IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "B", PUNE

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER
AND
SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.310/PUN/2019
निर्धारण वर्ष / Assessment Year : 2014-15

ZF Steering Gear (India) Ltd., Gat No.1242/44, Village: Vadu Badruk, Taluka: Shirur, District: Pune- 412216. PAN : AAACZ0549G	Vs.	DCIT, Central Circle-1(1), Pune.
Appellant		Respondent

Assessee by	:	Shri Nikhil Pathak
Revenue by	:	Shri M. G. Jasnani
Date of hearing	:	18.01.2023
Date of pronouncement	:	07.02.2023

आदेश / ORDER

PER INTURI RAMA RAO, AM:

This is an appeal filed by the assessee directed against the order of ld. Commissioner of Income Tax (Appeals)-11, Pune ['the CIT(A)'] dated 11.01.2019 for the assessment year 2014-15.

2. The appellant raised the following grounds of appeal :-

"1. The learned Commissioner of Income Tax (Appeals) -11, Pune ['the Id. CIT(A)'] has erred in law in upholding disallowance of expenses made u/s 14A of the Income Tax Act, 1961 ('the Act') applying Rule 8D of the Income Tax Rules 1962 ('the Rules'). The ld. CIT(A) ought to have appreciated the fact that the provisions of sub-section (2) of section 14A of the Act could be invoked only if the ld. AO, having regard to the accounts of the assessee, was not satisfied with the correctness of the claim of the assessee in respect of such expenditure in relation to income which does not form part of the total income

under the Act. The ld. AO has not brought on record dissatisfaction about the reasonableness of indirect expenses disallowed by the appellant in the return of income u/s 14A of the Act.

2. Without prejudice to the Ground No. 1, the ld. CIT(A) has erred in law and on facts in not reducing the amount of strategic investments from the average value of investments while calculating disallowance under Rule 8D(2)(iii) of the Rules. [Amount of disallowance of expenses - Rs.25,59,498/-]

3. The ld. CIT(A) has erred in law in confirming disallowance of the claim of additional depreciation of Rs. 15,64,711/- to the extent of 50% in respect of plant & machineries acquired and installed in immediately preceding financial year 2012-13 for less than 180 days.

4. The ld. CIT(A) has erred in law and on facts in holding that subsidy received from the Government of Maharashtra under Package Scheme of Incentive, 2007 to be reduced from the actual cost of asset applying explanation 10 to section 43(1) of the Act and depreciation to that extent should be disallowed. [Amount of disallowance of depreciation - Rs. 9,82,175/-]

5. The ld. CIT(A) has erred in law and on facts in confirming disallowance of the claim of expenses of Rs.24,33,339/- towards amortisation of leasehold premium paid in respect of land acquired from Gujarat Power Corporation Limited, Gujarat for Solar project on leasehold basis."

3. The appellant also raised the following additional ground of appeal :-

"1] The assessee submits that the investments which did not yield any exempt income during the year under consideration should be reduced while computing the disallowance u/s 14A r.w.r. 8D."

4. Briefly, the facts of the case are as under :-

The appellant is a company incorporated under the provisions of the Companies Act, 1956. It is engaged in the business of manufacturing mechanical and power steering gears & spares thereof for commercial vehicles, passengers-buses, multi-utility

vehicles, passenger-cars and tractors. The Return of Income for the assessment year 2014-15 was filed on 29.11.2014 declaring total income of Rs.42,58,29,650/-. Against the said return of income, the assessment was completed by the Dy. Commissioner of Income Tax, Central Circle-1(1), Pune ('the Assessing Officer') vide order dated 28.12.2016 passed u/s 143(3) of the Income Tax Act, 1961 ('the Act') after making the following disallowances :-

Sr.	Nature of disallowance/ addition	Amount (Rs.)
1	Disallowance of expense u/s 14A r.w. Rule 8D	32,38,180/-
2	Treatment of carbon credit income as revenue in nature	2,60,534/-
3	Disallowance of claim of balance additional depreciation in respect of plant & machinery	15,64,711/-
4	Treatment of subsidy received from Govt. of Maharashtra under PSI-2007 as revenue in nature	65,47,833/-
5	Disallowance of lease premium amortization expenses	26,33,339/-

5. Being aggrieved by the above disallowances, an appeal was filed before the ld. CIT(A), who vide impugned order confirmed addition u/s 14A and also confirmed the disallowance of claim for allowance of balance of additional depreciation in the subsequent assessment year. However, the ld. CIT(A) held that the subsidy received by the appellant company from the Government of Maharashtra under Package Scheme of Incentive, 2007 is capital in

nature, but directed the Assessing Officer to reduce the same from the actual cost of the depreciable asset for the purpose of allowing the depreciation. The ld. CIT(A) also confirmed the addition on account of amortization of leasehold premium paid.

