

**IN THE INCOME TAX APPELLATE TRIBUNAL
DIVISION BENCH, 'A' CHANDIGARH**

BEFORE SHRI N.K. SAINI, VICE PRESIDENT AND
SHRI SANJAY GARG, JUDICIAL MEMBER

ITA No.913/Chd/2018
Assessment Year: 2012-13

DCIT, Circle, Sangrur	Vs	M/s Lotus Processors Pvt. Ltd., B-XIII-1689, Lakhi Colony, Barnala. PAN AAKCS8706J
(Appellant)		(Respondent)

Appellant By : Sh. Rajesh Kumar, Addl. CIT
Respondent By : Sh. Ashwani Kumar, CA

Date of hearing : 24/04/2019
Date of Pronouncement : 13/05/2019

ORDER

PER SANJAY GARG, JUDICIAL MEMBER:

The present appeal has been preferred by the Revenue against the order dated 25.04.2018 of the Commissioner of the Income Tax (A) [hereinafter referred to as 'CIT(A)'].

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

- "1. Whether on the facts & in the circumstances of the case, the Ld. CIT(A) has erred in deleting the addition of Rs. 18,57,527/- made by the Assessing Officer on account of interest bearing loan on one hand and has given interest free advances to various persons by invoking the provisions of section 36(l)(iii) of the Income Tax Act, 1961.

2. *Whether on the facts & in the circumstances of the case, the Ld. CIT(A) has erred in deleting the addition of Rs. 14,70,848/- on account of disallowance u/s 14A of the Income Tax Act, 1961.*
3. *Whether on the facts & in the circumstances of the case, the Ld. CIT(A) has erred in deleting the addition of Rs.46,76,663/- on account of wastage/scrap.*
4. *It is prayed that the order of Ld. CIT (A), Patiala be set aside and that of the Assessing Officer be restored.*
5. *That the appellant craves leave to add or amend any grounds of appeal before the appeal is heard and finally disposed off."*

3. At the outset, the Id. Counsel for the assessee has submitted that the impugned addition/disallowances have been deleted by the CIT(A) by following the order of his predecessor in earlier A.Ys 2011-12, 2013-14 and 2014-15 on exactly the same facts and issues. He further submitted that the Department had preferred an appeal against the order of the CIT(A) dated 14.10.2016, relevant to A.Y. 2013-14 before this Tribunal and that the Tribunal vide order dated 02.07.2018 passed in ITA No. 6/Chd/2017 involving identical facts and issues has dismissed the appeal of the Revenue.

4. We have perused the order dated 02.07.2018 of this Tribunal passed in assessee's own case for A.Y. 2013-14, we find that the facts and issues involved are exactly the same except the figures of the amount of disallowances made by the AO. The relevant

part of the order of the Tribunal for the sake of the reference is reproduced as under:

"The present appeal has been preferred by the Revenue against the order dated 14.10.2016 of the Commissioner of Income Tax(A), Patiala [hereinafter referred to as 'CIT(A)'].

2. *The Department is aggrieved by the action of the CIT(A) in deleting the addition made by the Assessing officer on account of disallowance of interest expenditure u/s 36(1)(iii) of the Income-tax Act, 1961 (in short 'the Act') as well as on account of disallowance made in relation to expenditure incurred for earning of tax exempt income earned u/s 14A of the Act.*

3. *At the outset, Ld. Counsel for the assessee has submitted that for the year under consideration the assessee did not earn any tax exempt income. He, therefore, submitted that in the light of the decision of the Hon'ble Jurisdictional High Court in the case of 'CIT Faridabad Vs. Lakhani Marketing Inc. Ltd', ITA No. 970 of 2008 (O&M), no disallowance was attracted u/s 14A of the Act. He in this respect has invited our attention to the order of the CIT(A) wherein the Ld. CIT(A) following the decision of the Hon'ble Jurisdictional High Court in the case of 'CIT Faridabad Vs. Lakhani Marketing Inc. Ltd' (supra) has held that since the assessee did not earn any tax exempt income during the year, hence, no disallowance u/s 14A of the Act was attracted.*

4. *The Ld. DR, on the other hand has relied on the findings of the Assessing officer.*

5. *We find that the issue is now squarely covered by the following decisions of the different High Courts in favour of the assessee.*

