

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DIVISION BENCH 'A', CHANDIGARH**

BEFORE MS.DIVA SINGH, JUDICIAL MEMBER  
AND MS. ANNAPURNA GUPTA, ACCOUNTANT MEMBER

**ITA No.195/Chd/2016**  
(Assessment Year : 2012-13)

The A.C.I.T.,  
Circle-5,  
Ludhiana.

Vs.

M/s Avon Cycles Ltd.,  
G.T. Road,  
Ludhiana.

PAN: AABCA4140R

&

**C.O.No.6/Chd/2016**

**In**

**ITA No.195/Chd/2016**  
(Assessment Year : 2013-14)

M/s Avon Cycles Ltd.,  
G.T. Road,  
Ludhiana.

Vs.

The A.C.I.T.,  
Circle-5,  
Ludhiana.

PAN: AABCA4140R  
(Appellant)

(Respondent)

Assessee by : Shri Subhash Aggarwal, Adv.  
Department by : Shri Akhilesh Gupta, Addl.CIT  
Date of hearing : 09.05.2018  
Date of Pronouncement : 06.08.2018

**ORDER**

**PER ANNAPURNA GUPTA, A.M. :**

The present appeal has been preferred by the Revenue against the order of Ld. Commissioner of Income Tax (Appeals)-2, Ludhiana dated 7.12.2016 relating to assessment year 2012-13. The assessee has filed Cross Objection against the same.

We shall first be taking up the appeal of the Revenue in ITA No.195/Chd/2016.

**ITA No.195/Chd/2016:**

2. The Revenue has raised following grounds of appeal:

- “1. Whether on the facts and in the circumstances of the case, the Ld.CIT(A) is right in law in holding that disallowance under section 36(1)(iii) cannot be made in respect of investment in land despite the investment being not for business purpose?
2. Whether on the fact and in the circumstances of the case, the Ld.CIT(A) is right in law in deleting disallowance of interest pertaining to building under construction, ignoring that the funds utilized by the assessee are mixed funds and therefore interest is liable to be disallowed under proviso to section 36(1)(iii).
3. Whether on the facts and circumstances of the case, the Ld.CIT(A) was right in law in restriction the disallowance under section 14A to Rs.30,85,987/- instead of Rs.73,03,132/- computed as per provisions of Rule 8D(2)(ii) of the Income Tax Rules, 1962?
4. Whether on the facts and in the circumstances of the case, the Ld.CIT(A) is right in law in holding that for the purpose of computation of disallowance u/s 14A under Rule 8D, the netting off interest income out of interest expenditure is to be allowed to the assessee.”

3. Ground Nos. 1 and 2 raised by the Revenue relate to disallowance of interest made under section 36(1)(iii) of the Income Tax Act, 1961 (in short ‘the Act’) amounting to Rs.14,42,161 which was deleted by the CIT (Appeals).

4. Briefly stated, during assessment proceedings the Assessing Officer noted that the assessee had claimed financial expenses of Rs.6.13 crores. He also noted that the assessee had invested in purchase of land at Neelon Khurd and Aayali Kalan which he found was not for the business purposes and that the assessee had shown investment in capital work in progress as at the end of the year amounting

to Rs.5.26 crores. Accordingly interest attributable to both was disallowed under section 36(1)(iii), amounting to Rs.13,56,748/- on account of investment made in land and Rs.85,413/-on account of investment in capital work in progress. Thus total disallowance under section 36(1)(iii) of the Act amounting to Rs.14,42,161/- was made. The same was deleted by the Ld.CIT (Appeals) following the order of the I.T.A.T. in the case of the assessee in preceding years i.e. assessment years 2010-11 and 2011-12 which the Ld.CIT (Appeals) observed were decided on identical facts.

5. Before us, the Ld. DR fairly admitted that the issue was covered by the decision of the I.T.A.T. in the preceding years. He, however, relied upon the order of the Assessing Officer in support of the disallowance made.

6. The Ld. AR, on the other hand, relied upon the order of the CIT(Appeals) and stated that the issue was squarely covered by the order of the I.T.A.T. in the preceding years, wherein identical disallowance made of interest on account of land purchased at Village Morekarima and Shekhpura was deleted holding that the said investment had been made out of own funds. The Ld. counsel for assessee further stated that in the impugned year the break up of old investment in land and investment made during the year was as under:

<i>Old Investment in land</i>	<i>Rs. 7,68,53,820/-</i>
<i>Investment during the year</i>	<i>Rs. 1,21,89,190/-</i>
<i>Interest disallowed</i>	<i>Rs. 13,56,748/- on debt equity ratio</i>

7. The Ld. counsel for assessee stated that the old investment in land had already been dealt with by the I.T.A.T. in its order relating to preceding years and, therefore, no disallowance of interest under section 36(1)(iii) of the Act on account of the same was warranted having been decided in the preceding years itself in favour of the assessee. As for the investment made in the impugned year amounting to Rs.1.21 crores, the Ld. counsel for the assessee stated that it had enough own funds for making the said investment. Our attention was drawn to the status of availability of own funds of the assessee as under:

<i>Share capital as on 01.04.2011</i>	89.64.420/-
<i>Reserves &amp; Surpluses</i>	<u>207,79,63,134/-</u>
<i>Total</i>	208,69,27,554/-
<i>Income of the year</i>	4132.84 Lakhs
<i>Add Depreciation</i>	1242.43 Lakhs
<i>Total</i>	5375.27 Lakhs

8. Referring to the same the Ld. counsel for assessee stated that the assessee had own funds available to the extent of Rs.53.75 crores which was more than the sufficient for making the investment in land during the year and, therefore, applying the proposition applied by the I.T.A.T. in the preceding years, no disallowance of interest on account of investment made in land during the year, was also warranted. With regard to the investment made in capital work in progress the Ld. counsel for assessee stated that the same was also covered by the decision of the I.T.A.T. in the preceding year wherein identical disallowance of interest made on account of investment in capital work in progress

was also deleted upholding the order of the CIT(Appeals) that the same was not warranted since there was no findings by the Assessing Officer that the building being so constructed was not for business purpose and even if any disallowance was warranted the same could be made under the proviso to section 36(1)(iii) of the Act, wherein the same could have been done only by showing that the assessee had borrowed funds specifically for investing in capital work in progress which had not been demonstrated by the Revenue. The Ld. counsel for the assessee, therefore, stated that the disallowance of interest made under section 36(1)(iii) of the Act to the extent of Rs.14,42,161/- had been rightly done by the Ld.CIT (Appeals).

9. Having heard the contentions of both the parties, we find no merit in the present ground raised by the Revenue. Undoubtedly, the CIT(Appeals) had deleted the disallowance of interest following the order of the I.T.A.T. in preceding years i.e. assessment years 2010-11 and 2011-12 finding the facts to be identical with the present case both with regard to investment made in land and investment in capital work in progress. The ITAT, we note, had deleted the disallowance for the reason that the assessee had demonstrated availability of own funds for the purpose of making the investment. Vis a Vis the investment made in capital work in progress the ITAT, we find, agreed with the CIT(Appeals) that for the purpose of making disallowance of interest on account of investment made in work in progress, it was

necessary to show that interest bearing funds had been borrowed specifically for the said purpose, which was not done by the Revenue. The Revenue, in the present case, we find, has not brought out to our notice any distinguishing facts. Even otherwise, the Ld. counsel for assessee has demonstrated the availability of enough own funds for the purpose of making investment in land during the year, which fact has not been controverted by the Revenue before us. Therefore, following the parity of reasoning made in the earlier years by the I.T.A.T., no disallowance of interest on account of investment made in land during the year, we hold, was also warranted.

10. In view of the above we uphold the order of the CIT(Appeals) in deleting the disallowance made of interest made under section 36(1)(iii) of the Act, amounting to Rs.14,42,161/-. Ground of appeal Nos.1 and 2 raised by the Revenue are, therefore, dismissed.

11. Ground Nos.3 and 4 raised by the Revenue relate to disallowance made u/s 14A r.w.r. 8D of the Income Tax Rules, 1962 on account of expenditure incurred for earning exempt income amounting to Rs. 97,32,906/- which was restricted by the Ld.CIT(Appeals) by directing the Assessing Officer to compute the same in accordance with the order of the ITAT in earlier years giving part relief to the assessee .

12. Brief facts are that the assessee had shown investment of Rs.45.93 crores, income from which did not/would not form part of the total income and at the same time claimed

financial expenses of Rs.6.13 crores. The Assessing Officer held that the expenses incurred in relation to these investments was required to be disallowed and accordingly worked out the disallowance under Rule 8D of the Income Tax Act, 1961 of Rs.97,32,906/-. Before the Ld.CIT(Appeals) the assessee raised several contentions that disallowance of interest if any was to be made after netting off interest received, that interest paid on loans taken for specific purposes related to the business of the assessee was to be excluded and that in view of sufficiency of own funds no disallowance u/s 14A was warranted. The Ld.CIT(Appeals) found that the I.T.A.T. had decided identical issue in the case of the assessee in assessment years 2010-11 and 2011-12 in ITA No.687/Chd/2014 dt27.11.2015 & in assessment year 2008-09, giving part relief to the assessee. He accordingly directed the Assessing Officer to rework the disallowance in accordance with the order of the ITAT in preceding years thus giving part relief to the assessee.

13. At the outset our attention was drawn to the order of the ITAT in assessment years 2010-11 & 2011-12, which was followed by the CIT(Appeals) and copy of which was placed before us. Drawing our attention to pages 7-13 of the order, where the issue of disallowance of expenses u/s 14A was dealt with, it was pointed out that the ITAT had granted relief to the assessee accepting its contention that interest paid which is directly attributable to earning taxable income i.e. interest on cash credits and packing credit be excluded

for computing disallowance u/s 14A of the Act. Ld.DR stated that Revenue was aggrieved by the order of the CIT(Appeals) directing the Assessing Officer to follow the order of the ITAT and thus allow relief to this extent to the assessee, which has been raised in Ground No.3 before us. Ground No.4 raised by the Revenue relating to netting off the interest, it was admitted before us, had been wrongly taken since the CIT(Appeals) had denied the benefit of netting and the Revenue therefore had no grievance against the same.

14. Taking up Ground No.3, Ld. DR fairly conceded that the issue was covered by the order of the I.T.A.T. in the case of the assessee itself in the preceding assessment years i.e. 2010-11 and 2011-12. He however relied on the order of the Assessing Officer.

15. The Ld. counsel for assessee, on the other hand, relied upon the order of the CIT(Appeals).

16. We have heard the contentions of both the parties. In view of the admitted fact that in preceding years the ITAT had held the exclusion of interest paid on specific loans taken for business purposes from the interest disallowable u/s 14A of the Act, we find no reason to interfere in the order of the CIT(Appeals) directing the Assessing Officer to recompute the disallowance in accordance with the said direction of the ITAT. No distinguishing facts have been brought to our notice by the Ld. DR. Therefore the direction of the CIT(Appeals) to follow the order of the ITAT in the preceding year in this respect is upheld.

Grounds of appeal Nos.3 & 4 raised by the Revenue are accordingly dismissed.

17. The appeal of the Revenue is therefore dismissed.

**C.O.No.6/Chd/2016:**

18. The assessee in this Cross Objection has raised the issue of denial of benefit of netting of interest received by the assessee against the interest paid during the year for the purpose of calculating the interest disallowable u/s 14A of the Act. The assessee has raised the following grounds before us:

- “1. That the learned CIT (A) - II, Ludhiana, has erred in sustaining a disallowance of Rs.40,19,112/- u/s 14A / Rule 8D(2)(ii) of the Income Tax Rules.
2. That the learned CIT(A) is in complete defiance of the order of the Tribunal for the A.Y. 2010-11 & 2011-12 wherein the Hon'ble Tribunal had deleted the disallowance u/s 14A on the ground that after netting of interest nothing remained for making any disallowance on account of interest.
3. That the learned CIT(A) has ignored that the principles of judicial discipline require that the orders of the higher appellate authorities should be followed unreservedly by the subordinate authorities and non-compliance leads to initiation of contempt proceedings.
4. That in any case the conformation of disallowance of Rs.40,19,112/- is against the law and facts of the case and ignoring the submissions made by the appellant.
5. That the assessee craves for permission to add, amend or alter any cross-objection at the time of hearing.”

19. During the course of hearing before us Ld. counsel for the assessee pointed out that the I.T.A.T. in the preceding years i.e. assessment years 2010-11 & 2011-12, in the case

of the assessee, had decided this issue in favour of the assessee. Our attention was drawn to the findings of the I.T.A.T. at para 14 of the order in ITA No. ITA No.687/Chd/2014 dt.27.11.2015 as under:

*14. As regards the Cross Objection filed by the assessee, we have no hesitation in holding that for the purposes of computation under Rule 8D of the Income Tax Rules, the netting off the interest income out of interest expenditure is to be allowed to the assessee. This issue has been very aptly discussed by the I.T.A.T., Chandigarh Bench in the case of Shiv Parshad Aggarwal (supra) at para 9, which reads as under :*

*“9. In the totality of the abovesaid facts and circumstances, where the assessee had incurred interest expenditure which is set-off against the interest income offered under the head ‘income from other sources’ and where no interest expenditure is remaining to be set off, there is no merit in the orders of the authorities below in making the disallowance under section 14A of the Act in line with Rule 8D(ii) of the IT Rules. The assessee during the year under consideration had earned dividend income of Rs.305,730/- against which disallowance of Rs.39,80,707/- was made by invoking the provisions of section 14A of the Act. We delete the addition made under section 14A read with Rule 8D(ii) at Rs.33,08,071/-. However, in view of the assessee having incurred various expenditures, the disallowance warranted under Rule 8D(iii) at ½ % of the average of the value of investment at Rs.672,635/- is upheld. The grounds of appeal No. 1 to 4 raised by the assessee are thus, partly allowed.”*

20. The Ld. counsel for assessee, therefore, stated that the issue is squarely covered by the order of the I.T.A.T. in the preceding years and following the same the assessee should be granted the benefit of netting of interest.

21. The Ld. DR fairly conceded that the issue was covered in favour of the assessee by the order of the I.T.A.T. in the preceding years i.e. assessment years 2010-11 and 2011-12

but pointed out that in A.Y 2008-09 identical issue had been decided against the assessee by the ITAT, which had been directed by the CIT(Appeals) to follow.

22. Having heard both the parties we find merit in the contention of the Ld.Counsel for the assessee. Admittedly identical issue has been decided in favour of the assessee in the assessment years 2010-11 & 2011-12, which is the latest decision in contrast to that rendered for assessment year 2008-09. The said decision therefore will apply to the case before us. Further, No distinguishing facts having been brought to our notice by the Ld. DR, the decision of the I.T.A.T. in assessment years 2010-11 & 2011-12, squarely applies in the impugned year also, following which we allow the grounds of Cross Objection raised by the assessee and direct the Assessing Officer to recompute the disallowance after allowing netting of interest. In view of the above, the Cross Objection filed by the assessee is allowed.

23. In the result, the appeal filed by the Revenue is dismissed and the Cross Objection filed by the assessee is allowed.

Order pronounced in the Open Court.

Sd/-  
**(DIVA SINGH)**  
**JUDICIAL MEMBER**

Sd/-  
**(ANNAPURNA GUPTA)**  
**ACCOUNTANT MEMBER**

Dated : 6<sup>th</sup> August, 2018

\*Rati\*

Copy to:

1. The Appellant
2. The Respondent

3. The CIT(A)
4. The CIT
5. The DR

Assistant Registrar,  
ITAT, Chandigarh