Maruti Suzuki India Ltd vs Commissioner Of Income Tax-Vi on 26 July, 2024

Author: Yashwant Varma

Bench: Yashwant Varma

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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ ITA 696/2018
MARUTI SUZUKI INDIA LTD .....Appel
Through: Mr. Ajay Vohra, Sr. Adv. wi
Ms. Kavita Jha, Mr. Vaibha
Kulkarni & Mr. Udit Naresh
Advs.

versus

COMMISSIONER OF INCOME TAX-VI .....Respond
Through: Mr. Aseem Chawla, SSC with
Ms. Pratishtha Chaudhary &
Ms. Poshali Dhillon, Advs.

57
+ ITA 735/2019
MARUTI SUZUKI INDIA LTD. .....Appel
Through: Mr. Ajay Vohra, Sr. Adv. wi
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COMMISSIONER OF INCOME TAX .....Respon
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Ms. Poshali Dhillon, Advs.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE RAVINDER DUDEJA

ORDER

% 26.07.2024

1. We have heard Mr. Vohra, learned senior counsel who appears in support of the appeal and Mr. Chawla, learned counsel representing the respondents.

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2. We had in terms of orders dated 04 October 2018 and 19 July 2023 passed in ITA 696/2018 and 735/2019 respectively, admitted these two appeals on the following two questions of law.

> (i) Whether the Income Tax Appellate Tribunal (TTAT') was right in holding that the sales tax subsidy (concession) received by the appellant/assessee was a revenue receipt and not capital receipt, hence, liable to tax.
>
> (ii) Whether the ITAT was justified and correct in remanding the issue of disallowance under Section 14A of the Income Tax Act, 1961 to the Assessing Officer.
>
> (i) Whether the Income Tax Appellate Tribunal [in short, "ITAT"] was right in holding that the sales tax subsidy received by the appellant/assessee was a revenue receipt, and not capital receipt, hence, liable to tax?
>
> (ii) Whether the ITAT was justified and correct in remanding the issue concerning disallowance under Section 14A of the Income Tax Act, 1961 to the Assessing Officer?

3. Undisputedly, insofar as the issue with regard to sales tax subsidy is concerned, the same stands answered in favour of the appellant in terms of a judgment rendered inter partes on 07 December 2017 in ITA 171/2012. We deem it apposite to extract the following from the aforesaid decision:

> "2. While admitting this appeal on 14th May 2013, the following question of law were framed for consideration:
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> (1) Whether on the facts and in circumstances of case, the ITAT was correct in law in deleting the addition/disallowance to the extent of Rs. 2,08,59,280/- on custom duty on import of components for exports purpose?
>
> (2) Whether on the facts and circumstance of case, the ITAT was correct in law in deleting the addition/disallowance relating to custom duty on inventory held in closing stock to the extent of Rs. 23,68,09,186/-?
>
> (3) Whether on the facts and circumstances of case, the ITAT was correct in law in deleting the addition of Rs. 4,65,02,993/-

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(4) Whether on the facts and circumstances of case, the ITAT was correct in law in deleting the addition on account of sales tax subsidy of Rs. 16,04,07,733 made by AO treating it to be revenue receipt?"

