

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 Nos. 452, 499, 500, 501, & 502/Chd/2018
निर्धारण वर्ष / Assessment Years : 2008-09 to 2009-10 and 2012-13 to 2014-15

M/s VMT Spinning Company Limited Chandigarh Road, Ludhiana Punjab	बनाम	The ACIT, Circle-1 Ludhiana, Punjab
स्थायी लेखा सं./PAN NO: AABCV8087C		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

आयकर अपील सं./ ITA Nos. 579 to 583/Chd/2018
निर्धारण वर्ष / Assessment Years : 2008-09 to 2009-10 and 2012-13 to 2014-15

The DCIT, Circle-1 Ludhiana, Punjab	बनाम	M/s VMT Spinning Company Limited Chandigarh Road, Ludhiana Punjab
स्थायी लेखा सं./PAN NO: AABCV8087C		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri. Vineet Jain
राजस्व की ओर से/ Revenue by : Shri. Manjit Singh
सुनवाई की तारीख/Date of Hearing : 29/11/2018
उद्घोषणा की तारीख/Date of Pronouncement : 16/01/2019

आदेश/Order

PER BENCH, A.M:

All the above Appeals have been filed by the Assessee and Cross Appeals have been filed by the Revenue.

Following grounds raised by the Assessee in ITA No. 452/Chd/2018 for A.Y. 2008-09:

1. That the Ld. CIT(A) has erred in law and on facts in treating Interest received amounting Rs.38,07,084/- as 'Income from Other Sources' instead of Income from Business and Profession.
2. That the Ld. CIT (A) has erred in law and on facts in not adjudicating the claim of the assessee regarding allowance of deduction u/s 80IC of the Act on interest reimbursement of Rs.1,81,81,351/- under TUFS.
3. That the Ld. CIT (A) has erred in law in not allowing the claim of the assessee for treating interest reimbursement of Rs.1,81,81,351/- under Technology Upgradation Fund Scheme (TUFS) as capital receipt.

Following grounds raised by the Assessee in ITA No. 499/Chd/2018 for A.Y. 2009-

10:

1. *That the Order passed by the Ld.CIT(A) is contrary to law and facts of the case.*
2. *That the Ld. CIT(A) has erred in law and on facts in treating Interest received amounting Rs.1,17,84,041/-as 'Income from Other Sources' instead of Income from Business and Profession.*
3. *That the Ld. CIT(A) has erred in law and on facts in confirming the action of the AO to reduce Interest from others of Rs.1,22,346/- from the profits of the units eligible for deduction u/s 80IC of the Income Tax Act, 1961.*
4. *That the Ld. CIT (A) has erred in law and on facts in not adjudicating the claim of the assessee regarding allowance of deduction u/s 80IC of the Act on interest reimbursement of Rs.1,82,79,859/- under TUF5.*
5. *That the Ld. CIT (A) has erred in law in not allowing the claim of the assessee for treating interest reimbursement of Rs.1,82,79,859/- under Technology Upgradation Fund Scheme (TUF5) as capital receipt.*

Following grounds raised by the Assessee in ITA No. 500/Chd/2018 for A.Y. 2012-

13:

1. *That the order passed by Ld. CIT(A) is contrary to law and facts of the case.*
2. *That the Ld. CIT (A) has erred in law in not allowing the claim of the assessee for treating interest reimbursement of Rs.1,56,02,175/- under Technology Upgradation Fund Scheme (TUF5) as capital receipt.*

Following grounds raised by the Assessee in ITA No. 501/Chd/2018 for A.Y. 2013-

14:

1. *That the order passed by the Ld. CIT(A) is contrary to law and facts of the case.*
2. *That the Ld. CIT(A) has erred in law and on facts in confirming the action of the Assessing Officer to reduce Rent received from employees of Rs.14,75,085/- and Refund on account of excess deposit of service tax of Rs.2,38,911/- booked under Miscellaneous receipt from the profits of the units eligible for deduction u/s 80IC of the Income Tax Act, 1961.*
3. *That the Ld. CIT (A) has erred in law and on facts in not adjudicating the claim of the assessee regarding allowance of deduction u/s 80IC of the Act on interest reimbursement of Rs.1,50,29,978/- under TUF5.*
4. *That the Ld. CIT (A) has erred in law in not allowing the claim of the assessee for treating interest reimbursement of Rs.1,50,29,978/- under Technology Upgradation Fund Scheme (TUF5) as capital receipt.*

Following grounds raised by the Assessee in ITA No. 502/Chd/2018 for A.Y. 2014-15:

1. That the order passed by the Ld. CIT(A) is contrary to law and facts of the case.
2. That the Ld. CIT(A) has erred in law and on facts in confirming the action of the AO to reduce Rent received from employees of Rs.19,44,377/- from the profits of the units eligible for deduction u/s 80IC of the Income Tax Act, 1961.
3. That the Ld. CIT (A) has erred in law and on facts in not adjudicating the claim of the assessee regarding allowance of deduction u/s 80IC of the Act on interest reimbursement of Rs.1,48,64,622/- under TUFS.
4. That the Ld. CIT (A) has erred in law in not allowing the claim of the assessee for treating interest reimbursement of Rs.1,48,64,622/- under Technology Upgradation Fund Scheme (TUFS) as capital receipt.