6. Being aggrieved by the decision of the ld. CIT(A), the appellant is in appeal before us in the present appeal.

7. Ground of appeal no.1 was not pressed during the course of hearing of appeal, same stands dismissed as not pressed

8. Ground of appeal no.2 challenges the methodology of computation of disallowance u/s 14A r.w. Rule 8D(2)(iii). We find merit in the contention the appellant that for the purpose of computation of amount of disallowance under Rule 8D(2)(iii), the value of such investments which yielded exempt income alone has to be considered in the light of the decision of the Hon'ble Delhi High Court in the case of in the case of Joint Investments Pvt. Ltd. vs. CIT, 374 ITR 694 (Delhi), the decisions of Hon'ble Madras High Court in the cases of ACB India Ltd. Vs. Assistant Commissioner of Income Tax, Marg Ltd. Vs. CIT, 318 CTR (Mad.) 148 and CIT Vs. Shriram Ownership Trust 318 CTR (Mad.) 233 and also by the Hon'ble Karnataka High Court in the case of Pragathi Krishna Gramin Bank Vs. Jt.CIT, 95 Taxman.com 41

(Kar.). Therefore, we remand the issue of computation of disallowance under Rule 8D(2)(iii) to the file of the Assessing Officer with the direction to compute the value of those investments which yielded the exempt income alone for the purpose of computing the average value of investments. Thus, this ground of appeal no.2 raised by the assessee stands partly allowed for statistical purposes.

9. Ground of appeal no.3 challenges the disallowance of claim for allowance of balance of additional depreciation not allowed in the preceding year on the ground that the asset was not put to use for less than 180 days. This issue is no longer *res integra* as it was decided by the Hon'ble Jurisdictional High Court in the case of PCIT vs. M/s. Godrej Industries Ltd. (Income Tax Appeal No.511 of 2016 dated 24.11.2018) following the decision of the Hon'ble Karnataka High Court in the case of CIT vs. Rittal India Pvt. Ltd., 380 ITR 423 (Karnataka) and the decision of the Hon'ble Madras High Court in the case of CIT vs. Shri T. P. Textiles Pvt. Ltd., 394 ITR 483 (Madras) and also the legislative amendment has been brought by inserting third proviso to clause (ii) of sub-section (1) of section 32 of the Act allowing the benefit of balance of 50% of depreciation in the subsequent year in such situation. Respectfully,

following the above legal positions, this ground of appeal no.3 stands allowed in favour of the assessee company.

10. Ground of appeal no.4 challenges the decision of the ld. CIT(A) in holding that the subsidy received from Government of Maharashtra under Package Scheme of Incentive, 2007 is to be reduced from the actual cost of asset in terms of Explanation 10 to section 43(1) of the Act. This issue stands covered in favour of the assessee company by the decision of the Co-ordinate Bench of this Tribunal in the case of ITO vs. Shriniwas Engineering Auto Components Pvt. Ltd. vide ITA No.2992/PUN/2017 for A.Y. 2014-15 decided on 27.04.2022, wherein, it was held as under :-

> *"10. We heard the rival submissions and perused the material on record. We have carefully gone through the Package Scheme of Incentives, 2007, the preamble of the scheme, extracted above, clearly indicates the intention behind grant of subsidy was to encourage the setting up the new industries in under developed region in the State of Maharashtra. Indisputably, it is not the case of the Assessing Officer that the subsidy is revenue in nature, as the Assessing Officer himself had invoked the provisions of Explanation 10 to section 43(1) of the Act. Therefore, the issue that arises for our consideration in the present appeal is whether the amount of subsidy received from the Government of Maharashtra shall go to reduce the actual costs of assets u/s 43(1) for the purpose of allowing the depreciation u/s 32 of Act. No doubt, the subsidy was granted in terms of the certain percentage of fixed assets to be disbursed in the form of refund of octroi, electricity duty exemption, entry tax refund, VAT etc. over a period of 8 years. Then the next question, that arises for consideration in such circumstances is that, can be it said that subsidy is granted to meet the cost of the actual fixed assets, merely because the amount of subsidy is calculated in term of certain percentage of investment in fixed assets. The Hon'ble Supreme Court had an occasion to consider the identical issue in the case of CIT vs. P.J. Chemicals Ltd., 210 ITR*

