

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ “ए”, चण्डीगढ़  
IN THE INCOME TAX APPELLATE TRIBUNAL,  
CHANDIGARH BENCH “A”, CHANDIGARH

श्री एन. के. सैनी, उपाध्यक्ष एवं श्री संजय गर्ग, न्यायिक सदस्य  
BEFORE SHRI N.K. SAINI, VICE PRESIDENT  
AND SHRI SANJAY GARG, JUDICIAL MEMBER

आयकर अपील सं./ ITA No.10/Chd/2016

निर्धारण वर्ष / Assessment Year : 2012-13

M/s Arisudana Industries Ltd., B-XXIX/143, G.T. Road, Ludhiana.	बनाम	The A.C.I.T., Circle-V, Ludhiana.
स्थायी लेखा सं./PAN NO.AABCA2449K		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by: S/Shri Sunil K. Mukhi, Adv.  
& D.S. Puri, Adv.

राजस्व की ओर से/ Revenue by : Smt.Meenakshi Vohra, Sr.DR

सुनवाई की तारीख/Date of Hearing : 06.03.2019

उद्घोषणा की तारीख/Date of Pronouncement: 04.06.2019

**आदेश/ORDER**

**Per Sanjay Garg, Judicial Member :**

The present appeal has been filed by the assessee against the order of the Commissioner of Income Tax (Appeals)-2, Ludhiana [hereinafter referred to as ‘CIT(A)’], dated 4.12.2015 relating to assessment year 2012-13,

passed u/s 250(6) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').

2. The assessee in this appeal has taken four grounds of appeal. Vide ground No.1, the assessee has agitated the action of the CIT(A) in sustaining the disallowance of Rs.1,86,089/- u/s 14A of the Act on account of expenditure incurred for earning of tax exempt income.

3. At the outset, the Ld.Counsel for the assessee has submitted that the assessee during the year has earned tax exempt dividend income of Rs.28,133/- only. That as per the law laid down by the Hon'ble Delhi High Court in the case of Cheminvest Ltd. Vs. CIT (2015) 378 ITR 33 (Del), the total disallowance u/s 14A of the Act cannot exceed the total tax exempt income earned by the assessee. The reliance in this respect has been placed on the decisions of various 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 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.

4. We find that the issue is squarely covered by the aforesaid decisions of the Hon'ble High Courts. The Hon'ble different High Courts of the country have held that the total disallowance u/s 14A of the Act cannot exceed the total tax exempt income earned by the assessee and if no tax exempt income is earned by the assessee, no disallowance u/s 14A of the Act can be made. In view of this, the disallowance on the issue is restricted to the extent of the total tax exempt income earned by the assessee which comes at Rs.28,133/-. Ground of appeal No.1 is accordingly, partly allowed.

5. Vide Ground Nos.2 & 3 the assessee has agitated the action of the lower authorities in making/confirming the disallowance of Rs.83,90,686/- u/s 43(5) of the Act holding the currency forward contracts as speculative transactions. The Ld.Counsel for the assessee has explained before us that the assessee company is engaged in the manufacturing of yarns and trading of knitted

cloths & yarns. The yarns manufactured by the assessee company are sold in the domestic market as well as in the international market. For the year under consideration, the assessee company received export orders for around US dollars 49,85,000/- for supply of yarns to different buyers in different countries. To hedge the loss, if any, against any foreign exchange fluctuations, the assessee entered in the forex contract and, therefore, incurred loss/expenditure of Rs.83,90,686/-. The Ld.Counsel for the assessee further submitted that hedging of the loss cannot be said to be a speculative rather it was to secure the expected profits. The hedging transaction against the apprehended foreign exchange fluctuation losses is permitted and cannot be said to be a speculative transaction. The Ld.Counsel for the assessee has also invited our attention to the order dated 30.8.2017 of the CIT(A) in the own case of the assessee for subsequent assessment year i.e. 2013-14, wherein the Ld.CIT(A) has accepted the contention raised by the assessee and has held that the foreign exchange fluctuation profits earned by the assessee of Rs.14,29,603/- through hedging contracts to save the company from future losses, cannot be said to be speculative gain. In view of this, we do not

find any justification of the CIT(A) in holding the transaction as speculative for the year under consideration, whereas in the subsequent year, the gain earned by the assessee on identical transaction has been treated as gain earned in normal course of business and not speculative. In view of this ground No.2 & 3 raised by the assessee are accordingly, allowed.

6. Vide ground No.4, the assessee has agitated the disallowance of interest of Rs.10,86,012/- u/s 36(1)(iii) of the Act in relation to running debit balance maintained with Master Capital Services. The contention of the Ld.Counsel for the assessee in this respect is that the running debit balance maintained by the assessee with M/s Master Capital Services Pvt. Ltd. is margin money to comply with legal and statutory requirements stipulated by SEBI and is a business advance. That it cannot be said to be an investment not related to business activity of the assessee. It has been further submitted that even otherwise, the own funds of the assessee for the year under consideration were sufficient to meet the aforesaid advance. The Ld.Counsel for the assessee in this respect has also invited our attention to the order of the CIT(A)

dated 30.2.2017 passed for subsequent assessment year 2013-14, wherein on identical circumstances, the CIT(A) considering the submissions of the assessee held that since the assessee was having sufficient own interest free funds to cover the interest free advances, hence, no disallowance was attracted.

7. We have considered the rival submissions of both the parties. Admittedly, the assessee was maintaining an account with M/s Master Capital Services Pvt. Ltd. as the assessee was obtaining their services for hedging losses against foreign exchange fluctuation. The assessee had to keep a margin money with M/s Master Capital Services Pvt. Ltd. for the purpose of forward contracts entered into to hedge the losses against foreign exchange fluctuation in respect of the amount receivable from exports. In respect of this essentially was related to the business activity of the assessee. Even otherwise, it has not been rebutted or denied by the revenue authorities that the assessee was having sufficient funds to meet the aforesaid debit balance with M/s Master Capital Services Pvt. Ltd. Hence, we do not find any justification on the part of the lower authorities in making the aforesaid disallowance

u/s 36(1)(iii) of the Act and the same is accordingly, ordered to be deleted.

8. No other ground is raised or pressed.

9. In the result, the appeal of the assessee is hereby treated as partly allowed.

Order pronounced in the Open Court on 04.06.2019.

Sd/-

एन. के. सैनी

**(N.K. SAINI)**

**उपाध्यक्ष/ Vice President**

**दिनांक /Dated: 4<sup>th</sup> June, 2019**

**\*रती\***

Sd/-

संजय गर्ग

**(SANJAY GARG )**

**न्यायकि सदस्य/ Judicial 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

आदेशानुसार/ By order,

सहायक पंजीकार/ Assistant Registrar