

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ 'आई' मुंबई  
IN THE INCOME TAX APPELLATE TRIBUNAL "I" BENCH, MUMBAI

श्री जी. एस. पन्नू, लेखा सदस्य, एवं श्री अमरजीत सिंह, न्यायिक सदस्य, के  
समक्ष

**BEFORE SHRI G.S.PANNU, AM AND SHRI AMARJIT SINGH, JM**

आयकर अपील सं/ I.T.A.No.2561/M/2010

(निर्धारण वर्ष / Assessment Year: 2006-07)

Income Tax Officer 19(2)(3) Room No.311, 3 <sup>rd</sup> Floor, Piramal Chambers, Lalbuag, Parel, Mumbai - 400012	<b>बनाम/</b> Vs.	M/s. India Value Fund 12, Technopolis Knowledge Park, Mahakali Caves Road, Andheri(E), Mumbai-400012
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आयकर अपील सं/ I.T.A.No.8127/M/2010

(निर्धारण वर्ष / Assessment Year: 2006-07)

India Value Fund Suite F9C, Grand Hyatt Plaza Santacruz (East), Mumbai - 400055	<b>बनाम/</b> Vs.	Deputy Commissioner of Income Tax Circle 15(3) [Now assessed with Income Tax Officer 19(2)(3) Mumbai
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स्थायी लेखा सं. / जीआइआर सं. / PAN/GIR No. : AAATI4007K

(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)
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Assessee by:	Shri Arvind Sonde & Ms. Aarti Sathe
Department by:	Shri Bhanwar Singh Ratnoo

सुनवाई की तारीख / Date of Hearing: 02.03.2016  
घोषणा की तारीख / Date of Pronouncement: 30.11.2016  
आदेश / ORDER

**PER AMARJIT SINGH, JM:**

The above said appeals have been filed by the assessee as well as revenue against the order dated 29.01.2010 passed by the Commissioner of Income Tax (Appeals)- 26, Mumbai [hereinafter referred to as the "CIT(A)"] relevant to the assessment year 2006-07.

**ITA NO.2561/M/10 (Revenue's Appeal)**

2. The revenue has raised the following grounds:-

- “1. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition of Rs.66,56,861/- being interest on bank deposits on the ground that the said income is exempt from tax under se.10(23FB) of the Income Tax Act, 1961.*
2. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition of Rs.1,99,78,334/- being short term capital gain on sale of shares of M/s.IVF Holdings Pvt. Ltd., on the ground that the said income is exempt from tax under sec.10(23FB) of the Income Tax Act, 1961.*
3. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) failed to appreciate that any income of a venture capital company or venture capital fund in a venture capital undertaking only is exempt and that definition of Section 10(23FB) itself narrows down the scope of investment to claim exemption and explicitly defines the purpose of fund i.e. to raise funds for investment on venture capital undertakings.*
4. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) failed to appreciate that if the intention of the legislature was to allow exemption in respect of any income of a venture capital fund from any investment, they would have used the words to that effect instead of a venture capital company or*

*venture capital fund set up to raise funds for investment in a venture capital undertaking.*

5. *The appellant prays that the order of the Ld. CIT(A) on the above ground be set aside and that of the Assessing Officer be restored.”*

3. The brief facts of the case are that the assessee filed the return of income on 31.10.2006 declaring total income to the tune of Rs.NIL. The return was accompanied with computation of total income, Certificate of registration as a Venture Capital Fund issued by the SEBI, Audit Report u/s.44AB of the Income Tax Act, 1961( in short “the Act”), Balance Sheet, Income and Expenditure Account, Cash flow statement and all relevant schedule etc. The return was processed u/s.143(1)(a) of the Act on 27.11.2006. Thereafter, notice u/s.143(2) of the Act was issued on 10.10.2007 and on 07.08.2008. Thereafter the notice u/s.142(1) of the Act was issued on 10.12.2007 alongwith questionnaire calling upon various details. These notices were duly served upon the assessee. The assessee is a Trust formed under the Indian Trust Act, 1882. The main object of the Trust is Venture Capital Fund. The trust deed of the assessee is registered under the Indian Registration Act 1908. As a venture capital fund registered under SEBI (Venture Capital Funds) Regulation 1996. The assessee trust raised funds from investors and make investment in venture capital undertakings in India. The assessee trust floated two schemes namely scheme A and scheme B with the schemes having

