आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'A' अहमदाबाद ।

IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, AHMEDABAD

BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER
& SHRI MAHAVIR PRASAD, JUDICIAL MEMEBR

आयकर अपील सं./I.T.A. No. 1843/Ahd/2016
WITH
CROSS OBJECTION No. 145/Ahd/2016
(**निर्धारण वर्ष /** Assessment Year : 2012-13)

Dy. Commissioner of Income Tax Circle-2(1)(2), Ahmedabad 1st Floor, Navjivan Trust Building, Ahmedabad – 380014	**बनाम**/ Vs.	**M/s. Jindal Worldwide Limited** 1st Floor, Suryrath, Panchvati First Lane, Ambawadi, Ahmedabad 380006
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACJ3816G		
(**Appellant / Respondent**)	..	(**Respondent / Cross Objector**)

राजस्व की ओर से/**Revenue by :**	Shri Mudit Nagpal, Sr. D.R.
अपीलार्थी ओर से /**Assessee by :**	Shri S. N. Soparkar & Shri Parin Shah, A.Rs.

सुनवाई की तारीख / **Date of Hearing**	11/12/2018
घोषणा की तारीख /**Date of Pronouncement**	20/02/2019

आदेश/O R D E R

PER PRADIP KUMAR KEDIA - AM:

The captioned appeal has been filed at the instance of the Revenue against the order of the Commissioner of Income Tax (Appeals)-2, Ahmedabad ('CIT(A)' in short), dated 02.05.2016 arising in the assessment order dated 27.02.2015 passed by the Assessing Officer (AO) under s. 143(3) of the Income Tax Act, 1961 (the Act) concerning assessment year 2012-13.

2. The assessee has also filed cross objection in the Revenue's appeal as captioned above.

ITA No. 1843/Ahd/2016 (Revenue's appeal)

3. The grounds of appeal raised by the Revenue reads as under:-

> *"1. The Ld. CIT(A) has erred in law and on facts in restricting the disallowance u/s. 14A to Rs.2,01,860/- as against Rs.40,43,049/- on account of which the book profit u/s.115JB has also been restricted to that extent without properly appreciating the facts of the case and the material brought on record."*

4. At the time of hearing, it was submitted by the Ld.AR for the assessee that the appeal filed by the Revenue is hit by recently issued CBDT Circular No.3 of 2018 dated 11/07/2018 revising the previous thresholds pertaining to tax effects. As per aforesaid Circular, all pending appeals filed by Revenue are liable to be dismissed as a measure for reducing litigation where the tax effect does not exceed the prescribed monetary limit which is now revised at Rs.20 Lakhs. In the instant case, the tax effect on the disputed issues raised by the Revenue is stated to be not exceeding Rs.20 lakhs and therefore appeal of the Revenue is required to be dismissed in limine.

5. The Learned DR for the Revenue fairly admitted the applicability of the CBDT Circular No. 3 of 2018. Accordingly, appeal of the Revenue is dismissed as not maintainable. However, it will be open to the Revenue to seek restoration of its appeal on showing inapplicability of the aforesaid CBDT Circular in any manner.

6. In the result, the appeal of the Revenue is dismissed.

7. Now, we turn to Cross Objection filed by the assessee in Revenue's appeal in CO No.145/Ahd/2016.

8. The first objection of the assessee concerns disallowance sustained by the CIT(A) under s.14A of the Act to the extent of exempt income i.e. Rs.5,67,276/-. The learned AR for the assessee submitted that the total disallowance under s.14A of the Act was worked out by the AO at Rs.44,08,465/- comprising of Rs.40,43,049/- towards proportionate interest disallowance under Rule 8D(2)(ii) and remaining Rs.3,65,416/- under Rule 8D(2)(iii) of the Income Tax Rules. The CIT(A) in first appeal has restricted the disallowance to the extent of exempt income amounting to Rs.5,66,276/- as against *suo moto* disallowance of Rs.3,65,416/- by the assessee. The learned AR in this context pointed out that reference to the financial statement that the own funds held by the assessee are nearly 100 times of the corresponding investment and therefore, in view of the decision of the Hon'ble Gujarat High Court in India Gelatine & Chemicals 376 ITR 553 (Guj), no disallowance towards proportionate interest is justified. We are in total agreement with the plea on behalf of the assessee in view of the long line of judicial precedents on the issue. We thus direct the AO to restrict the disallowance under s.14A to the extent of Rs.3,65,416/- as per Rule 8D(2)(iii) of the ITAT Rules, 1962. The issue accordingly stands allowed.

9. The second grievance of the assessee relates to maintainability of disallowance computed under s.14A of the Act under normal provisions for the purposes of adjustments in book profit as determined for the purposes of Section 115JB of the Act. With the assistance of the learned AR for the assessee, we find that the issue is squarely covered in favour of the assessee by the decision of the Hon'ble Gujarat High Court in Alembic Ltd. Tax Appeal No. 1249 of 2014 (Guj) as well as the decision of the special Bench in Vireet Investments 165 ITD 27 (SB). In view of the express judicial fiat available in this regard, the disallowance computed under s.14A cannot be imported for the purposes of adjustment in book profit under

s.115JB of the Act. The issue raised by the assessee in this regard thus stands allowed.

10. Third issue concerns disallowance of Rs.38,850/- made on account of additional depreciation in respect of air conditioner machines and finger recognition system. The learned AR for the assessee submitted that the air conditioners were installed with the factory premises and the finger recognition system is for the supervision and control of the emplyees' attendance. Both the assets are in the nature of plant and machinery and thus qualify for additional depreciation under s.32(1)(iia) of the Act. For this proposition, the learned AR for the assessee referred to the decision of Hon'ble Gujarat High Court in CIT vs. Nathubhai H Patel (2006) 154 TAXMAN 117 (Guj). We find force in the plea of the assessee noted above. The assessee cannot be denied additional depreciation in the facts narrated above. The aforesaid issue is thus settled in favour of the assessee.

11. We shall now turn to the additional ground raised by the assessee in its cross objection which reads as under:

> *"On the facts and the circumstances of the case and in law, the interest subsidy of Rs.2,16,45,161 received by the assessee under Technology Upgradation Fund Scheme (TUFS) for Textile and Jute industries during the above assessment year should be treated as capital receipt."*

11.1 The additional ground has been admitted to adjudicate the legal issue in the light of the available view taken by the co-ordinate bench in DCIT vs. M/s. Adani Gas Ltd. ITA Nos. 775/Ahd/2014 & Ors. order dated 17.10.2018. The relevant operative para of the order of the co-ordinate bench is reproduced hereunder:

> *"21.4 A legal issue also cropped up in the course of hearing as to whether additional ground could be raised in a cross objection filed by the assessee under s.253(4) of the Act. On being enquired on this aspect of the matter, it was submitted on behalf of the*

assessee that there is no perceptible distinction between the position of law qua cross objection in the matter of filing additional ground. It was submitted that a cross objection has all the trappings of a regular appeal more so in the light of language employed under s.253(4) of the Act.

21.5 We find ourselves in agreement with the propositions made on behalf of the assessee that in a cross objection, there is no bar to raise legal issues for the first time before ITAT. A cross objection is like an appeal. It has all the trappings of an appeal. It is filed in the form of memorandum and it is required to be disposed in same manner as an appeal. Even where the appeal is withdrawn or dismissed for default, cross objection may nevertheless be heard and determined. Cross objection is nothing but an appeal, a cross appeal at that. This apart, raising of additional ground would only enable the authority concern to correctly assess the tax liability of the assessee. Similar view has been expressed by the co-ordinate bench in the case of ITO vs. Jasjit Singh (Del) in cross objection Nos. 138 to 142/Del/2014 interim order dated 23.09.2014. We thus do not see any impediment in entertaining the additional grounds. The relevant facts are available on record.

21.6 In so far as the merits of the claim made in additional ground is concerned, we observe that where the AO has readjusted the quantum of depreciation in the subsequent assessment year, the assessee is within its legitimate rights to be granted depreciation in AY 2009-10 as per the figures worked by the AO himself. We do not see any perceptible reason for not admitting such claim of the assessee. We also find bonafides in the plea of the assessee for raising new claim on account of depreciation by way of additional ground at this belated stage. The order for the AY 2012-13 was passed on 29.03.2015. By virtue of this order, the assessee came to know about the revision in the claim of depreciation concerning AY 2012-13. By that time, the order of the CIT(A) dated 13.12.2013 was already passed. Therefore, the assessee was incapacitated to put forward such new claim towards depreciation on goodwill amounting to Rs.5,57,63,315/- for which relevant facts are duly available on record in the light of the decision of Hon'ble Supreme court in the case of Goetze (India) Ltd. vs. CIT [2006] 284 ITR 323 (SC) & NTPC vs. CIT 229 ITR 383 (SC).

22. In the result, additional ground raised by the assessee is allowed."

11.2 Having admitted the additional ground for adjudication as noted above we now turn to the relevant facts touching the issue. As pointed out on behalf of the assessee, a Technology Upgradation Fund Scheme (TUFS) was introduced in 1999 to catalyze investments in textile industries. The purpose of scheme under which the subsidy was given was stated to be to sustain and prove the competitiveness and for long term viability of textile industry. The concerned ministry of textile adopted TUFS scheme envisaging technology upgradation of the industry as per the scheme. The object of the scheme was to enhance sustainable growth in value chain for overall growth of textile industry. Pursuant to TUFS, certain subsidy benefits by way of

interest on reimbursement of loans taken from authorized agencies for investment in plant and machinery for spinning units and other machineries in textile industry was availed by textile sector.

11.3 In this background, it was contended on behalf of the assessee that the assessee herein as obtained subsidy by way of reimbursement of interest under the scheme. The assessee has treated the aforesaid interest reimbursement subsidy mistakenly as revenue receipt in the P&L account and disclosed the same by way of net off from interest expenses. The taxable income was thus stated to be overstated to this extent. It was contended that the character of such subsidy in the hands of recipient assessee is capital in nature having regard to the purpose for which the subsidy was given i.e. acceleration of development of textile industry.

11.4 Reference was made to the notes forming part of the financial account detailing the interest subsidy aggregating to Rs.2,16,45,161/- as reduced from the interest costs. Our attention was also adverted to Notes to the Financial Statement wherein suitable disclosure was made towards claim of interest subsidy.

11.5 In the circumstances, it is the case of the assessee that where such subsidy is intended and bestowed not with the object of running the business but with a solemn object of attracting industrial investment or expansion, such interest subsidy is in the nature of capital receipt and therefore cannot be reduced from the interest costs. It is thus contended that such capital receipt is not chargeable to tax in the relevant AY 2012-13 in question being a capital receipt.

12. We find that the issue is squarely covered in favour of the asseessee by the decision of the Hon'ble Supreme Court in CIT vs. Chaphalkar Brothers Pune [2017] 88 taxmann.com 178 (SC); CIT vs.

Meghalaya Steels Ltd. [2016] 67 taxmann.com 158 (SC) and CIT vs. Sham Lal Bansal [2011] 11 taxmann.com 369 (P&H). In the light of aforesaid judgments, we find merit in the plea of the assessee that having regard to the object and purposes of the scheme, the interest subsidy is required to be treated as capital receipt of non-taxable nature having regard to the propositions laid down in the judicial proceedings noted above.

13. The aforesaid view is also fortified by the legislature in view of amendment as per sub clause (xviii) to Section 2(24) of the IT Act as inserted by the Finance Act, 2015 which reads as under:

> *"[(xviii) assistance in the form of a subsidy or grant or cash incentive or duty drawback or waiver or concession or reimbursement (by whatever name called) by the Central Government or a State Government or any authority or body or agency in cash or kind to the assessee [other than,—*
>
> *(a) the subsidy or grant or reimbursement which is taken into account for determination of the actual cost of the asset in accordance with the provisions of Explanation 10 to clause (1) of section 43; or*
>
> *(b) ……."*

A claim on behalf of the assessee, as a corollary to said amendment, such a capital receipt may become chargeable to tax which is otherwise a capital receipt w.e.f. 01.04.2016. The aforesaid amendment has thus come into force w.e.f. AY 2016-17 which reinforces the impression of such capital receipt being out of tax net for the assessment year in question.

14. Thus, on first principles, we find ourselves in total agreement with the contentions on behalf of the assessee for non chargeability of such capital receipts regardless of its treatment in books as revenue receipts. We are however conscious in same vain that the issue has

been raised for the first time before the Tribunal. The Revenue authorities had no occasion to look into the relevant facts. We accordingly consider it expedient to restore the issue to the file of the AO for verification of relevant factual aspects towards quantum of receipt of interest subsidy and relevant documentation in this regard, if so considered necessary in the opinion of the AO. The AO shall accordingly grant relief to the assessee in accordance with law in the light of our observations and shall exclude the subsidy from the ambit of taxation on being satisfied about the factual correctness on quantum of such subsidy.

15. In the result, the additional ground raised by the assessee in its cross objection is allowed for statistical purposes.

16. In the result, the appeal of the Revenue is dismissed and cross objection of the assessee is partly allowed.

This Order pronounced in Open Court on 20/02/2019

Sd/-	Sd/-
(MAHAVIR PRASAD)	(PRADIP KUMAR KEDIA)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Ahmedabad: Dated 20/02/2019

True Copy

S. K. SINHA

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. राजस्व / Revenue
2. आवेदक / Assessee
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाइल / Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण, अहमदाबाद ।