

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "बी", चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH "B", CHANDIGARH

श्री संजय गर्ग, न्यायिक सदस्य एवं डा. बी.आर.आर. कुमार, लेखा सदस्य
BEFORE: Sh. SANJAY GARG, JM & DR. B.R.R. KUMAR, AM

आयकर अपील सं./ ITA NO. 1615/Chd/2017
निर्धारण वर्ष / Assessment Year : 2012-13

M/s Trident Limited E-212, Kitchlu Nagar Ludhiana, Punjab	बनाम	The DCIT, C-1, Rishi Nagar Ludhiana, Punjab
स्थायी लेखा सं./PAN NO: AABCA4139J		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

आयकर अपील सं./ ITA NO. 1590/Chd/2017
निर्धारण वर्ष / Assessment Year : 2012-13

The DCIT, C-1, Ludhiana, Punjab	बनाम	M/s Trident Limited E-212, Kitchlu Nagar Ludhiana, Punjab
स्थायी लेखा सं./PAN NO: AABCA4139J		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri. Ashwani Kumar
राजस्व की ओर से/ Revenue by : Shri. G.S. Phani Kishore CIT (DR)

सुनवाई की तारीख/Date of Hearing : 30/10/2018
उद्घोषणा की तारीख/Date of Pronouncement : 31/10/2018

आदेश/Order

PER DR. B.R.R. KUMAR, A.M

These are appeals filed by the Assessee and the Revenue against the order of the Ld. CIT(Appeals)-1 Ludhiana dt. 29/09/2017 on the following respective grounds:

ITA No. 1615/Chd/2017:

That order passed under section 250(6) of the Income Tax Act, 1961 by the Ld. CIT(A)-1, Ludhiana is against law and facts on the file in as much as he was not justified to arbitrarily uphold disallowance made by the Ld. Assessing Officer under section 36(1)(iii) of Rs. 1,87,28,165/- on account of interest on investments.

ITA No. 1590/Chd/2017:

1. Whether upon facts and circumstances of the case, the Ld. CIT(A) was justified in law in deleting the addition made on account of disallowance u/s 14A of the Income Tax Act, 1961 read with rule 8D of the Income Tax Rules 1962?

2. That the order of the Ld. CIT(A) be set aside and that of the Assessing Officer be restored.

3. *That the appellant craves leave to add or amend any ground of appeal before it is finally disposed off*

2. The Id. AR addressing the grounds raised by the parties submitted that the points at issues were fully covered in favour of the assessee. Inviting attention to the assessee's grounds, it was submitted that the facts have been discussed by the CIT(A) at page 13 para 11 wherein the CIT(A) relying upon the proceedings held in assessee's own case in 2011-12 assessment year sustained the addition made by the AO. For ready reference, para 13 of the CIT(A) is reproduced hereunder :

"The submissions of the appellant have been considered. In the appellant's case for A.Y.2011-12, similar addition was confirmed vide order dated 28/12/2015 in Appeal No.. 06/IT/CIT (A)-I/Ldh/2014-15. Following the same precedence, the disallowance of Rs. 73,61,265/-is upheld. It is ordered accordingly. The ground of appeal pertaining to this addition is, thus, dismissed."

3. Inviting attention to the copy of the order of the ITAT available in assessee's own cases wherein the ITAT vide its order dated 29.11.2017 and 20/03/2018 considering the identical issues allowed relief to the assessee Accordingly, it was his submission that the issue is covered in assessee's favour.

4. For the sake of brevity the relevant part of the order dated 20/03/2018 is reproduced below:

4. We have heard the rival submissions and perused the material on record. We find that the issue was considered by the CIT(A) relying upon the position taken in 2011-12 assessment year on same set of facts and circumstances. The said case had come up for consideration before the Coordinate Bench and considering the facts and position of law thereon, addition was directed to be deleted. In the absence of any infirmity either on facts or change in position of law, we find no good reason to vary. Respectfully following the order of the ITAT, ground raised by the assessee in this appeal is allowed. Specific reasoning taken by the ITAT which is being followed in the present proceedings is reproduced in para 10 of the said order.

5. Addressing the sole issue raised by the Revenue in the present proceedings. The Id. AR submitted that in the facts of the present case, the assessee has not earned any exempt income which fact has been taken note of by the AO as well as by the CIT(A). Accordingly, relying upon the position of law, as has been consistently considered by various Courts and followed by the ITAT also, in the facts as they stand, it was his submission that the relief granted by the CIT(A) deserves to be upheld. Reliance was placed upon the order dated 22.04.2016 in ITA 545/CHD/2015 and ITA 428/CHD/2015 in the cross appeals in the case of M/s Vardhman Chemtech Pvt. Ltd.

5.1 The Id. CIT-DR relies upon the assessment order. No contrary decision or fact was brought to our notice.

5.2 We have heard the rival submissions and perused the material on record. We find that in the peculiar facts and circumstances of the case, where admittedly there is no exempt income, position of law as considered by the jurisdictional High Court in the case of CIT Vs Lakhani Marketing in ITA 970/2008 and decision of the Delhi High Court in the case of Cheminvest Ltd., we find that the departmental appeal cannot survive. Accordingly, upholding the conclusion arrived at for the reasons set out herein above, departmental appeal is dismissed and assessee's

appeal is allowed. Said order was pronounced in the Open Court at the time of hearing itself.

5. Following the above rationale the appeal of the Assessee is allowed.
6. Regarding the addition of Rs. 1,87,28,165/- , the Assessing Officer made the addition on account of interest on investments by resorting to provisions of section 36(1)(iii) of Income Tax Act,1961. The Assessing Officer observed that the assessee had total investments of Rs. 55.64 Crores and these investments are not related to the core business of the assessee. The Ld. CIT(A) has confirmed the addition based on the earlier order for the A.Y. 2011-12. He supported the argument of the Assessing Officer that since the investments were made out of composite funds it would be difficult to apportioned the non interest bearing funds which have been purportedly said to have been utilized for the purpose of making the investments in a situation where the assessee had raised secure as well as unsecured loans on which the interest was paid.
7. Before us, the Ld. AR submitted that these investments were made out of share capital, reserves and surplus and interest free funds available with the assessee and hence it cannot be said that the interest bearing funds have been utilized for making the investments. This matter has been dealt in the case of the assessee by this Tribunal for the A.Y. 2011-12 wherein the said addition was deleted on the grounds that when the assessee has got sufficient own funds available at their disposal no disallowance is called for. For ready reference the relevant para of the order of the ITAT, Chandigar Bench in ITA No. 189/CHD/2016 is reproduced hereunder:

10. Crisply to say that the disallowance of interest under section 36(1)(iii) on advances confirmed by the Ld. CIT(A) is on the principle that the assessee utilized mixed funds for investment. The Ld. CIT(A) reliance that the funds utilized by the assessee are mixed funds it cannot be distinguished whether surplus funds or borrowed funds are used for the said investments cannot be accepted in view of the further development of the judicial pronouncements on the issue. When the assessee has got own funds available at their disposal no disallowance is called for as enunciated in various judgments. In the case of Bright Enterprises Pvt. Ltd. Vs. CIT (Punjab & Haryana High Court in ITA No. 224/2013 dt. 24/07/2015 it was held that if there are interest free funds available then it will be presumed that these have been made out of interest free funds. Similar view was held in the case of CIT Vs. Kapsons Associates Investment Pvt. Ltd. [2015] 381 ITR 204 (P&H) wherein, the Hon'ble Court has held that interest on investment in other properties not for business purpose cannot be disallowed if the assessee is having sufficient interest free funds at its disposal. Similar view was taken in the case of Hero Cycles Pvt. Ltd. 63 Taxman 308 (Supreme Court) 2015 wherein the Hon'ble Supreme Court held that once it is established that there is a nexus between the expenditure and the purpose of the business no disallowance is called for. Hence, respectfully following the ratio laid down by the various judicial pronouncements, the disallowance made on account of interest is hereby deleted.

8. Following the above rationale the appeal of the Revenue is dismissed.

Order pronounced in the Open Court.

Sd/-

संजय गर्ग
(SANJAY GARG)

न्यायिक सदस्य/ Judicial Member

AG

Date: 31/10/2018

Sd/-

डा. बी.आर.आर, कुमार,
(DR. B.R.R. KUMAR, AM)

लेखा सदस्य/ Accountant Member

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

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File