

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

**श्री संजय गर्ग, न्यायिक सदस्य एवं डा. बी.आर.आर, कुमार, लेखा सदस्य
BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER AND
DR. B.R.R. KUMAR, ACCOUNTANT MEMBER**

आयकर अपील सं./ ITA No. 1434/CHD/2017

निर्धारण वर्ष / Assessment Year : 2013-14

The DCIT, Circle-1, Ludhiana	बनाम	M/s Kapsons Associates Investments (P) Limited, B-26, Focal Point, Ludhiana
स्थायी लेखा सं./PAN NO: AAACK7243A		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Smt. Chanderkanta, Sr.DR

राजस्व की ओर से/ Revenue by : Sh. Vipin Gupta, CA

सुनवाई की तारीख/Date of Hearing : 23.08. 2018

उदघोषणा की तारीख/Date of Pronouncement : 15.11.2018

आदेश/Order

Per Sanjay Garg, Judicial Member:

The present appeal has been preferred by the Revenue against the order dated 13.7.2017 of the Commissioner of Income Tax (Appeals)-2, Ludhiana [hereinafter referred to as CIT(A)].

2. The Revenue is aggrieved by the action of the CIT(A) in restricting the addition to Rs. 16,53,617/- out of the addition made by the Assessing officer of Rs. 2,89,72,984/- u/s 14 A read of the Income-tax Act, 1961 (in short 'the Act') read with Rule 8D of the Income Tax Rules, 1962.

3. The brief facts relevant to the issue are that Assessing officer noticed that the assessee had earned tax exempt dividend income of Rs. 67,05,197/- during the year. He invoking the provisions of section 14A read with rule 8D of the I.T. Rules made the disallowance of Rs. 2,89,72,984/- in respect of expenditure incurred for earning of tax exempt income..

4. However, in appeal, the Ld. CIT(A) noted that the assessee was possessed of sufficient own funds / interest free funds to meet the investments whereupon the tax exempt dividend income was earned. He, relied upon the decision of the Jurisdictional High Court in the own case of the assessee titled as 'CIT Vs. Kapsons Associates' (2016) 381 ITR 204 (P&H), wherein, it has been held 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. He, therefore, deleted the addition in respect of the disallowance of interest made by the Assessing officer under rule 8D(2)(ii) of the Act. However, so far as the disallowance on administrative expenses under rule 8D(2)(iii) was concerned, the Ld. CIT(A) sustained the addition so made by the Assessing officer.

Being aggrieved by the above order of the CIT(A), the Revenue thus has come in appeal before us.

5. We have heard the rival contentions and have also gone through the record. There is no rebuttal of the factual position that the assessee was possessed of own sufficient funds to meet the investment in question. However, the Ld. DR contended that the proposition laid down by the

Hon'ble Jurisdictional High Court in the decision relied upon by the CIT(Appeals) while deleting the disallowance was no longer good law. The Ld. DR pointed out that the presumption theory had now been overruled by the Hon'ble Apex Court in its decision in group of cases with the lead case being 'Maxopp Investment Ltd. Vs. CIT' (2018) 402 ITR 640 (SC), wherein in the context of section 14A, the decision of the Hon'ble Jurisdictional Punjab & Haryana High Court in the case of Avon Cycles Ltd. Vs. CIT in ITA No.277 of 2013 was also under consideration wherein the Hon'ble Jurisdictional High Court has upheld the disallowance of interest u/s 14A where mixed funds were deployed by the assessee, and this proposition has been affirmed by the Hon'ble Apex Court. Our attention was drawn to para 42 of the order of the Hon'ble Apex Court in this regard which is reproduced as under:

"40 Civil Appeal No. 1423 of 2015 is filed by M/s. Avon Cycles Limited, Ludhiana, wherein the AO had invoked section 14A of the Act read with Rule 8D of the Rules and apportioned the expenditure. The CIT(A) had set aside the disallowance, which view was upturned by the ITAT in the following words:

"...Admittedly the assessee had paid total interest of Rs.2.92 crores out of which interest paid on term loan raised for specific purpose totals to Rs.1.70 crores and balance interest paid by the assessee is Rs.1.21 crores. The funds utilized by the assessee being mixed funds and in view of the provisions of Rule 8D(2)(ii) of the Income Tax Rules the disallowance is confirmed at Rs.10,49,851/-, we find no merit in the ad hoc disallowance made by the CIT (Appeals) Rs.5,00,000/-. Consequently, ground of appeal raised by the Revenue is partly allowed and ground raised by the assessee in cross-objection is allowed..."---

Taking note of the aforesaid finding of fact, the High Court has dismissed the appeal of the assessee observing as under:

"In the present case, after examining the balance-sheet of the assessee, a finding of fact has been recorded that the funds utilized by the assessee being mixed funds, therefore, the interest paid by the assessee is also an interest on the

investments_made. Such being a finding of fact, we do not find that any substantial question of law arises for consideration of this Court.

After going through the records and applying the principle of apportionment, which is held to be applicable in such cases, we do not find any merit in Civil Appeal No. 1423 of 2015, which is accordingly dismissed.”

6. We find that the aforesaid decision of the Hon'ble Supreme Court in the case of 'Avon Cycles Ltd Vs. CIT' (supra) with the lead case being 'Maxoppp Investment Ltd Vs. CIT' (supra) has come into consideration before the Coordinate Bench of the Tribunal in the case of 'ACIT Vs. Janak Global Resources Pvt Ltd' ITA No. 470/Chd/2018 order dated 16.10.2018 (incidentally consisted of both of us), wherein, the issue has been decided in favour of the assessee also considering the decision of the Hon'ble Apex Court in the case of 'Hero Cycles Vs. CIT' 379 ITR 347 (SC) . The relevant part of the order of this Tribunal in the case of 'ACIT Vs. M/s Janak Global Resources Pvt Ltd.' (supra) is reproduced as under:-

“9. We have carefully considered the contentions of both the parties and have also gone through various case laws referred to before us. The issue to be adjudicated, as narrowed down from the arguments made before us by both the parties, is whether in relation to disallowance of interest made u/s.36(1)(iii) of the Act, the proposition laid down by the Hon'ble Jurisdictional High Court in a number of decisions, that where the assessee had sufficient own interest free funds along with interest bearing funds and had made or advanced sums for non business purposes without charging any interest, the presumption that would arise is that the investment had been made out of interest free funds generated or available with the assessee, is still a good law in the light of the decision of the Hon'ble Apex Court in the case of Hero Cycles Ltd. (supra).

10. We are in agreement with the contention of the Ld. counsel for assessee. Undoubtedly, proposition of law laid down by courts have to be read in the context of the facts before them and the issue dealt with by them.

Reliance should not be placed on a decision without discussing how the factual situation fits in with the factual situation of the decision on which reliance is placed. The Hon'ble High Court of Bombay in the case of CIT vs Sudhir, 214 ITR 154 (Bom) has observed that a case is an authority for what it actually decides and not what may come to follow from some observation which may find place therein. The Hon'ble High court observed as under:

"It is well-settled that the ratio of a decision alone is binding, because a case is only an authority for what it actually decides and not what may come to follow from some observations which find place therein. The ratio of the decision has to be distinguished from propositions assumed by the Court to be correct for the purpose of disposing of the particular case, because it is the ratio and not the propositions which are relevant and binding. It is, therefore, not proper to regard every word, clause or sentence occurring in a judgment of the Court as containing a full exposition of the law. Judgments of the Courts should not be construed as statutes. They must be read as a whole and observations made therein should be considered in the light of the facts and circumstances of that case and the questions before the Court. A decision of the Court takes its colour from the questions involved in the case in which it is rendered."

In the case of CIT vs Sun Engineering Works Pvt. Ltd. 198 ITR 297(SC), the Hon'ble Supreme Court observed that Judgements must be read as a whole and observations in judgements should be considered in the context in which they are made and in the light of the question that were before the court:

"It is neither desirable nor permissible to pick out a word or a sentence from the judgement of the Supreme Court divorced from the context of the question under consideration and treat it to be the complete law declared by the court. The judgement must be read as a whole and the observation from the judgement have to be considered in the light of the questions which were before the court. A decision of the Supreme Court takes its colour from the question involved in the case in which it is rendered and while applying the decision to a later case, courts must carefully try to ascertain the true principle laid down by the decision."

11. *The Hon'ble apex court in the case of Goodyear India Ltd & Ors vs State of Haryana & Another and State of Maharashtra & Another reported in 188 ITR 402(1991) have held that a decision on a question that has not been argued cannot be treated as a precedent. The Hon'ble Kerala High Court in the case of CIT vs K. Ramakrishnan (1993) 202 ITR 997 held that a precedent is an authority only for what it actually decides and not for what may remotely or even logically follow from it.*

Having said so we find that in the case of Avon Cycles Ltd. (supra) the issue was relating to disallowance of expenditure u/s 14A of the Act. The Hon'ble Apex Court dealing with the bunch of cases relating to said issue, took up the case of Maxopp Investment Ltd. (supra) as the lead case and proceeded to answer the question which arose under various circumstances before them that whether the investment made in shares and stocks for the purpose of retaining the control over the company or as stock-in-trade and from which exempt income by way of dividend was generated would attract the provisions of section 14A of the Act, calling for disallowance of expenditure incurred in relation to earning the said dividend income and the question arose for the reason that it was the contention of the assessee, which had been upheld by various High Courts, that the dominant purpose for making the investment in the shares not being earning of dividend income, it called for no disallowance of expenditure u/s 14A of the Act. Answering this question the Hon'ble Supreme Court held that the dominant purpose test was irrelevant and the fact remaining that the exempt income had been earned which was attributable to the dividend income had to be disallowed and could not be treated as business expenditure. The Hon'ble Apex Court reaffirmed the theory of apportionment of expenditure between taxable and non taxable income laid down by it in the case of CIT Vs. Walfort Share & Stock Brokers Pvt. Ltd., 326 ITR 1. After holding so, the Hon'ble Apex Court dealt with the appeal filed in the case of Avon Cycles Ltd. (supra) and taking note that the fact in that case was that the funds utilized by the assessee were mixed funds, the Hon'ble Apex Court held that the principle of apportionment was to be applied and, therefore, dismissed the appeal of the assessee. The same is evident from a bare reading in the case of Maxopp Investment Ltd. (supra) and more specifically para 42 of the said order wherein the case of Avon Cycles Ltd. (supra) has been dealt with and which is reproduced again hereunder:

40. *Civil Appeal No. 1423 of 2015 is filed by M/s. Avon Cycles Limited, Ludhiana, wherein the AO had invoked section 14A of the Act read with Rule 8D of the Rules and apportioned the expenditure. The CIT(A) had set aside the disallowance, which view was upturned by the ITAT in the following words:*

"...Admittedly the assessee had paid total interest of Rs.2.92 crores out of which interest paid on term loan raised for specific purpose totals to Rs.1.70 crores and balance interest paid by the assessee is Rs.1.21 crores. The funds utilized by the assessee being mixed funds and in view of the provisions of Rule 8D(2)(ii) of the Income Tax Rules the disallowance is confirmed at Rs.10,49,851/-, we find no merit in the ad hoc disallowance

made by the CIT (Appeals) Rs.5,00,000/-. Consequently, ground of appeal raised by the Revenue is partly allowed and ground raised by the assessee in cross-objection is allowed..."

Taking note of the aforesaid finding of fact, the High Court has dismissed the appeal of the assessee observing as under:

"In the present case, after examining the balance-sheet of the assessee, a finding of fact has been recorded that the funds utilized by the assessee being mixed funds, therefore, the interest paid by the assessee is also an interest on the investments made. Such being a finding of fact, we do not find that any substantial question of law arises for consideration of this Court.

After going through the records and applying the principle of apportionment, which is held to be applicable in such cases, we do not find any merit in Civil Appeal No. 1423 of 2015, which is accordingly dismissed."

12. It is evident from the above that the issue before the Hon'ble Apex Court was not whether the presumption theory would apply or not where there are mixed funds and the assessee had demonstrated availability of sufficient own funds for making the investments . No discussion on this aspect has also been done by the Hon'ble Apex Court and merely noting that the assessee had utilized mixed funds, the Hon'ble Apex Court held that the principle of apportionment would apply. Without any discussion or deliberation on the presumption theory, the proposition laid down in the case of Avon Cycles Ltd. (supra) by the Hon'ble Apex Court has to be restricted to the extent of the issue before the Hon'ble Apex Court and facts before it and not beyond that. And on that basis the decision of the Hon'ble Supreme Court in the case of Avon Cycles Ltd. (supra) can be read only to the extent of upholding the principle of apportionment of expenses incurred in the context of the limited fact of mixed funds available with assessee and no further. The proposition laid down cannot be stretched even logically to address the fact situation where sufficient own interest free funds are available with assessee, which fact was not there before the Hon'ble Apex court in the case of Avon Cycles (supra), and to negate the presumption that the own funds were used for making the investment, which was neither the question raised before the apex court and therefore not addressed by it also.

13. Going further from here we find that the presumption theory was upheld by the Hon'ble Supreme Court in the case of Hero Cycles Pvt. Ltd. (supra) wherein on the issue of disallowance of expenditure u/s.36(1)(iii) of the Act on interest free advance made to Directors, the Hon'ble Apex Court held

that in view of the findings of fact that the assessee had sufficient credit balance in its bank account for making the impugned advances and had sufficient own interest free funds, the assessee company could in any case utilize those funds for giving advances to its Directors. The findings of the Hon'ble Apex Court at para 16 of this order to this effect are as under:

“16. Insofar as the loans to directors are concerned, it could not be disputed by the Revenue that the assessee had a credit balance in the bank account when the said advance of Rs.34 lakhs was given. Remarkably, as observed by the CIT(A) in his order, the company had reserve/surplus to the tune of almost Rs.15 crores and, therefore, the assessee company could in any case, utilise those funds for giving advance to its directors.”

14. It is evident from the above that the Hon'ble Apex Court had in very clear terms held that where sufficient own interest free funds are available with the assessee, the presumption arises that the assessee had utilised those funds for the purpose of making interest free non business advances. Thus in very clear terms the Hon'ble Apex Court in the case of Hero Cycles Pvt. Ltd. (supra) have upheld the presumption theory.

15. Considering both the judgments of the Hon'ble Apex Court and reading and interpreting them in the light of facts and the issue before the Hon'ble Apex Court we find that the judgments compliment each other. In the case of Avon Cycles Ltd. (supra) the Hon'ble Apex Court held that in the fact situation where mixed funds are utilized by the assessee, the disallowance of interest to the extent the funds are utilized for the purpose of non business advance is warranted. Going forward from there, the presumption theory would come into operation if in the case of mixed funds, the assessee is able to demonstrate/ establish availability of interest free funds equal to or more than interest free non business advances/investments thus raising the presumption that the same have been made out of the interest free funds of the assessee.

16. In view of the above, we hold that the decision of the Hon'ble Apex Court in the case of Avon Cycles Ltd. (supra) does not displace the presumption theory which has been upheld by the Hon'ble Apex Court in the case of Hero Cycles Pvt. Ltd. (supra) and the same still holds. In view of the above, since the Ld.CIT(Appeals), we find, has allowed the assessee's appeal deleting the disallowance of interest made on finding that it had sufficient own interest free funds for making the investment, which fact has not been controverted by the

Revenue, we see no reason to interfere in the order of the Ld. CIT(Appeals) and the ground raised by the Revenue, therefore, is dismissed.

6. In view of this and for the sake of consistency, following our above decision in the case of 'ACIT Vs. Janak Global Resources Pvt Ltd' (supra), we do not find any merit in the appeal of the Revenue and the same is accordingly dismissed.

In the result, appeal of the Revenue stands dismissed.

Order pronounced in the Open Court on 15.11.2018.

Sd/-
(बी,आर.आर. कुमार / B.R.R. KUMAR)
लेखा सदस्य/ Accountant Member

Sd/-
(संजय गर्ग / SANJAY GARG)
न्यायिक सदस्य /Judicial Member

Dated : 15.11.2018
"आर.के."

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

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar