IN THE INCOME TAX APPELLATE TRIBUNAL
DIVISION BENCH, CHANDIGARH

BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER
AND Ms. ANNAPURNA GUPTA, ACCOUNTANT MEMBER

ITA No. 481/CHD/2016
Assessment Year : 2011-12

M/s Vardhman Acrylics Ltd., Chandigarh Road, Ludhiana	Vs.	The ACIT, Circle-1, Ludhiana

PAN No.AAACV7602E

ITA No. 517/CHD/2016
Assessment Year : 2011-12

The DCIT, Circle-1, Ludhiana	Vs.	M/s Vardhman Acrylics Ltd., Chandigarh Road, Ludhiana PAN No.AAACV7602E

ITA No. 482/CHD/2016
Assessment Year : 2012-13

M/s Vardhman Acrylics Ltd., Chandigarh Road, Ludhiana	Vs.	The DCIT, Circle-1, Ludhiana

PAN No.AAACV7602E

&
ITA No. 743/CHD/2016
Assessment Year : 2012-13

The DCIT, Circle-1, Ludhiana	Vs.	M/s Vardhman Acrylics Ltd., Chandigarh Road, Ludhiana PAN No.AAACV7602E

Appellant by : Sh. Vineet Jain (on 13.12.2017)
& none on 23.2.2018
Sh. Subhash Aggarwal, Adv. (20.6.2018)

Respondent by : Sh. Ashish Abrol, CIT DR (on 13.12.2017)
Sh Gulshan Raj, CIT DR (on 23.02.2018)
Sh. Manjit Singh,Sr. DR (on 20.06.2018)

Date of Hearing : 20.06.2018
Date of Pronouncement : 20. 08.2018

ORDER

Per Sanjay Garg, Judicial Member:

The captioned are cross appeals by the assessee and the Department for assessment year 2011-12 and assessment year 2012-13 respectively against the separate orders dated 29.02.2016 & 28.03.2016 respectively of Commissioner of Income Tax (Appeals)-1, Ludhiana [hereinafter referred to as CIT(A)].

2. Since the facts and issue involved in all these appeals are identical, hence, these were heard together and are being disposed of by this common order. First, we take up assessee's appeal for assessment year 2011-12.

ITA No. 481/Chd/2016 (A.Y. 2011-12)

3. The sole issue raised by the assessee in this appeal relates to disallowance u/s 14A read with Rule 8D of the Income Tax Rules, 1962. During assessment proceedings, the Assessing officer noticed that the assessee had made huge investment capable of yielding tax exempt income. The assessee explained before the Assessing officer that the assessee did not incur any expenditure for making the investment in question. However, the suo-moto disallowance of Rs. 10,000/- in this respect was made by the assessee in its computation of income. That the assessee has own sufficient funds to meet the investments. The total of the share capital and reserve and surplus as on 31.3.2011 was Rs. 22632.34 lacs and as on 31.3.2010

was Rs. 18868.02 lacs. So there was an increase in the reserve and surplus of the assessee of Rs. 3764.14 lacs. The total investment was at Rs. 4743.49 lacs as on 31.03.2011 and of Rs. 1014.75 lacs as on 31.3.2010. The total increase in investment was Rs. 3728.74 lacs. The assessee has demonstrated that the total investment as on the end of the year i.e. 31.3.2011 were far less than the funds of the assessee and even the increase in the reserve and surplus was more than the increase in the investment during the year. The assessee further explained that the loan funds of the company as on 1.4.2010 were Rs. 234.38 lacs which had decreased to 223.87 as on 31.3.2011 and further that cash reserves including capital as on 31.3.2010 were Rs. 30900.15 lacs which had increased to Rs. 35781.91 lacs as on 31.3.2011. The net current assets of the assessee have increased by Rs. 696.95 lacs in aggregate. The assessee, therefore, had submitted that since the assessee had own sufficient funds to make the investment, there was no question of disallowance of interest expenditure u/s 14A read with rule 8D of the Income Tax Rules. In respect of disallowance under Rule 8D(2)(iii),, the assessee explained that only one investment during the year i.e in IIFL Bonds of Rs. 1023.10 lacs was made which yielded dividend exempt income of Rs. 59.11 lacs. That the other investments made by the assessee were not capable of yielding taxable income. The assessee in this respect has given a chart, which is reproduced as under:-

Particulars of investment	***As on 31.03.11 (Rs. In Lacs)***	***As on 31.03.2010 (Rs. In lacs)***	***Nature of income (except or taxable)***
Bharuch Eco-Acqa infrastructure Ltd	*164.75*	*164.75*	*Not applicable*

Reliance regular Saving fund-growth option	*Nil*	*300.00*	*Taxable*
SBI Magnum Cash Fund	*1023.10*	*Nil*	*Exempt*
IIFL Bonds	*1056.30*	*Nil*	*Taxable*
Solaris Holidays Ltd (debentures)	*999.34*	*Nil*	*Taxable*
REC Bonds	*500.0*	*Nil*	*Taxable*
Reliance Fixed Horizon Fund-Growth Option	*1000.00*	*Nil*	*Taxable*
SBI Debt Series – Growth option			*Taxable*

It was also explained that except the investment in IIFL Bonds, the income from the other investment i.e. in Bharuch Eco-Acqa Infrastructure Ltd, Reliance Regular Saving fund-Growth option, SBI Magnum Cash Fund, Solaris Holding Ltd (Debentures), REC Bonds, Reliance Fixed Horizon Fund-Growth Option and SBI Debt series – Grown Option) was taxable income of the assessee. So far as the investment in Bharuch Eco-Acqa Infrastructure Ltd, it was explained that it was a section 25 company and as per Companies Act, no dividend can be declared by the said company. That the ITAT in assessee's own case for assessment year 2010-11 (first round of appeal (in ITA No. 911/Chd/2013 dated 20.1.2014 has held that investment in Bharuch Eco-Acqa Infrastructure Ltd. was made as per the directions of the Hon'ble Gujarat High Court and since no dividend declared by the said company being a section 25 company under the Companies Act, therefore, section 14 A could not be

applied. The Ld. Assessing officer, however, was not satisfied with the above contention of the assessee. He observed that since the assessee had used mixed funds for investment, hence, the provisions of section 14A read with Rule 8D were applicable, and he therefore, calculated the disallowance applying the aforesaid provisions.

4. In appeal, the Ld. CIT(A) upheld the findings of the Assessing officer that since the common funds have been used, there was no separate account of the assessee's own funds and, hence, the provisions of section 14A read with Rule 8D would be applicable. He, however, accepted the contention of the assessee that only the investment in IIFL Bonds yielded tax exempt income, therefore, directed the Assessing officer to rework the disallowance u/s 14A read with Rule 8D of the Income Tax rules only in respect of investment made in IIFL Bonds.

Being aggrieved by the above order of the CIT(A), the assessee had come in appeal before us.

5. We have considered the rival submissions. As observed above, the assessee has demonstrated before the lower authorities that it has much more reserve and surplus than the total investments made during the year. The assessee has also demonstrated that except investment in IIFL Bonds, all other investments were not capable of yielding exempt income. It was also explained that except the investment in Bharuch Eco-Acqa Infrastructure Ltd, income from other investments made by the assessee were taxable income. In case of Bharuch Eco-Acqa Infrastructure Ltd, the said investment was not

capable of yielding exempt income. It has been held time and again by various High Courts including the Jurisdictional High Court of Punjab & Haryana High that if the assessee has its own funds sufficient to make investment, then the presumption would be that investment has been made from own funds and no disallowance u/s 14A of the Act would be attracted under those circumstances. Reliance in this respect can be placed upon the decisions of CIT Vs. Max India Ltd (2016) 388 ITR 81(P&H) and CIT Vs. Kapson Associates (2016) 381 ITR 204 (P&H), wherein, it has been held by the higher Courts that if the assessee has availability of own sufficient funds to make the investment, then the presumption would be that investment has been made from own funds and no disallowance u/s 14A of the Act would be attracted under those circumstances.