CIT, Faridabad Vs. Lakhani Marketing Inc.' 226 Taxman 45 (P&H)

CIT Vs. Winsome Textiles' (2009) 319 ITR 204 (P&H)

Cheminvest Ltd Vs. ITO' (2015)378 ITR 33 (Delhi)

Corrtech Energy P. Ltd. (2014) 45 Taxman.com 116 (Gujarat High Court)

CIT Vs. M/s Shivam Motors (P) Ltd' (2014) 272 CTR (All) 277

In all the above referred to case laws, the Hon'ble High Courts have been unanimous to hold that no disallowance is attracted u/s 14A of the Act in case the assessee has not earned any income not forming part of the total income.

6. In view of the above, we do not find any infirmity in the order of the CIT(A) on this issue and the same is upheld.

7. So far as the issue relating to the disallowance of interest expenditure under the provisions of section 36 (i) (iii) of the Act, the Ld. Counsel for the assessee has invited our attention to para 5.3 of the impugned order of the CIT(A) wherein the Ld. CIT(A) has given as categorical finding that during the year the assessee did not raise any interest bearing loan. Only one loan was raised during the financial year 2009-10 relevant to assessment year 2010-11, which was for the specific purpose for purchase of assets. The Ld. Counsel has submitted that the said loan was fully utilized for the purpose of assets and no interest bearing funds have been diverted for making interest free advances. The Ld. CIT(A) after going through the record, has held that the Assessing officer could not controvert the above submission of the assessee. Since the assessee had been able to demonstrate before the Ld. CIT(A) that the term loan raised by the assessee was used for specific purpose for purchase of assets and no part of it was used for advancement of interest free advances, hence, Ld. CIT(A) deleted addition on this issue.

8. After going through the order of the CIT(A) and hearing the submissions of the Ld. counsel of parties we do not find any infirmity in the order of CIT(A) on this issue.

9. There is another ground taken by the Revenue agitating the action of the CIT(A) in deleting the addition of Rs. 55,11,651/- made by the Assessing officer on account of generation of wastage / scarp during the manufacturing process. The Assessing officer observed that in the line of the trade business of the assessee, a lot of wastage and scrap is generated, whereas the assessee had shown his wastage at a very low rate of 0.065%. He, therefore, show caused the assessee as to why generation of scrap / wastage be not taken at 0.75% of the total turnover. The assessee in this respect explained the process, which is carried out in the business process of dyeing of fabrics and submitted that though the total wastage of the scrap in the process comes out to about 6 to 7% of the material consumed, however, the said wastage generated during the process did not carry any marketable value. That during the year, the visible wastage which had some marketable value, was only 0.305% of the raw material against which the receipt of Rs. 52,135/- was

generated and that the assessee had duly accounted for the said amount in its books of account. The Ld. Assessing officer, however, did not agree with the above contention and estimated the wastage @ 7.5% of the total turnover at Rs. 60,36,786/- after deducting the value of the wastage declared by the assessee. He made the addition of Rs. 55,11,651/-.

10. In appeal, the Ld. CIT(A) deleted the addition observing that the Assessing officer had made the impugned addition purely on assumption and estimation basis. That the books of account of the assessee were duly audited and the Assessing officer had not pointed out any defect in the same. There is no rationale or basis for the Assessing officer for holding that the total wastage / generation was at 7.5% of the total turnover. The Ld. CIT(A) considering the overall facts and circumstances held that the addition made by the Assessing officer was purely on assumption and presumption basis and the same were not sustainable in the eyes of law.

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

In the result, the appeal of the Revenue is hereby dismissed."

5. Both the Representatives of the parties have submitted that the facts and issues have involved in earlier assessment year were identical to the facts and issues raised in this appeal. Therefore, to maintain the consistency, we follow the order of the Tribunal in earlier assessment year and we do not find any merit in the Revenue's appeal and the same is dismissed.

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

(Order pronounced in the open court on 13/05/2019)

Sd/-

Sd/-

(N.K. SAINI)
VICE PRESIDENT

(SANJAY GARG)
JUDICIAL MEMBER

Dated : 13/05/2019

Aks-tour

Copy to: The Appellant, The Respondent, The CIT, The CIT(A), The DR