP :

This appeal by the assessee is directed against the order passed by the CIT(A)-2, Pune on 13-10-2017 in relation to the assessment year 2013-14.

2. The first ground is against the partial relief allowed against the disallowance made u/s.14A of the Income-tax Act, 1961 (hereinafter also called 'the Act').

3. Briefly stated, the facts of the case are that the assessee earned an exempt income of Rs.80,837/- in the form of dividend on mutual funds. No disallowance was offered u/s.14A of the Act. Applying the mandate of rule 8D of the Income-tax Rules, 1962, the Assessing Officer (AO) computed the disallowance at Rs.5,27,069/-. The Id.

CIT(A) allowed relief in part and sustained the disallowance at Rs.5,16,350/-. Aggrieved thereby, the assessee has come up in appeal before the Tribunal.

4. Having heard both the sides through virtual court and gone through the relevant material on record, it is found as an admitted position that the assessee earned exempt of Rs.80,837/-. The Hon'ble Delhi High Court in *Cheminvest Ltd. vs. CIT (2015) 378 ITR 33 (Del)* has held that if there is no exempt income, there can be no question of making any disallowance u/s 14A of the Act. Similar view has been taken by the Hon'ble Delhi High Court in *CIT vs. Holcim India P. Ltd. (2014) 90CCH 081-Del-HC*. Taking this proposition further, the Hon'ble jurisdictional High Court in *Pr. CIT VS. HSBC Invest Direct (India) Ltd. (2020) 421 ITR 125 (Bom)* has held that disallowance u/s 14A cannot exceed the amount of exempt income. Considering the *ratio* laid down in the case of *HSBC Invest Direct (India) Ltd. (supra)*, we order to sustain the disallowance at Rs.80,837/-.

5. The second ground is against the confirmation of addition of interest u/s.244A of the Act amounting to Rs.3,30,210/-.

6. The facts apropos this ground are that the assessee received during the previous year relevant to the assessment year under consideration interest on income-tax refund amounting to

Rs.3,30,210/- u/s.244A of the Act pertaining to the assessment year 2010-11. The same was not offered to tax in the return filed for the year. On being called upon to explain as to why such interest was not offered, the assessee submitted that no information about such interest was received in this regard. On verification of the record, the Assessing Officer noticed that the refund including interest of Rs.3,30,210/- was adjusted against the demand. Since the refund was issued and received, the AO included the interest component of Rs.3,30,210/- in the total income. No relief was allowed in the first appeal.

7. Having heard both the sides and gone through the relevant material on record, it is seen as an admitted position that the assessee did receive income-tax refund for the assessment year 2010-11 in the previous year relevant to the assessment year under consideration. Though such refund was not actually passed on to the assessee but the same was adjusted against the tax demand. The fact that the assessee did receive interest on income-tax refund during the year under consideration, the same is chargeable to tax. We, therefore, uphold the impugned order on this score. This ground fails.

8. The assessee has raised an additional ground reading as under:

“1. The learned AO erred on facts and in law in making addition of input credit of service tax which is written off by the assessee as ineligible amounting to Rs.6,04,871/- contending

the same as prior period expense without appreciating the facts and submissions made in this behalf.”

9. The Hon'ble Supreme Court in *National Thermal Power Company Ltd. Vs. CIT (1998) 229 ITR 383 (SC)* has observed that “the purpose of the assessment proceedings before the taxing authorities is to assess correctly the tax liability of an assessee in accordance with law. If, for example, as a result of a judicial decision given while the appeal is pending before the Tribunal, it is found that a non-taxable item is taxed or a permissible deduction is denied, we do not see any reason why the assessee should be prevented from raising that question before the tribunal for the first time, so long as the relevant facts are on record in respect of that item”. Answering the question posed before it in affirmative, their Lordships held that on the facts found by the authorities below, if a question of law arises (though not raised before the authorities) which has bearing on the tax liability of the assessee, the Tribunal has jurisdiction to examine the same. Having gone through the subject matter of the additional ground espoused by the assessee, it is discernible that the same raises a pure question of law. We, therefore, admit the same and take it up for disposal on merits.

10. On going through the detail of Prior period expenses, the AO observed that the assessee debited the service tax and Cenvat credit

amounting to Rs.6,04,871/- pertaining to F.Y. 2011-12. As this amount pertained to the preceding year, the AO made disallowance. The assessee did not challenge such disallowance before the ld. CIT(A). However, it is through this additional ground that the assessee has raked up this issue at the stage of the Tribunal. In view of the fact that the details of input credit of service tax etc., which were disallowed by the AO, are not available before the Tribunal and further the issue has not passed through the eyes of the ld. CIT(A), the ld. AR requested that the matter may be sent back to the file of ld. CIT(A) for consideration and decision. No serious objection was taken by the ld. DR to this situation. Having regard to the rival but common submission, we remit this matter to the file of ld. CIT(A) for deciding it on merits as per law after allowing reasonable opportunity to the assessee.

11. In the result, the appeal is partly allowed.

Order pronounced in the Open Court on 31st August, 2021.

Sd/-
(S.S. VISWANETHRA RAVI)
JUDICIAL MEMBER

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

पुणे Pune; दिनांक Dated : 31st August, 2021
सतीश

आदेश की प्रतिलिपि □ प्रेषित/Copy of the Order is forwarded to:

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The CIT(A)-2, Pune
3. The Pr.CIT-1, Pune
4. DR, ITAT, 'B' Bench, Pune
5. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

// True Copy //

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

		Date	
1.	Draft dictated on	31-08-2021	Sr.PS
2.	Draft placed before author	31-08-2021	Sr.PS
3.	Draft proposed & placed before the second member		JM
4.	Draft discussed/approved by Second Member.		JM
5.	Approved Draft comes to the Sr.PS/PS		Sr.PS
6.	Kept for pronouncement on		Sr.PS
7.	Date of uploading order		Sr.PS
8.	File sent to the Bench Clerk		Sr.PS
9.	Date on which file goes to the Head Clerk		
10.	Date on which file goes to the A.R.		
11.	Date of dispatch of Order.		

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