Following grounds raised by the Revenue in ITA No. 579/Chd/2018 for A.Y. 2008-09:

1. *Whether upon facts and circumstances of the case, the Ld. CIT(A) was justified in allowing relief to the assessee by treating the interest income from Customers & Suppliers as income from "business and profession" instead of "income from other source"?*
2. *Whether upon facts and circumstances of the case, the Ld. CIT(A) was justified in allowing relief to the assessee by treating the Insurance Claim received, Interest from Customer & Suppliers and Misc. receipts eligible for deduction u/s 80IC of the Income Tax Act, 1961?*
3. *Whether on the issue of deduction u/s 80IC claimed on interest reimbursement under TUFS Scheme, the Ld. CIT(A) can refrain from adjudication by directing the AO to apply the decision of higher appellate authority on the identical issue, on receipt of the decision, which is yet to be decided by the such appellate authority?*
4. *Whether upon facts and circumstances of the case, the Ld. CIT(A) was justified in allowing relief to the assessee by holding that MAT credit to be carried forward to subsequent years should be calculated after including of Surcharge and Cess?*
5. *That the order of the Ld. CIT(A) be set aside and that of the Assessing Officer be restored.*

Following grounds raised by the Revenue in ITA No. 579/Chd/2018 for A.Y. 2009-10:

1. *Whether upon facts and circumstances of the case, the Ld. CIT(A) was justified in allowing relief to the assessee by treating the interest income from Customers & Suppliers and Employees as income from "business and profession" instead of "income from other source"?*
2. *Whether upon facts and circumstances of the case, the Ld. CIT(A) was justified in allowing relief to the assessee by treating the Insurance Claim received, Interest from Customer & Suppliers, Misc. receipts & Interest from Others eligible for deduction u/s 80IC of the Income Tax Act, 1961?*

3. Whether on the issue of deduction u/s 80IC claimed on interest reimbursement under TUFs Scheme, the Ld. CIT(A) can refrain from adjudication by directing the AO to apply the decision of higher appellate authority on the identical issue, on receipt of the decision, which is yet to be decided by the such appellate authority?

4. Whether upon facts and circumstances of the case, the Ld. CIT(A) was justified in allowing relief to the assessee by holding that MAT credit to be carried forward to subsequent years should be calculated after including of Surcharge and Cess?

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

Following grounds raised by the Revenue in ITA No. 581/Chd/2018 for A.Y. 2012-

13:

1. Whether on the issue of deduction u/s 80IC claimed on interest reimbursement under TUFs Scheme, the Ld. CIT(A) can refrain from adjudication by directing the AO to apply the decision of higher appellate authority on the identical issue, on receipt of the decision, which is yet to be decided by the such appellate authority?

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

Following grounds raised by the Revenue in ITA No. 582/Chd/2018 for A.Y. 2013-

14:

1. Whether upon facts and circumstances of the case, the Ld. CIT(A) was justified in allowing relief to the assessee by treating the Rent received, Misc. receipts, Gain on forex fluctuation and Interest from Customer & Suppliers eligible for deduction u/s 80IC of the Income Tax Act, 1961?

2. Whether on the issue of deduction u/s 80IC claimed on interest reimbursement under TUFs Scheme, the Ld. CIT(A) can refrain from adjudication by directing the AO to apply the decision of higher appellate authority on the identical issue, on receipt of the decision, which is yet to be decided by the such appellate authority?

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

Following grounds raised by the Revenue in ITA No. 583/Chd/2018 for A.Y. 2014-

15:

1. Whether upon facts and circumstances of the case, the Ld. CIT(A) was justified in allowing relief to the assessee by treating the Rent received, Misc. receipts, Gain on forex fluctuation and Interest from Customer & Suppliers eligible for deduction u/s 80IC of the Income Tax Act, 1961?

2. Whether on the issue of deduction u/s 80IC claimed on interest reimbursement under TUFs Scheme, the Ld. CIT(A) can refrain from adjudication by directing the AO to apply the decision of higher appellate authority on the identical issue, on receipt of the decision, which is yet to be decided by the such appellate authority?

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

2. The appeals of the assessee in ITA Nos. 452, 499, 500, 501 and 502 primarily deal with the issue of deduction under section 80IC on interest reimbursement of amount under TUFs (Technology Up-gradation Fund Scheme).

3. The Ld. CIT(A) has not adjudicated this issue raised before him on the grounds that the similar matter has been pending for adjudication in the Group of Vardhman Holdings Ltd. for the A.Y. 2003-04 and Vardhman Textiles Ltd. for A.Y's 2002-03 to 2005-06 before the ITAT Chandigarh. At the time of passing of the order by the Ld. CIT(A), he held that the cases were heard and the order was awaited and hence precluded himself in pre deciding the matters heard by the ITAT.

4. We find that the cases mentioned supra have been heard and order has been passed on 04/05/2018 setting the matter back to the file of the Ld. CIT(A) as in that case the issue has not been taken before the Ld. CIT(A) in their appeals filed. Hence the matter is being sent back to the file of the Ld. CIT(A), Ludhiana with directions to pass a speaking order in a comprehensive manner in a way so as to have a common departmental view in accordance with the provisions of the Income Tax Act, 1961.

5. Regarding the departmental appeal in ITA No. 581/CHD/2012 for A.Y. 2012-13 the only issue taken up by the Revenue pertains to the reimbursement of interest under TUF Scheme which has been set aside to the file of the Ld. CIT(A) while adjudicating the appeals of the Assessee mentioned above in this order. Hence this appeal is treated as allowed for statistical purposes.

Appeal of the Revenue in ITA No. 582/CHD/2012 for A.Y. 2013-14

6. Regarding the Ground No. 1 the Revenue has objected to the order of the Ld.CIT(A) in allowing exemption to the assessee on account of

- a) Rent received
- b) Misc. receipts
- c) Gain on Forex fluctuations
- d) Interest from customers and suppliers

7. We have gone through the page no. 8 of the order of the Ld. CIT(A) wherein it was held that the rent receipts were not eligible for exemption under section 80IC. To that extent the ground taken by the Revenue is factually

incorrect. Regarding the other items namely Misc. receipts, Gain on Forex fluctuations, Interest from customers and suppliers, we find that the Ld. CIT(A) has allowed these expenses based on the decision of the Tribunal in ITA No. 592/CHD/2005, ITA No. 654/CHD/2005 dt. 31/07/2007 and ITA No. 1147/CHD/2014. Since the decision of the Ld. CIT(A) was based on the decision of the Tribunal in the assessee's own case in earlier years and in the absence of any new material brought to our notice by the Revenue, we hereby confirm the order of the Ld. CIT(A) on this ground.

8. Ground No. 2 pertains to the reimbursement of interest under TUF Scheme which has been set aside to the file of the Ld. CIT(A) while adjudicating the appeals of the Assessee mentioned above in this order. The same holds good for the appeal of the Revenue too.

9. Hence the appeal of the Revenue treated as partly allowed for statistical purposes.

Appeal of the Revenue in ITA No. 579/CHD/2012 for A.Y. 2008-09 and Appeal of the Revenue in ITA No. 580/CHD/2012 for A.Y. 2009-10.

10. Ground No. 1 pertaining to treating of interest income from customers and suppliers has been rightly treated by the Ld. CIT(A) as income from business and profession based on the order of this Tribunal in the case of Vardhman Threads Ltd. in ITA No. 556/CHD/2008 dt. 28/04/2014. Hence, we declined to interfere in the order of the Ld. CIT(A).

11. Ground No. 2 pertaining to treatment of insurance claim, interest from customers, misc. receipts and interest from others following the similar rationale adopted in ITA No. 582/CHD/2012 for A.Y. 2013-14 mentioned in this order, we hereby confirm the order of the Ld. CIT(A) which was based on the earlier order of this Tribunal.

12. Ground No. 3 pertains to the deduction of reimbursement of interest under TUF Scheme which has been set aside to the file of the Ld. CIT(A) while adjudicating the appeals of the Assessee mentioned above in this order. The same holds good for the appeal of the Revenue too.

13. Ground No. 4 wherein the Ld. CIT(A) justified in allowing relief to the Assessee by holding that MAT credit has to be carried forward to the subsequent year after including surcharge and cess. The adjudication of the Ld.

CIT(A) was inconsonance with the order of the Tribunal in assessee's own case for A.Y. 2007-08 which states as under:

" 11. In view of the aforesaid decisions of the coordinate Bench and of the Apex Court in the case of K Sreenivasan (supra), we hold that MAT credit to be carried forward should be calculated after including surcharge and cess in the tax calculated both under MAT under section 115JB and under the normal provisions of the Act. We, therefore, direct the Assessing Officer to calculate the MAT credit accordingly. The ground of appeal raised by the assessee, therefore, stands allowed."

14. Since the matter already stands adjudicated in favour of the assessee by this Tribunal in earlier year, we hereby confirm the order of the Ld.CIT(A).

Appeal of the Revenue in ITA No. 583/CHD/2012 for A.Y. 2014-15.

15. The Ground No.1 of this appeal is akin to the Ground No. 1 of the ITA NO. 580/CHD/2012 for the A.Y. 2009-10. Hence the adjudication to ground no. 1 stands mutatis mutandis to the issue discussed above.

16. Ground No. 2 pertains to the deduction of reimbursement of interest under TUF Scheme which has been set aside to the file of the Ld. CIT(A) while adjudicating the appeals of the Assessee mentioned above in this order. The same holds good for the appeal of the Revenue too.

17. This appeal of the Revenue treated as partly allowed for statistical purposes.

18. In the result, appeal of the Assessee are allowed for statistical purposes and that of the Revenue's appeal are partly allowed for statistical purposes.

Order pronounced in the open Court.

Sd/-

**संजय गर्ग
(SANJAY GARG)**

न्यायिक सदस्य/ Judicial Member

AG

Date: 16/01/2019

Sd/-

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

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