6. The Ld. counsel has invited our attention to a chart to demonstrate the financial position of the assessee, which for the sake of convenience is as under:-

Particulars	***As on 31.03.11***	***As on 31.03.2010***	***Increase / decrease***
Share capital	*10853.25*	*10853.25*	*-*
Reserve & Surplus	*11779.09*	*8014.95*	*3764.14*
Total	*22632.34*	*18868.20*	*3764.14*
Accumulated balance of depreciation	*13148.85*	*12031.95*	*1116.9*
Cash Reserves including capital	*35781.19*	*30900.15*	*4881.04*
Investments	*4743.49*	*1014.75*	*3728.74*
Loan funds	*223.87*	*234.38*	*-10.51*

Fixed assets including capital work in progress	*23728.90*	*23581.91*	*146.99*
Net current assets	*9804.03*	*9107.08*	*696.95*

7. The Ld. DR, on the other hand, has relied on another decision of the High Court in the case of Avon Cycles Ltd Vs. CIT [2015] 53 taxmann.com 297 (P&H) wherein the Hon'ble High Court has held that where funds utilized by assessee was mixed funds and, hence, interest paid on borrowed fund was also relatable to interest on investment made in tax free funds, interest expenditure relatable to investment in tax free funds was to be computed under provisions of Rule 8D(2)(ii). It has been further submitted that the said decision of the High Court in 'Avon Cycles Ltd Vs. CIT has been further upheld by the Supreme Court vide order dated 12.2.2018 in group of appeals with the lead case 'Maxopp Investment Ltd vs CIT' reported in (2018) 91 taxman.com (154) SC.

8. In our view, the said decision cited by the Department is not applicable to the facts and circumstances of the case. The counsel for the assessee has demonstrated that the loan funds of the company during the year have decreased whereas the reserve and surpluses of the company during the year had increased to a large extent. The increased in the reserve and surplus was more than the total investment made by the assessee, hence, under the circumstances, it cannot be said that the assessee has used interest bearing loan funds to make investments in question.

We are guided in this respect by the decision of the Hon'ble Supreme Court in the case of ‘Hero Cycles P. Ltd’ which has been followed in the various decisions of the Hon'ble Jurisdictional High Court of Punjab & Haryana High Court in the case of ‘Bright Enterprises Pvt Ltd Vs. CIT’, 381 ITR 107(P&H), CIT Vs. Max India Ltd (2016) 388 ITR 81(P&H) and CIT Vs. Kapson Associates (2016) 381 ITR 204 (P&H). Further, the Hon'ble Supreme Court in the case of Vegetable Products ltd [1973] 88 ITR 192 (SC) has held that where two views are available on a proposition, the view favorable of the assessee is to be taken. In view of this, no disallowance on interest expenditure is attracted in this case.

So far as the disallowance on account of administrative expenditure is concerned, the assessee during the year had made investment only in one company which was capable of earning taxable income. Merely because the value of the investment was high, cannot be a sole fact for determination of the administrative expenditure incurred / likely to be incurred. This is not the case of the Revenue that the assessee had made so many investments which were capable of yielding exempt income which require day to day monitoring. The fact is that the assessee had made only sole investment which was capable of earning tax exempt income and the assessee had suo moto made a disallowance of Rs. 10,000/-. In our view, no further disallowance u/s 14A of the Act is attracted. The Assessing officer recorded objective dis-satisfaction to the claim of the

assessee that it has not incurred the expenditure more than it has suo moto declared in the computation of income.

9. In view of this, the disallowance made u/s 14A is restricted with that has been suo moto made by the assessee. Further, the additions made by the lower authorities on this issue are ordered to be deleted.

10. Now coming to the Departmental appeal for assessment year 2010-11

ITA No. 517/Chd/2016 – (A.Y. 2011-12)

In its Cross objection above, the Revenue has taken the following grounds:-

1. *Whether upon the facts and circumstances of the case, the Ld. CIT(A) was justified in disregarding the findings of the Assessing officer and treating the sales tax subsidy received by the assessee as capital in nature?*

2. *Whether upon facts and circumstances of the case, the Ld. CIT(A) was justified in reducing the quantum of disallowance made u/s 14A of the Act, by directing the Assessing officer to recalculate the disallowance u/s 14A on the investment in IIFL Bonds only.*

3. *That the order of Ld. citabe set aside and that of aobe restored.*

We find that the Revenue in this appeal has taken two effective grounds of appeal.

11. **Ground No. 1 -** Vide this ground, the Revenue has agitated the action of the CIT(A) in deleting the sales tax subsidy received by the assessee as capital in nature as against the treatment of the same by the Assessing officer as Revenue receipts.

The brief facts relating to the issue under consideration are that the assessee during the year received sales tax subsidy amounting to Rs. 9,09,47,621/- and incentive from the Government under the scheme of State government namely 'Capital Investment Incentive to Premier / Prestigious Unit Scheme 1995-2000' for setting up a manufacturing unit of the assessee at Jhagadia District Baroch in Gujarat. The Assessing officer after examining the scheme and natue of the subsidy received by the assessee observed that under the scheme the incentive is given by the Government after unit starts its commercial production. That the scheme provides for subsidy in the form of sales tax exemption or deferment for a period of few years after commencement of the commercial production by the unit. That the said subsidy was given to lend a helping hand to new unit in running its business more profitably. That the scheme did not fund specially part of capital investment for setting up the industry in backward areas and, hence, the same are Revenue in nature. The Ld. Counsel for the assessee in this respect has relied upon the decision of the Hon'ble Punjab & Haryana High Court in the case of .CIT Vs. Abhishek Industries Ltd' 284 ITR 1.

12. The Ld. CIT(A), however, in appeal, deleted the addition so made by the Assessing officer by following the decision of the

Tribunal in the case of the assessee in ITA No. 592/2007, 824/2007, 773/2012, 283/2014, 911/2013 vide order dated 21.10.2015 has held that the sales tax subsidy received by the assessee was a capital receipt and not chargeable to tax. Now, the Revenue has come in appeal agitating the action of the CIT(A) in deleting the addition made on this issue.

13. We have heard the rival contentions. Admittedly, the CIT(A) has allowed the claim of the assessee while following the decision of the Tribunal in earlier assessment year in the own case of the assessee wherein the subsidy received by the assessee has been held to be a 'capital receipt'. The assessee has also placed on file a copy of the sales tax scheme of the government namely 'New Incentive Policy – Capital Investment Incentive to Premier / Prestigious Unit Scheme 1995-2000'. The purpose of the scheme mentioned in the opening paras of the scheme, which reads as under:-

> *"The new industrial policy, announced by the Government of Gujarat has emphasized the need to accelerate development of the backward areas of the State and to create large scale employment opportunities. It has also stressed the need to increase the total flow of investment to industrial sector with the proper development of infrastructure and human resources to sustain the long term growth and achieve sustainable development.*
>
> *2. The Government of Gujarat is committed to create large-scale employment opportunities to absorb the swelling ranks of the unemployed. State Government has announced the new employment policy in order to*

ensure that priority is given to local persons for employment in industrial sectors.

There are certain core sector industries which have tremendous potential to spur industrial growth in ancillary, secondary; and tertiary sectors of the economy. Investment in such core industries, entitled as 'Premier / Prestigious Units' is likely to trigger off accelerate industrial development and economic growth. In view of this, government after careful conserving has decided to give certain higher benefits under its incentive policy to provide special package to such type of industries. Government. is pleased to introduce the following scheme……."

14. A perusal of the above opening paras of the scheme reveal that the scheme has been floated by the Government of Gujarat for development of the backward area of the state and to create large scale employment opportunities and with a stress to encourage investment for development of infrastructure and human resources to sustain long term growth and achieve sustainable development. The other purpose of the scheme was to encourage investment in certain core sector industries names as 'premier / Prestigious units' likely to trigger off industrial development and economic growth. Though the incentives have to be given, over a period of time, in the form of sales tax subsidy etc. after the commencement of production but purpose of the scheme was to encourage new investment in core sector of the industry, to accelerate the development of the backward area of the state and to create large scale employment opportunities.

The issue under consideration is now settled by the decision of the Hon'ble Supreme Court in the case of 'CIT-I Vs. M/s Chaphalkar Brothers, Pune' and Others in Civil Appeal Nos. 6513-6514 of 2012 vide order dated 7.12.2017 [2017] 88 taxman.com 278 (SC). The Hon'ble Supreme Court while deliberating on the other decisions of the Supreme Court in the cases of 'Sahney Steel & Press Works Ltd. Hyderabad Vs. CIT, A.P.-1, Hyderabad' : 1997 (7) SCC 765, 'CIT, Madras Vs. Pooni Sugars and Chemicals Limited' 2009 (9) SCC 337 and further of the Hon'ble J&K High Court in the case of 'Shri Balaji Alloys Vs. CIT' (2011) 333 ITR 335, has held that to hold whether any of such receipts are capital or Revenue in nature, 'purpose test' is to be applied. If the purpose is for the setting up of new industry, then the receipts are to be considered as capital in nature. However, if the receipts are in the nature of facilitation / helping hand to the trade, the same are to be construed as Revenue in nature. What is important is the object for which the subsidy / incentive is granted. That the object is carried out in a particular manner is irrelevant. Once the object of the subsidy was to industrialize the State and to generate employment in the State, the fact that a subsidy took a particular form and that it was granted only after commencment of production, would not make any difference. The Hon'ble Supreme Court made reference to the decision of the Hon'ble J&K High Court in the case of 'Shri Balaji Alloys v CIT' (supra), wherein, the Hon'ble High Court while considering the scheme of refund of excise duty and interest

subsidy, has held that the receipts were capital in nature despite the fact that the incentives were not available until and unless the commercial production has started and despite the fact that these incentives were not given to the assessee expressly for the purpose of capital assets. The relevant part of the decision of the Hon'ble Supreme Court in the case of 'CIT Vs. M/s Chaphalkar Baroathers, Pune' is reproduced as under:-

> *"Finally, it was found that, applying the test of purpose, the Court was satisfied that the payment received by the assessee under the scheme was not in the nature of a helping hand to the trade but was capital in nature.*
>
> *What is important from the ratio of this judgment is the fact that Sahney Steel was followed and the test laid down was the "purpose test". It was specifically held that the point of time at which the subsidy is paid is not relevant; the source of the subsidy is immaterial; the form of subsidy is equally immaterial.*
>
> *Applying the aforesaid test contained in both Sahney Steel as well as Ponni Sugar, we are of the view that the object, as stated in the statement of objects and reasons, of the amendment ordinance was that since the average occupancy in cinema theatres has fallen considerably and hardly any new theatres have been started in the recent past, the concept of a Complete Family Entertainment Centre, more popularly known as Multiplex Theatre Complex, has emerged. These complexes offer various entertainment facilities for the entire family as a whole. It was noticed that these complexes are highly capital intensive and their gestation period is quite long and therefore, they need Government support in the form of incentives qua entertainment duty. It was also added that*

government with a view to commemorate the birth centenary of late Shri V. Shantaram decided to grant concession in entertainment duty to Multiplex Theatre Complexes to promote construction of new cinema houses in the State. The aforesaid object is clear and unequivocal. The object of the grant of the subsidy was in order that persons come forward to construct Multiplex Theatre Complexes, the idea being that exemption from entertainment duty for a period of three years and partial remission for a period of two years should go towards helping the industry to set up such highly capital intensive entertainment centers. This being the case, it is difficult to accept Mr. Narasimha's argument that it is only the immediate object and not the larger object which must be kept in mind in that the subsidy scheme kicks in only post construction, that is when cinema tickets are actually sold. We hasten to add that the object of the scheme is only one -there is no larger or immediate object. That the object is carried out in a particular manner is irrelevant, as has been held in both Ponni Sugar and Sahney Steel.

Mr. Ganesh, learned Senior Counsel, also sought to rely upon a judgment of the Jammu and Kashmir High Court in Shri Balaji Alloys vs. C.I.T. (2011) 333 I.T.R. 335. While considering the scheme of refund of excise duty and interest subsidy in that case, it was held that the scheme was capital in nature, despite the fact that the incentives were not available unless and until commercial production has started, and that the incentives in the form of excise duty or interest subsidy were not given to the assessee expressly for the purpose of purchasing capital assets or for the purpose of purchasing machinery.

After setting out both the Supreme Court judgments referred to hereinabove, the High Court found that the concessions were issued in order to achieve the twin

objects of acceleration of industrial development in the State of Jammu and Kashmir and generation of employment in the said State. Thus considered, it was obvious that the incentives would have to be held capital and not revenue. Mr. Ganesh, learned Senior Counsel, pointed out that by an order dated 19.04.2016, this Court stated that the issue raised in those appeals was covered, inter alia, by the judgment in Ponni Sugars, and the appeals were, therefore, dismissed.

We have no hesitation in holding that the finding of the Jammu and Kashmir High Court on the facts of the incentive subsidy contained in that case is absolutely correct. In that once the object of the subsidy was to industrialize the State and to generate employment in the State, the fact that the subsidy took a particular form and the fact that it was granted only after commencement of production would make no difference."

15. We may further add here that the decision of the Hon'ble Jammu & Kashmir High Court in the case of 'CIT Vs. Shri Balaji Alloys & Ors' (supra) has been upheld by the Hon'ble Supreme Court vide its decision dated 19.12.2016 reported in (2016) 95 CCH 0249 SCC / (2016) 138 DTR 0036 (SC).

16. In view of this proposition of law laid down by the Hon'ble Supreme Court, the aforesaid receipts of the assessee on account of subsidy, excise duty refund and interest refund are held to be capital in nature and not taxable. Since the receipts have been held to be capital in nature, hence, no addition is attracted on account of these receipts into the income of the assessee.

We, therefore, do not find any infirmity it the order of the CIT(A) and, therefore, ground No.1 raised by the Revenue is dismissed.

17. **Ground No.2**. - In this ground the Revenue has agitated the action of the CIT(A) in directing the Assessing officer to recalculate the disallowance u/s 14A taking into consideration the investment in IIFL Bonds only.

18. While adjudicating the appeal of the assessee we have already deleted the additions made by the Assessing officer and also even confirmed by CIT(A) on this issue. In view of our findings given above, there is no merit in the ground of appeal and the same is accordingly dismissed.

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19. Now coming to the sole issue raised in both the cross appeals which is relating of the disallowance u/s 14A read with Rule 8D of the Income Tax Rules, 1962.

The assessee has come in appeal against the action of the CIT(A) in directing the Assessing officer to calculate the disallowance u/s 14A read with Rule 8D taking into consideration the investment which was capable of yielding taxable income whereas the Revenue has agitated the action of the CIT(A) in directing the Assessing officer to exclude the investment not yielding exempt income.

20. The facts for the year under consideration are identical to the facts of the case for assessment year 2011-12 (ITA No. 481/Chd/2016) as discussed above except that during the year the assessee had made one new investment of Rs. 108.75 lacs in IRFC NCB. Income from rest of the interments made by the assessee was taxable. The investment in Bharuch Eco-Acqa Infrastructure Ltd, Reliance Regular Saving fund-Growth option as discussed above was an old investment not capable of yielding tax exempt income as discussed in the assessee's case for assessment year 2011-12. It is also to be noted that investment in IRFC NCB of Rs. 1023.10 lacs has been withdrawn whereas an investment of Rs. 108.75 lacs was made in IFRC NCB. The assessee during the year earned exempt income of Rs. 84.08 lacs. The assessee suo moto disallowed a sum of Rs. 10,000/- on account of expenditure u/s 14A of the Act. The other facts regarding the own funds of the assessee are identical as share capital, reserve and surpluses of the assessee at the end of the year had increased i.e. on 31.3.2012 at Rs. 25081 lacs and there was an increase of Rs. 2449 lacs. Though, the loan funds during the year had increased from 224 lacs at the end of the year, however, the investment of the assessee during the year have decreased. The total reserve and surplus of the assessee were much more that the total investments, out of which, one investment in IRFC NCB of Rs. 108.75 lacs was capable of yielding tax exempt income.

21. In view of this, our observations made above while deciding the appeal for assessment year 2011-2 are squarely applicable for the year under consideration also and accordingly the disallowance u/s

14A on this issue is restricted to suo moto disallowance made by the assessee of Rs. 10,000/-. The additions made by the lower authorities on this issue are hereby ordered to be deleted.

In view of this, the appeal of the assessee is hereby allowed and that of the Revenue is hereby dismissed.

Order pronounced in the Open Court on 20.08.2018

Sd/-	**Sd/-**
(ANNAPURNA GUPTA)	**(SANJAY GARG)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Dated 20.08.2018
Rkk

Copy to:

- *The Appellant*
- *The Respondent*
- *The CIT*
- *The CIT(A)*
- *The DR*