830 and after review of the case law on the point, the Hon'ble Supreme Court held as under :-

> *"Where Government subsidy is intended as an incentive to encourage entrepreneurs to move to backward areas and establish industries, the specified percentage of the fixed capital cost, which is the basis for determining the subsidy, being only a measure adopted under the scheme to quantify the financial aid, is not a payment, directly or indirectly, to meet any portion of the 'actual cost. The expression 'actual cost in section 43(1) of the Income-tax Act, 1961, needs to be interpreted liberally. Such a subsidy does not partake of the incidents which attract the conditions for its deductibility from 'actual cost'. The amount of subsidy is not to be deducted from the 'actual cost' under section 43(1) for the purpose of calculation of depreciation etc."*

11. The Hon'ble Gujarat High Court in the case of CIT vs. Swastik Sanitary Works Ltd., 286 ITR 544 (Guj.) following the principle laid down by the Hon'ble Supreme Court in the case of P.J. Chemicals Ltd. (supra) held that the subsidy is intended as an incentive to encourage entrepreneurs to move and establish industries,, the specified percentage of the fixed capital cost, which is the basis for determining the subsidy, being only a measure adopted under the scheme to quantify the financial aid, is not a payment, directly or indirectly, to meet any portion of the "actual cost" as defined under the provisions of section 43(1) of the Act. Similarly, the Hon'ble Bombay High Court in the case of PCIT vs. Welspun Steel Ltd., 264 Taxman 252 followed the ratio of the decision of the Hon'ble Gujarat High Court (supra).

12. As regards to the applicability of Proviso to Explanation 10 to section 43(1) which was inserted in the Statute w.e.f. 1.4.1999 by the Finance Bill (2) of 1998, the Proviso take cares of situation where such subsidy, grant or reimbursement is such nature that subsidy, grant or reimbursement cannot be directly relatable to the assets acquired by an assessee. In such a situation, the Proviso envisages that so much of amount which bears to the total subsidy, reimbursement or grant, the proportion as such assets bears to all the assets in respect of or with reference to which subsidy or grant is so received shall be deducted in the actual cost of the asset of the assessee. Thus, the proviso envisages adjustment of subsidy in the assets of the assessee. In case the subsidy grant is not directly relatable to particular asset. Since in the preceding paras we held that the provisions of Explanation 10 to section 43(1) have no application to the facts of the present case, the question of applicability of Proviso does not arise. In the light of the above, we hold that the amount of subsidy is not to be deducted from the actual cost u/s 43(1) for the purpose of calculation of depreciation and the provisions to Explanation 10 to section 43(1) have no application to the facts of the present case. We are forfeited in taking this view by the decision of the Hon'ble Bombay High Court in the case

of Welspun Steel Ltd. cited supra. This decision being that of Jurisdictional High Court is binding on us. Therefore, it is not necessary for us to deal with the decision of the Hon'ble Delhi High Court in the case of Steel Authority of India Ltd. (supra) and the Hon'ble Karnataka High Court in the case of Shree Renuka Sugars Ltd. (supra) relied upon by the ld. CIT-DR. Therefore, we do not find any merit in the ground of appeal no.2 and 3 filed by the Revenue. Accordingly, ground of appeal no.2 and 3 stands dismissed.

13. The Revenue vide his ground of appeal no.4 seeks finding from the Tribunal that the amount of capital subsidy received should be held as "revenue in nature". At the outset, we find that this ground of appeal no.4 does not arise out of the assessment order neither does arise out of the order of the ld. CIT(A). Further, it is only from the assessment year 2016-17 by enacting the provisions of sub-clause (xviii) to section 2(24) of the Act, the amount of subsidy which is not reduced from the actual cost and is made taxable. The Co-ordinate Bench of this Tribunal in the case of M/s. Alkoplus Producers Pvt. Ltd. vs. DCIT vide ITA No.1129/PUN/2016 for the assessment year 2011-12 and others, order dated 0404.2019 held as follows :-

> *"13. A bare reading of the above provision makes it explicit that now subsidy given by the Central Government or a State Government or any authority etc. for any purpose, except where it is taken into account for determination of the actual cost of the asset under Explanation 10 section 43(1), has become chargeable to tax. Even if a subsidy is given to attract industrial investment or expansion, which is a otherwise a capital receipt under the pre-amendment era, shall be treated as income chargeable to tax, except where it has been taken into account for determining the actual cost of assets in terms of Explanation 10 to section 43(1). This amendment is patently prospective. As the assessment year under consideration is 2011-12 and the amendment is effective from assessment year 2016-17, new hold that section 2(24) (xviii) will have no application."*

Accordingly, Revenue cannot travel beyond the assessment order, hence, we do not find merit in this ground of appeal no.4 raised by the Revenue and the same stands dismissed."

11. Respectfully, following the above legal position, the ground of appeal no.4 stands allowed in favour of the assessee.

12. Ground of appeal no.5 challenges the decision of the ld. CIT(A) in confirming the disallowance of amount of Rs.24,33,339/-

towards amortization of leasehold premium paid in respect of land acquired from Gujarat Power Corporation Limited, Gujarat for Solar Project on leasehold basis. The facts of the claim are as under :

During the financial years 2011-12 and 2012-13, the assessee company acquired on leasehold 1,52,981 sq.mtr. land situated at Gujarat Solar Park from Gujarat Power Corporation Limited ('GPCL') for a sum of Rs.5,07,73,072/- and land development charges of Rs.2,14,86,181/- for a total period of 30 years. Under the said agreement, the appellant is required to pay a very nominal annual rent @ Rs.1 per sq.mtr (i.e. Rs.1,52,981/-) to GPCL. The appellant also claimed amortization of expenses of Rs.26,33,339/- on leasehold land taken for windmill & solar project based on the tenure of lease agreement. The Assessing Officer was of the opinion that amortization of lease premium cannot be allowed as "revenue expenditure", as it is of enduring nature. Even on appeal before the ld. CIT(A), the same was confirmed.

13. Being aggrieved, the appellant is in appeal before us in the present ground of appeal no.5.

14. This issue is no longer *res integra* as it is settled by the decision of the Hon'ble Supreme court in the case of Aditya

Minerals Pvt. Ltd. vs. CIT (236 ITR 39)(SC), wherein, the Hon'ble Apex Court held that lease rent paid for acquiring mining rights is capital in nature and cannot be allowed as a deduction. The relevant paragraph of the said judgment of the Hon'ble Apex Court (supra) is as under :-

> "*4. We find that there is a material difference in the facts of the case of Pingle Industries Ltd. (supra) and the effects of the case of Gotan Lime Syndicate (supra). As the judgment in Gotan Lime Syndicate's case (supra), relied upon by the assessee, clearly shows, in that case "there is no payment once for all; it is an yearly payment of dead-rent and royalty. It is true that if a capital sum is arrived at and payment is made every year by chalking out the capital amount in various instalments, the payment does not lose its character as a capital payment if the sum determined was capital in nature. But it is an important fact in this case that it is a case of an annual payment of royalty or dead-rent". The judgment adds that the case of Pingle Industries Ltd. (supra) was "distinguishable because, on the facts, it was a lump sum payment in instalments for acquiring a capital asset of enduring benefit to his trade". The Court in Gotan Lime Syndicate's case (supra) took the view that the royalty payment therein was 'not a direct payment for securing an enduring advantage; it has relation to the raw material to be obtained." The Court, thus, accepted the argument on behalf of Gotan Lime Syndicate's case ((supra) that what it got was a right to get lime for ITA Nos.362 to 366/2016 & CO No.2 to 6/Bang/2017 manufacturing and the payment had a direct relation to the amount of lime that was removed.*
>
> *5. In the case before us, as indicated by the lease deed, what was to be paid by the assessee was rent for the land that was leased. It was payable at the rate of Rs. 35 per acre per month. The assessee was required to pay in advance the rent calculated at this rate for the entire period of the lease, i.e., fifteen years, in the form of a 'deposit'. The deposit was "by way of a guarantee for the performance of this lease deed for fifteen years", that is, towards fifteen years' rent. It was adjustable against the rent of each month and it carried no interest. On the facts, as it appears to us, this case is on a par with Pingle Industries Ltd.'s case (supra) and, accordingly, the civil appeals must fail and are dismissed."*

15. In the light of the judgment of the Hon'ble Supreme Court in the case of Aditya Minerals Pvt. Ltd. (239 ITR 817) the impugned amortization of lease premium cannot be allowed as "revenue expenditure". Thus, the ground of appeal no.5 filed by the assessee stands dismissed.

16. In the result, the appeal filed by the assessee stands partly allowed.

Order pronounced on this 07th day of February, 2023.

Sd/-	**Sd/-**
(PARTHA SARATHI CHAUDHURY)	**(INTURI RAMA RAO)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

पुणे / Pune; दिनांक / Dated : 07th February, 2023.

Sujeet

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-11, Pune.
4. The Pr. CIT (Central), Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "**B**" 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.