> 3. As fas as Question 1, 2 and 3 are concerned, in view of the decision rendered today in ITA 250 of 2005 in respect of the same Assessee for AY 1999-2000, they are answered in the affirmative, i.e in favour of the Assessee and against the Revenue.
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> 4. Question (4) pertains to sales tax subsidy being added to the income of the Assessee by treating it as revenue expenditure. With regard to the very same sales tax subsidy provided in the State of Haryana, pursuant to the Scheme in force in the said State during the AY in question, this Court, in Commissioner of Income Tax v Johnson Matthey India (P) Limited (order dated 13th March 2015 in ITA No. 193 of 2015) answered the said issue in favour of the Assessee and against the Revenue. In that decision, this Court relied on the decision of the Supreme Court in Sahney Steel and Press Works Limited v CIT [1997] 228 ITR 253 (SC) and CIT v. Ponni Sugars and Chemicals Ltd (2008) 306 ITR 392 (SC).
>
> 5. The decision of this Court in CIT v Johnson Matthey India (P) Ltd. (supra) was not appealed against by the Revenue. Further, it is pointed out by the Assessee that the decision of this Court in Commissioner of Income Tax v. Bhushan Steel Pvt. Ltd. [2017] 398 ITR 216 (Del), which has been relied upon by the Revenue, is in appeal before the Supreme Court in S.L.P.(C) No. 30728-30732 of 2017 and has been stayed by that court.
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> 6. Since the sales tax subsidy under the same scheme that was the subject matter of CIT v. Johnson Matthey India (P) Ltd (supra) is also the subject matter of the present appeal, Question (4) is answered in the affirmative, i.e in favour of the Assessee and against the Revenue.
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> 7. The appeal is disposed of in the above terms."

4. That only leaves us to examine the questions emanating from Section 14A of the Income Tax Act, 19611, read along with Rule 8D of the Income Tax Rules, 19622. From a perusal of the assessment order which forms part of the record of ITA 696/2018, we note that Act Rules This is a digitally signed order.

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> "D) Disallowance on account of provisions of section 14A (1) During the year under consideration the assessee company has received dividend income of Rs. 166,83,50,967/- and claimed exemption u/s 10(34) and 10(35) of I.T. Act, 1961. The

assessee company was provided an opportunity to explain the reasons as to why the disallowance u/s 14A be not made against the exempt income.

(2) In response thereof, the assessee company vide reply dated 20.09.2011 has again emphasized on the non-applicability of section 14A & rule 8D (I.T. Rule, 1962) like in earlier years of I.T. Act, 1961. The assessee has submitted that:

a) The investments were made out of internal resources.

Therefore, no expenditure was incurred in relation to investments.

b) Similar disallowance by Assessing Officers in AY 1999- 2000 and 2000-0l have been deleted by Hon'bl ITAT. Disallowances in A.Y 2001-02, 2002-03 and 2004-05 have been deleted by Hon'ble CIT(A).

(3) The arguments of the assessee is not acceptable because there cannot be any dispute regarding applicability of section 14A because the assessee has incurred income which is exempt and it is not proved that NO expense has been done for earning the same. Now if section 14A is applicable the question arises what is the disallowance to be made in respect of tax free income. The dispute arises when there is no demarcation of expenses by the assessee. It is for such peculiar circumstances that one has to resort to Rule 8D for calculation of expense possible related to tax free income. In view of the following discussion disallowance u/s 14A is being calculated as per the provisions of Rule 8D:-

Section 14A of the I.T. Act provides that for the purpose of computing the total income no deduction shall be allowed in respect of expenditure incurred by the assessee in relation to income which does not form part of the total income. Rule 8D was inserted in the Income Tax Rules vide IT Fifth Amendment Rules 2008 w.e.f. 24.03.2008, but the relevant point is that this rule was introduced as "Method for determining amount of expenditure in relation to income not includible in total income". .....

AO This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 02/08/2024 at 23:11:23 In the case of M/s. Daga Capital Management Pvt. Ltd. 312 ITR (AT) 01 (2009) Delhi (SB) the Hon'ble Tribunal has held that-

"Section 14A of the Income-tax Act, 1961, has full application over all the heads of income .and expenses deductible under the head "Business income" are not immune from the section. In other words if any expenditure is found to have been claimed as deduction under any of the heads of income in relation to income which does not form part of the total income under the Act, that will fall in the consideration zone of section 14A for disallowance. The deductability of interest is covered by the general

provision of section 36(1)(iii). On the other hand, Section 14A is a special provision which deals with disallowing expenditure incurred by the assessee in relation to income which does not form part of the total income under the Act. Expenses falling under any head or section which are otherwise deductible as business expenditure or under other respective heads, would call for disallowance in view of the specific provision of section 14A. Since the provisions of section 14A are specific in nature and deal with the disallowance of expenditure in relation to exempt income, such expenses cannot be allowed as deduction if these relate to exempt income notwithstanding the fact that there are separate provisions for allowing such deduction.

The issue of applicability of Rule 8D as well as the apportionment of direct and indirect expenditure towards taxable and exempt income has been dealt by Hon'ble Members of ITAT, Mumbai recently in the case of M/s. Daga Capital Management Pvt. Ltd. and others Income Tax Act No.8057/Mum/2003 & others and it is held by the Hon'ble Bench that Rule 8D is applicable retrospectively and it is mandatory to be adopted by the Assessing Officer as well as by the assessee.

In this case the assessee has earned dividend income of Rs.720 million as exempt income. However, he has shown an investment of Rs. 20,512 million. In case of Cheminvest Ltd. Vs. ITO (2009) 317 ITR (AT) 86 (Delhi Spl. Bench). the Hon'ble Bench has held that -

"interest expenditure incurred by the assessee was for borrowing used for the purposes of investment in shares, both held for trading as well as investment purposes. Irrespective of whether or not there was any yield of dividend on the shares purchased, the interest incurred was relatable to earning of dividend on the shares purchased. The dividend income being exempted from tax by virtue of section 10(34) of the Act, the interest paid on borrowed capital utilized in This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 02/08/2024 at 23:11:23 purchase of shares, being the expenditure incurred in relation to dividend income not forming part of the assessee's total income, could not be allowed as a deduction. There was no chargeable income against which it could be allowed as a deduction. It could not also be allowed against any other taxable income inasmuch as the interest so paid was not relatable to the earning of taxable income."

5. We note that although a broad discussion on the disallowance of expenditure finds place in the assessment order, the same is clearly absent any recordal of satisfaction or formation of opinion noting that the expenditure as reflected in the books of account was not reliable.

6. We deem it pertinent to take note of the observations of this Court in H.T. Media Limited vs. Principal Commissioner of Income Tax - IV, New Delhi4, and which are reproduced hereinbelow:-

> "Failure of the AO to record satisfaction
>
> 32. The question regarding the failure of the AO to record his dissatisfaction with the correctness of the Assessee's claim regarding administrative expenses of Rs. 3 lakhs arises in ITA 349 of 2015. Mr Raghvendra Singh is not entirely right in his submission that there is no question framed about the failure by the AO to record his satisfaction. In ITA 349 of 2015, the question framed by this Court by the order dated 15th October 2015 is in fact in two parts: viz., (i) Whether the AO recorded a proper satisfaction in terms of Section 14A (2) and Rule 8 (D) of the Rules and (ii) in calculating the disallowance at 0.5% of average value of investments as per clause (iii) of Rule 8 D (2) of the Rules?
>
> 33. The contention of Mr. Singh is that if there was a valid recording of satisfaction by the AO as required by Rule 8D (1), then there was no option available to the AO other than to apply Rule 8D (2) of the Rules. Therefore, even according to the Revenue, the applicability of Rule 8D (2) hinges on the recording of the AO in terms of Rule 8D (1) that he was not satisfied with the Assessee's claim regarding expenditure incurred to earn the exempt income.
>
> 34. The Assessee had explained that Rs. 3 lakhs was being disallowed voluntarily as an "expenditure which could be attributable for earning the said income." The Assessee explained [2017] 399 ITR 576 (Del.) This is a digitally signed order.
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> The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 02/08/2024 at 23:11:23 that the disallowance had been determined on the basis of cost of finance department in the ratio of exempt income to total turnover. On that basis the disallowance in AY 2005-06 was upheld by CIT (A) at Rs. 1 lakh. The disallowance for this AY was worked out as Rs. 1,42,404/- and since the Assessee had already made a disallowance of Rs. 3 Lacs, no further disallowance was called for.
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> 35. In order to disallow this expense the AO had to first record, on examining the accounts, that he was not satisfied with the correctness of the Assessee's claim of Rs. 3 lakhs being the administrative expenses. This was mandatorily necessitated by Section 14 A (2) of the Act read with Rule 8D (1) (a) of the Rules.
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> 36. In para 3.2 of the assessment order, the AO records that, in answer to the query posed by the AO requiring it to produce calculation for disallowances, the Assessee "submitted that they have not incurred any expenditure for earning the dividend income." Thereafter, in para 3.3, the AO records "I have considered the submissions

of the Assessee and found not to be acceptable."

Thereafter, the AO proceeded to deal with the said provisions of Section 14A and Rule 8D and observed, in para 3.3.1, that making of investment, maintaining or continuing investment and time of exit from investment are well informed and well coordinated management decisions that, in relation to earning of income, are embedded in indirect expenses. It is then stated in para 3.4 that, in view of the above, the provisions of sub-section (2) of Section 14A and Rule 8D of the Rules are in operation and therefore, will strictly be adhered to by the Assessee. In para 3.6 of the assessment order, after discussing Section 14A(1) read with Rule 8D and referring to the decision of the Bombay High Court in Godrej and Boyce Mfg. Co. Ltd v. DCIT (supra), the AO simply stated that "in view of the facts and circumstances and legal position on the issue as discussed above, I am satisfied that the Assessee had incurred expenses to manage its investments which may yield exempt income, and Assessee grossly failed to calculate such expenses in a reasonable manner to ascertain to ascertain the true and correct picture of its income and expenses."

37. In the considered view of this Court, the above observations of the AO in the assessment order are of a broad general nature not with particular reference to the facts of the case on hand.

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45. What is plain from the explanation offered by the Assessee, which was not discarded by the AO on facts, was that there was no part of the interest expenditure which did not bear a direct nexus to a loan that was already borrowed in some earlier year. As explained This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 02/08/2024 at 23:11:23 by this Court in Principal Commissioner of Income Tax v. Bharti Overseas Pvt. Ltd. (supra), if there is no interest expenditure "which is not directly attributable to any particular income or receipt", then "the question of applying the formula" under Rule 8D

(ii) of the Rules will not arise. In other words, one of the pre- requisites for the applicability of the formula Rule 8 D (2) (ii) of the Rules for determining the extent of disallowance of interest, is that there must some interest expense which is not attributable to any particular income or receipt. In the present case, the AO does not indicate which part of the interest expense falls in the above category.

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51. In the present case, the Assessee has been able to demonstrate that the AO has failed to establish any direct nexus between the investments made by the Assessee and the interest expenditure incurred. On the other hand , the Assessee was able to show that any interest expenditure incurred was in respect of various bank loans during the course of the AY in question. The AO also failed to deal with the assertion of the Assessee that it had sufficient own funds and, as such, had no occasion to use borrowed interest bearing funds for that purpose.

Conclusion

52. As a result of the above discussion:

> (i) The question as framed in ITA No. 548 of 2015 is answered in the affirmative by holding that the ITAT erred in remanding the matter concerning deletion of disallowance of any interest under clause (ii) of Rule 8D (2) of the Act to the AO for fresh determination in light of the decision in Commissioner of Income Tax v. Taikisha Engineering India Limited (supra)
>
> (ii) The question framed in ITA No. 549 of 2015 is answered in the negative by holding that the AO failed to record proper satisfaction in terms of Section 14A (2) of the Act read with Rule 8D (1) (a) of the Rules and therefore, erred in calculating the disallowance at 0.5% on overall value of the investments as per the Rule 8D (2) (iii) of the Rules.

53. The appeals are accordingly allowed. The effect is that the Assessee's appeal before the ITAT on the issue of Section 14 A read with Rule 8D of the Rules must be treated as allowed and the Revenue's appeal on the said issue must be treated as dismissed."

7. Accordingly, the appeals are allowed and the questions stand answered in favour of the appellant-assessee.

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8. The order of the Tribunal insofar as it remits the matter for the consideration of the AO is set aside.

YASHWANT VARMA, J RAVINDER DUDEJA, J JULY 26, 2024/kk This is a digitally signed order.

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