their own set off investors. Thereafter, considering each and every fact on record, the income of the assessee was assessed to the tune of Rs.2,74,86,130/-. The assessee was not satisfied with the said assessment therefore filed an appeal before CIT(A), who deleted the disallowance of exemption u/s.10(23 FB) of the Act in respect of the interest on temporary investment of Rs.66,46,861/- and profit on sale units of mutual fund of Rs.8,60,939/-therefore, the revenue has filed the present appeal before us. Assessee has also raised grounds in connection with the taxing of interest of Rs.8,60,939/- as income from other sources.

**ISSUE NO.1:-**

4. We have heard the argument advanced by the learned representative of the parties and perused the record. Under this issue, the revenue has challenged the deletion of disallowance for exemption u/s.10(23 FB) in temporary investment of Rs.66,46,861/- and profit on sale units of mutual fund of Rs.8,60,939/-. On appraisal of the order passed by the CIT(A) on record we find that the CIT(A) has relied upon the observations of the decision of Income Tax Appellate Tribunal in the appellant's own case in ITA No.7157/Mum/2005 for the A.Y.2002-03 dated 05.11.2009. The relevant observation is hereby reproduced below for ready reference:-

“5.8. I have considered the rival submission of the Assessing Officer carefully. I have also perused the decision of the Hon’ble ITAT in Appellant’s own case. The finding of the Hon’ble Tribunal in this case is as under:

“..... Thus, under this provision exemption is available on any income to a venture capital Fund or Venture Capital Company, which has been set up to raise funds for investment in Venture Capital Undertakings. Perhaps the legislature has itself noted this situation which is there in the case before us that there may be circumstances where income maybe earned from other activities for example income from interest and therefore, legislature has incorporation the restricted expression by substituting the words “set up to raise funds for investment’ by “from investment” with effect from Assessment Year 2008-09, which means from that year the exemption would be available only from income generated from such investments in the Venture Capital Undertakings.”

“.....Merely because FDRs are made for short duration of few months that too, to match contributions with the investment in the intervening period cannot lead to the conclusion that assessee Venture Capital Fund was manly engaged in the business of investing fund in FDRs. In the circumstances, we are of the opinion that interest in

the case of assessee is exempt u/s.10(23FB) and therefore, we set aside the order of the CIT(A) and direct the Assessing Officer to allow the deduction.”

- 5.9 Considering the above submission of the appellant and respectfully following the judgment of Hon’ble Tribunal, as above, I allow the claim of the appellant and hold that it is a VCF eligible for exemption under section 10(23FB) and interest income of Rs.66,46,861/- earned by the appellant is eligible to exemption u/s.10(23FB) of the Act. Therefore AO is directed to delete the addition.”

In view of the above said finding, CIT (A) has allowed the claim of the Appellant and hold that VCF is eligible for exemption under section 10(23FB) and interest income of Rs.66,46,861/- earned by the Appellant is eligible to exemption u/s.10(23FB) of the Act, therefore directed the AO to delete the addition. In view of the finding of the CIT(A) on record, it is apparent that the CIT(A) has followed the order passed by the Income Tax Appellate Tribunal in the assessee’s own case in ITA No.7157/Mum/2005 dated 05.11.2009 for the A.Y.2002-03. This order has not been controvert by any other law. No any other material contrary to the above said finding has been produced by the revenue before us. Moreover the factual position as well as the legal proposition is not different from the present case. No material of any kind was produced by the revenue before us to

contradict the finding of the Income Tax Appellate Tribunal in the assessee's own case for the A.Y.2002-03. In view of the observations made above we are of the view that the CIT(A) has been given its finding judiciously and correctly which does not require to be interfered with at this appellate stage. Accordingly, this issue is decided in favour of the assessee and against the revenue.

**ISSUE NO.2, 3 & 4:-**

5. These grounds are interconnected therefore are being taken up together for adjudication. Under these issues basically the revenue has challenged the deletion of the addition of Rs.1,99,78,334/- being Short Term Capital Gain on sale of shares of M/s.IVF Holding Pvt. Ltd. and interest on loan of Rs.8,60,939 under the head of income from other sources. Under the year of consideration, the assessee had sold share of the above VENTURE CAPITAL UNDERTAKING (VCU) and earned Short Term Capital Gain of Rs.1,99,78,334/-. The assessee advanced a sum of Rs.500 lacs to Srinagar Cinema Pvt. Ltd. as loan and earned the interest to the tune of Rs.8,60,939/- for the year under consideration. On appraisal of the order of CIT(A) in question, it came into the notice that the CIT(A) has decided the issue on the basis of the earlier assessment year for A.Y.2003-04, 2004-05 and A.Y.2005-06 confirmed by the CIT(A) No. CIT(A)XV/IT-48/ACIT 15(3)/2004-05, CIT(A)XV/IT-47/ACIT 15(3)/2005-06 CIT(A)XV/IT-80/ACIT 15(3)/2006-07. The facts of the present case are quite

similar with the facts of earlier appeal. The revenue did not place any distinguishable facts on record. Therefore, the CIT(A) has held that the Capital Gain earned from VENTURE CAPITAL UNDERTAKING (VCU) and interest arising out from the investment in VENTURE CAPITAL UNDERTAKING (VCU) are liable to exemption u/s.10(23FB) of the Act and deleted the addition to the tune of Rs.2,08,39,273/-. However, it is clear that the CIT(A) in fact mentioned the wrong figure as Rs.2,08,39,273/- which was later on corrected in view of the application u/s.154 of the Act and corrected the figure as Rs.1,99,78,334/-. In view of the said facts and circumstances we are of the view that the CIT(A) has passed the order judiciously and correctly which does not require to be interfere with at this appellate stage. Accordingly these issues are decided in favour of the assessee against the revenue.

**ISSUE NO.5:-**

6. This issue is formal in nature and nowhere require the adjudication at all, therefore, this issue is decided in favour of the assessee against the revenue.

**ITA NO.8127/M/10 (Assessee's Appeal)**

7. The assessee has raised the following grounds:-

- “1. *On the facts and circumstances of the case and in law, the CIT(A) erred in disposing of the Appellant's application seeking rectification under section 154 of*

*the Income-tax Act, 1961 ('the Act'), of the order under section 250 of the Act, by passing an order which was contrary to the order applied for by the Appellant.*

2. *On the facts and circumstances of the case, and in law, the CIT(A) erred in revising his order in relation to Ground No.6 which had actually and effectively been allowed in favour of the Appellant.*
3. *On the facts and circumstances of the case, and in law, the CIT(A) ought to have merely corrected the erroneous reference to the Ground No.6 before him by substituting a reference to the correct ground, viz Ground No.7.*
4. *Without prejudice to Ground No.1 to 3, on the facts and circumstances of the case, and in law, the CIT(A) erred in taxing interest of Rs.8,60,939/- as Income From Other Source in the hand of the Appellant."*

**ISSUE NO.1 to 4:-**

8. The issue no.1 to 4 are interconnected therefore are being taken up together for adjudication. These issues are in connection with the disallowance of interest received on account of investment in Srinagar Cinema Pvt. Ltd. to the tune of Rs.8,60,939/-. The assessee has also contested this issue on the ground that this issue has been decided in favour of him in his appeal by the CIT(A) while deciding issue no.6. However, the finding of the CIT(A) has intermingled on the point of taxation of Short Term Capital Gain and upon the interest on the loan as income from other sources. The issue of Short Term Capital Gain

has been decided which also includes the interest received on account of investment in Srinagar Cinema Pvt. Ltd. The CIT(A) discussed this issue also in deciding the controversy on the point of the income earned from VCU i.e. capital gains. However, CIT(A) has subsequently corrected the same upon the application u/s.154 of the Act. . Before discussing further, it is necessary to advert the finding of the CIT(A) on this record.

“7. Ground No.6 is against making the addition of Rs.8,60,939/- being interest on loan granted to Shrinagar Cinemas Pvt. Ltd. In the grounds of appeal, the appellant has claimed deduction of expenses incurred by the appellant while calculating the income. I have considered this issue. I find that this issue was also raised for A.Y.2002-03, in appeal before CIT(A). For the detailed reason discussed in the appellate order for A.Y.2002-03, in para 4.2 in the order dated 26.09.2005 in Appeal No.CIT(A)XV/IY-11/AC.15(3)/ 2005-06, I dismissed this ground of appeal.

7.1. In the result ground No.6 is dismissed.”

While deciding this issue by the Tribunal in the assessee's own case for the A.Y.2004-05, 2005-06 and 2007-08 vide order dated 31.03.2015 has directed the Assessing Officer to decided the matter

afresh on certain guidelines as recorded in the order while deciding the said issues. Finding of the said order is hereby reproduced below for ready reference:-

- “5. Ground nos.5, 6 and 7 relates to the Shringar Films Private Limited (Sringar Films) and Shringar Cinemas Private Limited (Shringar Cinemas) and whether these entities constitute Venture Capital Undertakings or not. In this regard, it is the generalized finding of the AO that these two companies are not Venture Capital Undertakings (VCU). In connection with the Shringar Film, AO held that the same is not engaged in rendering services as the same is a distributor of films. The AO has not considered the relevant facts that the assessee as a distributor merely obtains the right of distribution of the films and makes earnings on the renting of the said rights to the customers. Regarding this aspect, there is no discussion by the Revenue as to how such business does not constitute ‘services’ and how the said business is a ‘trading activity’. Similarly, in connection with another VCI i.e., Shringar Cinemas, it is the case of the assessee that the said the assessee is engaged in the business of exhibiting the films. It is the case of the assessee, being the exhibitor of films, he merely rents the theatres and

exhibits the films for earning income. It is a service activity. These aspects are not discussed by Revenue before coming to the conclusion that the said company is also not a VCU. It is the submission of the assessee before us that these two companies qualify as VCUs. However, on a query from the Bench about the business activities of the said concerns, Ld. Counsel for the assessee fairly submitted that the assessee is not a privy to the said information and the AO may acquire the same using the powers in the remanding proceedings. In connection with the Shringar Films, Ld Counsel for the assessee also mentioned that the said services are subjected to service tax. Therefore, these VCUs should be considered as such and the income earned by the assessee from these concerns should be allowed as exempt income as per the provisions of section 10(23FB) of the Act. On perusal of the Relevant paras from the orders of the Revenue Authorities as well as the relevant information placed before us, we find the ground nos.5,6 and 7 should also be remanded to the file of the AO for a fresh look into the facts and the decision in the matter. Accordingly, the said ground nos.5, 6 and 7 are allowed for statistical purposes.”

Since the matter is under consideration before the Assessing Officer to decide the issue in accordance with law, therefore, we are also of the view that the consequential result thereof would be followed while deciding this issue also. Therefore, we set aside the finding of the CIT(A) on this issue and direct the Assessing Officer to decide the matter afresh in view of the directions given by the Income Tax Appellate Tribunal, Mumbai in the assessee's own case for the A.Y.2004-05, 2005-2006 and 2007-08. Accordingly, these issues are hereby allowed for statistical purpose.

9. Accordingly, appeal of the Revenue is hereby dismissed and appeal of the Assessee is hereby allowed for statistical purpose.

Order pronounced in the open court on 30<sup>th</sup> November,  
2016

Sd/-

Sd/-

(G.S.PANNU)

(AMARJIT SINGH)

लेखा सदस्य / ACCOUNTANT MEMBER

न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated

November, 2016

*MP*

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त (अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai