

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ, "ए", चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL
DIVISION BENCH, 'A', CHANDIGARH

श्री संजय गर्ग, न्यायिक सदस्य एवं श्रीमती अन्नपूर्णा गुप्ता, लेखा सदस्य
BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER AND
Ms. ANNAPURNA GUPTA, ACCOUNTANT MEMBER

आयकर अपील सं./ ITA No. 1051/CHD/2018

निर्धारण वर्ष / Assessment Year : 2011-12

The DCIT, Circle 1(1), Chandigarh	बनाम	M/s A.B. Sugars ltd., (formerly known as M/s Guru Teg Bahadur Sugar Ltd.,) H.No. 77, Sector 11-A, Chandigarh
स्थायी लेखा सं./PAN No: AABCG3045M		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri T.N. Singla, CA

राजस्व की ओर से/ Revenue by : Sh. Sandeep Dahiya, CA

सुनवाई की तारीख/Date of Hearing : 21.02.2019

उदघोषणा की तारीख/Date of Pronouncement : 21.02.2019

आदेश/Order

Per Sanjay Garg, Judicial Member:

The present appeal has been preferred by the Revenue against the order dated 8.5.2018 of the Commissioner of Income Tax (Appeals)-1, Chandigarh [hereinafter referred to as CIT(A)].

2. The Revenue has taken following grounds of appeal:-

1. *On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in allowing appeal of the assessee without appreciating the facts of the case.*

2. *On the facts and circumstances of the case, the Ld. CIT(A) has erred in deleting the addition of Rs. 21,50,686/- made u/s 36(l)(iii) of the I.T. Act, 1961, ignoring that the assessee has not maintained*

any separate account for interest bearing / interest free and hence the amount advanced to sister concern cannot be said to be made from interest free funds only.

3. On the facts and circumstances of the case, the Ld. CIT(A) has erred in deleting the addition of Rs. 21,50,686/- made u/s 36(l)(iii) of the I.T. Act, 1961, ignoring that the assessee has failed to establish any business expediency for advancing such a huge sum to its concern.

4. On the facts and circumstances of the case, the Ld. CIT(A) has erred in deleting the addition of Rs. 21,50,686/- made u/s 36(l)(iii) of the I.T. Act, 1961, based on the submission of the assessee ignoring that neither the assessed has brought this fact into the notice of AO during the assessment proceedings nor this fact is apparent from the records, therefore the submission of the assessee is nothing but an after-thought only.

5. On the facts and circumstances of the case, the Ld. CIT(A) has erred in restricting the addition of Rs. 11,08,624/- made u/s 14A of the I.T. Act, 1961, to Rs. 1.19 Lacs without taking cognizance of circular No. 5 of 2014 of CBDT on this issue, wherein it has been clarified that the provision of section 14A are applicable even when no exempt income has been earned.

6. On the facts and in circumstances of the case and in law the ITAT has erred in deleting the addition made on account of capitalization of interest related to CWIP as there was a huge addition of fixed assets and interest was required to be capitalized on account of CWIP.

7. On the facts and in circumstances of the case and in law the Ld. CIT(A) has erred in deleting the disallowance of additional depreciation as the Assessing officer had made a combined disallowance on account of excess depreciation & additional depreciation amounting to Rs. 5,56,98,007/- and the assessee has failed to prove how excess rates of depreciation were allowable on the items and the

assessee also failed to prove that those items were being used in its business.

8. It is prayed that the order of the Ld. CIT(A) be cancelled and that of the assessing officer may be restored.

9. The appellant craves leave to add or amend any grounds of appeal before the appeal is heard or is disposed off.

3. **Ground Nos. 1 to 4** : Vide ground Nos, 1 to 4, the Revenue has agitated the action of the CIT(A) in deleting the addition of Rs. 21,50,686/- which was made by the Assessing officer u/s 36(1) (iii) of the Income-tax Act, 1961 (in short 'the Act').

4. The Assessing officer had made the impugned additions on account of notional disallowance of interest expenditure in respect of the interest free advances given by the assessee to its sister concern. The assessee took the plea before the Ld. CIT(A) that, firstly, the advances were made out of business expediency and secondly, that assessee had its own / interest free sufficient funds to meet the investment.

5. The Ld. CIT(A) deleted the addition made by the Assessing officer while relying upon the decision of the Hon'ble Jurisdictional High Court in Bright Enterprises (ITA No. 224 of 2013) and judgement of Hon'ble Supreme Court in the case of M/s Hero Cycles (63 Taxman 308), wherein, it has been held that if assessee had funds / interest free funds available with it to make investment, the presumption will be that investment made by the assessee is out of own funds.

6. Now the issue is also squarely covered by the decision of the

Hon'ble Supreme Court in in 'CIT Vs. Reliance Industries Ltd' [2019] 102 taxmann.com 52 (SC) / 410 ITR 466 (SC). We, therefore, do not find any infirmity in the order of the Ld. CIT(A) on this issue.

7. **Ground No.5 :** Vide this ground, the Revenue has agitated the disallowance made by the Assessing officer of Rs. 11,08,624/- u/s 14A of the Act at Rs. 1.19 lacs. The Ld. CIT(A) while relying upon the decision of the Hon'ble Delhi High Court in the case of 'Joint Investment Pvt Ltd. (ITA No. 117/2015) and in the case of M/s Expire Packaging Pvt Ltd. in ITA No. 415 of 2015 (P&H) has restricted the disallowance u/s 14A of the Act to the extent of tax exempt income earned by the assessee. The issue is squarely covered by the various decisions of the Hon'ble High Courts including that of the Jurisdictional High Court of Punjab and Haryana in the case of 'CIT Vs. Winsome Textiles' (2009) 319 ITR 204 (P&H) and Hon'ble Delhi High Court in the case of 'Cheminvest Ltd Vs. ITO' (2015) 378 ITR 33 (Delhi) and of the Hon'ble Gujarat High Court in the case of 'Corrtech Energy P. Ltd. (2014) 45 Taxman.com 116' and further of the Hon'ble Allahabad High Court in the case of 'CIT Vs. M/s Shivam Motors (P) Ltd' (2014) 272 CTR (All) 277 and various other case laws. In all the above referred to case laws, the Hon'ble High Courts have been unanimous to hold that disallowance u/s 14A cannot exceed the tax exempt income earned by the assessee.

We do not find any infirmity in the order of the CIT(A) on this issue.

8. **Ground No.6:** Vide ground No.6, the Revenue has agitated the action of the CIT(A) in deleting the addition made on account of capitalization of interest relating to capital work in progress. The Ld.

CIT(A) has dealt with this issue in para 8 of the impugned order, wherein, he while relying upon the decision of the Tribunal in the own case of the assessee for assessment year 2010-11 held that the funds invested in the assets were only a small percentage of total fixed assets and could not be termed as 'substantial expansion' and, therefore, the addition could not be made under the proviso to section 36(1)(iii) of the Act. No distinguishing fact or contrary decision has been cited by the Ld. DR on this issue.

In view of this, we do not find any infirmity in the order of the CIT(A) on this issue also.

9. **Ground No.7:** Vide this ground, the Revenue has agitated the action of the CIT(A) in deleting the disallowance of additional depreciation made by the Assessing officer. A perusal of the impugned order of the CIT(A) on this issue reveals that the assessee had claimed depreciation in respect of various items. However, the CIT(A) has directed the Assessing officer to examine the additional depreciation claimed in respect of each of the items and allow depreciation and additional depreciation as per schedule by applying different rate of depreciation applicable as per rules.

10. We find that the Ld. CIT(A) has not deleted the addition on this issue, rather, he has directed the Assessing officer to examine each item and allow the depreciation and additional depreciation in accordance with law and as per rules.

We do not find any infirmity in the order of the CIT(A) on this issue also.

11. **Ground Nos. 8 & 9** are general and do not require any specific adjudication.

In the result, there is no merit in the appeal of the Revenue and the same is accordingly dismissed.

Order dictated and pronounced in the Open Court on 21.02.2019.

Sd/-
(अन्नपूर्णा गुप्ता / ANNAPURNA GUPTA)
लेखा सदस्य/ Accountant Member

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

Dated : 21.02.2019

“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