

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ “बी”, चण्डीगढ़  
IN THE INCOME TAX APPELLATE TRIBUNAL,  
CHANDIGARH BENCH ‘B, CHANDIGARH

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

आयकर अपील सं./ ITA No.484 /Chd/2019

निर्धारण वर्ष / Assessment Year : 2008-09

Vardhman Textiles Limited, Chandigarh Road, Ludhiana.	बनाम	The A.C.I.T., Circle-1, Ludhiana.
स्थायी लेखा सं./PAN NO: AABCM4692E		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

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आयकर अपील सं./ ITA No.611 /Chd/2019

निर्धारण वर्ष / Assessment Year : 2008-09

The D.C.I.T., Circle-1, Ludhiana.	बनाम	Vardhman Textiles Limited, Chandigarh Road, Ludhiana.
स्थायी लेखा सं./PAN NO: AABCM4692E		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

आयकर अपील सं./ ITA No.485/Chd/2019

निर्धारण वर्ष / Assessment Year : 2009-10

Vardhman Textiles Limited, Chandigarh Road, Ludhiana.	बनाम	The J.C.I.T., Circle-1, Ludhiana.
स्थायी लेखा सं./PAN NO: AABCM4692E		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

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आयकर अपील सं./ **ITA No.612 /Chd/2019**

निर्धारण वर्ष / Assessment Year : 2009-10

The D.C.I.T., Circle-1, Ludhiana.	बनाम	Vardhman Textiles Limited, Chandigarh Road, Ludhiana.
स्थायी लेखा सं./PAN NO: AABCM4692E		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

आयकर अपील सं./ **ITA No.486 /Chd/2019**

निर्धारण वर्ष / Assessment Year : 2013-14

Vardhman Textiles Limited, Chandigarh Road, Ludhiana.	बनाम	The A.C.I.T., Circle-1, Ludhiana.
स्थायी लेखा सं./PAN NO: AABCM4692E		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

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आयकर अपील सं./ **ITA No.613 /Chd/2019**

निर्धारण वर्ष / Assessment Year : 2013-14

The D.C.I.T., Circle-1, Ludhiana.	बनाम	Vardhman Textiles Limited, Chandigarh Road, Ludhiana.
स्थायी लेखा सं./PAN NO: AABCM4692E		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by: S/Shri Subhash Aggarwal, Adv.  
& Rishit Dhingra, CA.

राजस्व की ओर से/ Revenue by: Smt.C.Chanderkanta, CIT DR

सुनवाई की तारीख/Date of Hearing : 02.03.2020

उदघोषणा की तारीख/Date of Pronouncement: 28.05.2020

**आदेश/ORDER**

**Per Annapurna Gupta, Accountant Member:**

All the above cross appeals relate to same assessee and have been preferred against separate orders of the Commissioner of Income Tax(Appeals-I, Ludhiana [(in short referred to as 'CIT(A)'] dated 8.2.2019, 11.2.2019 and 1.2.2019 relating to assessment years 2008-09, 2009-10 and 2013-14 respectively, passed u/s 250(6)) of the Income Tax Act, 1961 (hereinafter referred to as 'Act'.

2. Both the parties conceded that there were common issues involved in all the appeals arising from identical set of facts. All the cross appeals were, therefore, taken up together for hearing.

We shall first take up the cross appeal pertaining to assessment year 2008-09 i.e. in ITA No.484/Chd/2019 & ITA No.611/Chd/2019 and first deal with the appeal of the assessee in **ITA No.484/Chd/2019**.

**ITA No.484/Chd/2019(A.Y.2008-09-Assessee's Appeal):**

3. The effective grounds of appeal raised by the assessee read as under:

2. *That the Ld.CIT(A) erred in law and on facts in upholding the applicability of section 14A of the Income Tax Act, 1961 read with Rule 8D and making disallowance thereunder ignoring the contentions/submissions of the assessee.*

&amp;

ITA Nos.611 to 613/Chd/2019

A.Ys. 2008-09, 2009-10 &amp; 2013-14

3. *That the Ld.CIT(A) has erred in law and on facts in upholding the action of AO for treating interest received amounting to Rs.9,89,04,000/- as 'Income from Other Sources' instead of 'Income from Business and Profession'.*
5. *That the Ld. CIT(A) has erred in law and on facts in confirming the action of the AO in reducing Rental income of Rs. 45,75,267/-, Interest from Other of Rs.42,40,928/- and Miscellaneous receipts of Rs.32,18,153/- from the profits of the units eligible for deduction u/s 80IC/80IB of the Income Tax Act, 1961.*
6. *That the Ld. CIT(A) has erred in law and on facts in upholding the action of the AO in allocating head office expenses to units claiming deduction u/s 80IB/80IC of the Act.*
7. *That the Ld.CIT(A) has erred in law and on facts in upholding the action of AO for treating line/bay charges amounting to Rs. 4,00,72,000/- as capital expenditure instead of revenue expenditure.”*

4. Ground No.2 relates to the issue of disallowance of expenses made pertaining to those incurred for the purpose of earning exempt income, as per the provisions of section 14A of the Act r.w.r. 8D of the Income Tax Rules.

5. Brief facts relating to the issue are that during the impugned year the assessee had earned substantial exempt income amounting to Rs.1,39,15,734/- from holding of investments, for which voluntary and suo moto disallowance of Rs.1 lac was made in the computation of income filed alongwith return of income. Not satisfied with the same the Assessing Officer (AO) invoked the provisions of section contained in Rule 8D for making disallowance u/s 14A of the Act. Accordingly, the AO computed the disallowance

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ITA Nos.611 to 613/Chd/2019

A.Ys. 2008-09, 2009-10 &amp; 2013-14

under Rule 8D(2)(ii)&(iii) at Rs.1,64,14,855/- and Rs.45,94,325/- respectively.

6. The Ld.CIT(A), following the decision of the first appellate authority in the case of the assessee for assessment year 2013-14, directed the AO to recompute the disallowance after excluding interest expenditure of specific purpose borrowings, netting the interest income out of interest expenditure before computing the disallowance and considering only those investments which had yielded exempt income for the purpose of computing the interest income. He further directed that the disallowance in any case should not exceed the exempt income.

7. Before us the contention raised by the Ld.Counsel for the assessee was that identical issue had been dealt with by the ITAT in preceding years i.e. assessment years 2006-07 and 2007-08 and in succeeding years i.e. assessment year 2011-12 and 2012-13 wherein the disallowance had been restricted to Rs.2 lacs to Rs.6 lacs. Our attention was drawn to the disallowance upheld by the ITAT in the said years as under:

<u>Asst. Year</u>	<u>Exempt Income</u>	<u>Disallowance</u>
2006-07	Rs.1.59 crores	Rs.2 lacs
2007-08	Rs.2.19 crores	Rs.2.50 lacs

&amp;

ITA Nos.611 to 613/Chd/2019

A.Ys. 2008-09, 2009-10 &amp; 2013-14

2011-12	Rs.12.59 crores	Rs.5 lacs
2012-13	Rs.14.87 crores	Rs.6 lacs

8. Referring to the above the Ld.Counsel for the assessee pleaded that considering the same since the exempt income earned in the impugned year amounted to Rs.1.39 crores, drawing parity from the orders of the ITAT as above, the disallowance in the present case be restricted to Rs.2 lacs. The Ld.Counsel for the assessee further pointed out that there were no change in facts and circumstances from the preceding year i.e. assessment year 2007-08 when the disallowance had been restricted by the ITAT to Rs.2.5 lacs since as in that year, in the impugned year also the assessee had sufficient own funds for the purpose of making the impugned investment. Our attention was drawn to the total investment made by the assessee in the said two years as reproduced in its synopsis as under:

<b>Investments</b>		<b>31.3.08</b>	<b>31.3.07</b>
<i>Subsidiaries/Associates</i>	=	95.16 Crs	84.63 Crs
<i>Investments generating taxable income</i>	=	0.25 Crs	0.25 Crs
<i>In section 25 companies</i>	=	0.85 Crs	0.85 Crs
<i>Investments which yield dividend</i>	=	0.89 Crs	0.89 Crs
<b>TOTAL Investments</b>	=	<b>97.15 Crs</b>	<b>86.62 Crs</b>

and to the possession of available surplus as under:

&amp;

ITA Nos.611 to 613/Chd/2019

A.Ys. 2008-09, 2009-10 &amp; 2013-14

<b>Own Funds</b>		<b>31.3.08</b>	<b>31.3.07</b>
Share capital	=	57.77 cr.	57.77 cr.
Reserves	=	1114.37 cr.	1034.26 cr.
Dep.Reserves	=	1074.27 cr.	930.75 cr.
		<b>2246.41 cr.</b>	<b>2022.78 cr.</b>

9. The Ld.Counsel for the assessee thereafter drew our attention to the fact that the exempt dividend income had been earned on the following investments:

VMT Spinning Company	=	Rs.1,36,62,054/-
IDBI Limited	=	<u>Rs. 2,53,680/-</u>
Total:	=	<u>Rs.1,39,15,734/-</u>

10. The Ld.Counsel for the assessee contended that almost the entire dividend income had been earned from VMT Spinning Company Limited which was subsidiary/associate concern of the assessee and investment in which had been made in preceding years only. He, therefore, contended that the assessee company was not required to make any expenditure for the purpose of earning the exempt income since it was investment in a subsidiary company only for which no administrative efforts was required for monetary either for making the investment or earning the dividend income. He, therefore, pleaded that the disallowance be restricted to Rs.2 lacs.

11. The Ld. DR, on the other hand, contended that the Ld.CIT(A) was just and fair having given all possible relief to the assessee as allowable under law by excluding interest

&amp;

ITA Nos.611 to 613/Chd/2019

A.Ys. 2008-09, 2009-10 &amp; 2013-14

paid on lines taken for specific purposes, allowing the netting of interest and further directing that only those investments which have earned exempt income be considered for the purpose of disallowance. The Ld. DR vehemently supported the order of the Ld.CIT(A).

12. We have heard the rival contentions and have also gone through the order of the ITAT in the case of the assessee for assessment years 2006-07, 2007-08, 2011-12 and 2012-13 to which our attention was drawn. On going through the order for assessment years 2006-07 and 2007-08 we find that the ITAT had directed the disallowance of Rs.2 lacs and Rs.2.5 lacs respectively in the said years for the purpose of calculating the disallowance u/s 14A and on further noting that the Hon'ble High Court in the case of the assessee itself for assessment year 2000-01 had confirmed the disallowance of Rs.1 lac against dividend income earned by the assessee for Rs.2.16 crores. Considering the overall facts and circumstances of the case the ITAT had confirmed the disallowance of Rs.2 lacs and Rs.2.5 lacs in assessment years 2006-07 and 2007-08 respectively. In assessment years 2011-12 and 2012-13, on going through the order of the ITAT, we find that the ITAT in the said years had taken note of the fact that the assessee had sufficient own funds for the purpose of making the investments and accordingly

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ITA Nos.611 to 613/Chd/2019

A.Ys. 2008-09, 2009-10 &amp; 2013-14

following the decision of the Hon'ble Apex Court in the case of CIT LTU Vs. Reliance Industries Ltd. (2010) 410 ITR 466 held that no disallowance of interest is warranted u/s 14A of the Act. Accordingly, the disallowance calculated as per Rule 8D(2)(ii) was deleted by the ITAT. As for the disallowance of administrative expenses the ITAT noted that the substantial amount of interest had been earned by the assessee from its subsidiary companies where not much of administrative resources were used. Accordingly, the ITAT held that the disallowance of administrative expenses could not be done solely in the ratio of quantum of investments shown. The ITAT, therefore, considering the past history of the assessee and overall facts and circumstances of the case upheld the disallowance of Rs.5 lacs as justifiable. The relevant finding of the ITAT in assessment year 2011-12 in ITA No.787/Chd/2015 dated 14.3.2019 at paras 8 to 10 of the order is as under:

*"8. We have considered the rival submissions. The issue relating to the presumption theory in the light of the decision of the Hon'ble Supreme Court in 'Maxopp Investment Ltd Vs. CIT.', 402 ITR 640 (SC) (supra) has been discussed by the Tribunal in the latest decision of the Tribunal in the case of 'ACIT Vs. Janak Global Resources Pvt Ltd' (supra), wherein, the Tribunal after considering the ratio laid down by the Hon'ble Supreme Court in the case of 'Hero Cycles Pvt. Ltd. Vs. CIT', 379 ITR 347(SC), and other decisions as well as in the case of 'Avon Cycles Ltd. Vs. CIT' of the Hon'ble High Court (supra) has decided the issue in favour*

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ITA Nos.611 to 613/Chd/2019

A.Ys. 2008-09, 2009-10 &amp; 2013-14

*of the assessee. At this stage, Ld. Counsel for the assessee has submitted that now the issue is squarely covered by the latest decision of the Hon'ble Supreme Court in the case of in the case of 'CIT (LTU) Vs. Reliance Industries Ltd.'* [2010] 410 ITR 466 (SC), wherein, the Hon'ble Supreme Court has reiterated the proposition that if there are interest funds available with the assessee, which are sufficient to meet the investment, it can be presumed that the investments are made from the interest free funds available with the assessee. In view of this, this question is now settled by the decision of the Hon'ble Supreme Court and the issue accordingly is decided in favour of the assessee so far as the issue of disallowance of interest expenditure is concerned.

9. However, so far as the issue of disallowance of administrative expenditure is concerned, the Ld. Counsel for the assessee has invited our attention to the earlier order of the Tribunal to state that in the appeal for the assessment year 2006-07, the assessee has earned dividend income of Rs. 1.59 crores and the Tribunal restricted the disallowance of administrative expenditure to Rs. 2 lacs and further in the assessment year 2007-08, the assessee had earned dividend income of Rs. 219 crores and the Tribunal restricted the disallowance to Rs. 2.5 lacs. In the year under consideration, the Ld. Counsel for the assessee has submitted that out of the total dividend of Rs. 12.59 crores, the assessee has earned a dividend of Rs. 7.91 crores from its subsidiaries. He, in this respect has submitted that for making investments in own subsidiaries, not much of administrative resources are used, hence, the disallowance on administrative expenditure cannot be disallowed solely in the ratio of the quantum of the investments shown. He, however, has fairly admitted that the assessee has also received dividend of Rs. 4.6 crores from the investment in other companies. The Ld. counsel has further submitted that the assessee has suo motto disallowed a sum of Rs. 2 lacs for the year under consideration on account of administrative expenses u/s 14A of the I.T.Act.

&amp;

ITA Nos.611 to 613/Chd/2019

A.Ys. 2008-09, 2009-10 &amp; 2013-14

*10. Considering the over all facts and circumstances of the case and submissions of both the parties and also considering the quantum of investment made, the amount of dividend earned by the assessee from its own subsidiary as well from outside / other companies, in our view, a total disallowance of Rs. 5 lacs will be justified in this case on account of administrative expenses. However, since the assessee itself has suo motu made disallowance of Rs. 2 lacs, the assessee will be given the benefit of the same.”*

13. Considering the above and further noting the fact that in the impugned year also the assessee has demonstrated the availability of sufficient own funds for the purpose of making investment as being Rs.2246.41 crores of own funds available as against total investment of Rs.97.51 crores, we hold that the said facts and circumstances of the assessee warrant no disallowance of interest in the present case, following the decision of the ITAT in the case of the assessee for assessment year 2011-12 as reproduced above. Similarly in the case of administrative expenses we have noted that almost entire amount of dividend income has been earned from subsidiary company of the assessee in which investment was made in the preceding years only. As noted by the ITAT in the case of the assessee for assessment year 2011-12 since the investment in subsidiaries do not require much administrative indulgence, the disallowance cannot be calculated as prescribed by Rule 8D in the ratio of investments made and considering the past history of the

&amp;

ITA Nos.611 to 613/Chd/2019

A.Ys. 2008-09, 2009-10 &amp; 2013-14

assessee wherein against exempt income earned of Rs.1.59 crores and Rs.2.19 crores in assessment years 2006-07 and 2007-08, disallowance of Rs.2 lacs and Rs.2 lacs respectively has been upheld by the ITAT. We direct the disallowance of Rs.2.25 lacs in the present case wherein the facts indicate that the assessee has earned dividend income of Rs.1.39 crores. We, therefore, direct the AO to restrict the disallowance in all u/s 14A in the present case to Rs.2.25 lacs. This ground of appeal raised by the assessee is, therefore, allowed in above terms.

14. Ground No.3 raised by the assessee relates to the issue of treatment of interest earned by the assessee amounting to Rs.9,89,04,000/- as income from other sources instead of income from business and profession. The Ld.Counsel for the assessee pointed out that the interest earned by the assessee from bank and others amounted in all of Rs.9,89,04,000/- was treated by the AO as taxable under the head 'income from other sources' as against the claim of the assessee of the said interest as 'income from business and profession'. No netting of interest expenses was also allowed against the same.

15. Before us at the outset itself the Ld. DR pointed out that identical issue stood adjudicated in the case of the

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ITA Nos.611 to 613/Chd/2019

A.Ys. 2008-09, 2009-10 &amp; 2013-14

assessee by the ITAT in assessment year 2006-07 in ITA No.1429/Chd/2010 and in assessment year 2007-08 in ITA No.270/Chd/2011 vide order dated 18.12.2018 wherein the ITAT had dismissed assessee's plea of treating it as income from business and profession but considering the plea of the assessee that the netting of interest expenditure be allowed, had directed the AO to allow the same where a direct nexus between the interest income earned and interest expenditure incurred was there. Our attention was drawn to paras 4 to 6 of the order dealing with the said issue in assessment year 2006-07 as under:

*"4. **Ground No.1:** Vide ground No.1, the assessee has agitated the action of the CIT(A) in treating the interest income amounting to Rs. 1,65,17,422/- as 'income from other sources' instead of 'income from business or profession' as was claimed by the assessee.*

*5. The facts relating to the above issue are that the Assessing officer had treated interest from customers and suppliers amounting to Rs. 355.28lacs and further interest from bank & others amounting to Rs. 165.17 lacs as 'income from other sources' as against the claim of the business income. The Ld. CIT(A) held that since income on the delayed payment from customers and suppliers was intrinsically linked with the business activity of the assessee, hence, the same was to be treated as business income of the assessee, whereas, the interest received from bank & others was directed to be treated as 'income from other sources'.*

*6. We have heard the rival submissions on this issue. We do not find any infirmity in the order of*

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ITA Nos.611 to 613/Chd/2019

A.Ys. 2008-09, 2009-10 &amp; 2013-14

*the CIT(A) so far as the treatment of the interest from customers and suppliers as 'business income' and interest from bank and other sources as 'income from other sources' is concerned. However, a contention has been raised by the Ld. Counsel for the assessee that where there is a direct nexus between the interest income earned and the interest expenditure incurred in this respect, the assessee should be allowed netting of the same before computing the same under the head 'income from other sources'. We find merit in the above contention of the assessee and we order accordingly."*

16. In view of the above, since the issue of interest income to be taxable under the head 'other sources' stands adjudicated by the ITAT against the assessee the said decision will squarely apply in the present case also and following the directions of the ITAT in the said year, we uphold the plea of the assessee to netting of interest expenditure against the said income directing the AO to allow netting of subject to there being direct nexus between the interest income earned as directed by the ITAT in the case of the assessee in assessment years 2006-07 and 2007-08 above. Ground No.3 raised by the assessee is allowed in above terms.

17. Ground No.5(which correctly should have been mentioned as ground No.4 in chronological order) relates to the issue of disallowance of deduction u/s 80IC/80IB of the Act on the following incomes earned by the assessee:

Rental Income = Rs.45,75,267/-

&amp;

ITA Nos.611 to 613/Chd/2019

A.Ys. 2008-09, 2009-10 &amp; 2013-14

Interest from other	=	Rs.42,40,928/-
Miscellaneous Receipt	=	Rs.32,18,153/-

The said disallowance was made for the reason that the impugned incomes were found to be not derived from industrial undertakings, which is a necessary prerequisite for the purpose of claiming deduction u/s 80IB/80IC of the Act.

18. With respect to rent receipt, the contention of the Ld.Counsel for the assessee was that it had received rental income from accommodation rented to its employees. The pleadings of the Ld.Counsel for the assessee in this regard was that while the Revenue authorities had excluded the entire rent receipts, the expenses incurred for maintaining those accommodations for the employees should have been reduced therefrom and only the balance rental income ought to have been disallowed.

19. As for the miscellaneous receipts it was pointed out that the same related to the following:

a)	Damages against cancellation of orders from customers	=	Rs.31,10,744/-
b)	Commission from shipping companies	=	Rs. 7,075/-
c)	Other receipts	=	Rs. 1,00,356/-

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ITA Nos.611 to 613/Chd/2019

A.Ys. 2008-09, 2009-10 &amp; 2013-14

20. The Ld.Counsel for the assessee contended that there cannot be dispute about the fact that the damages received against cancellation of orders from customers had direct nexus with the industrial undertaking of the assessee and deduction u/s 80IC/80IB of the Act was allowable in this regard. He relied upon the decision of the ITAT in the case of Pr.CIT, Delhi Vs. Bharat Sanchar Nigam Ltd. in ITA No.476/2016 dated 1.8.2016 wherein the Ld.Counsel for the assessee pointed out that deduction u/s 80IA was allowed on liquidated damages. As for the commission from shipping companies, the Ld.Counsel for the assessee contended that the ITAT in the case of the assessee for assessment years 2006-07 and 2007-08 had allowed deduction u/s 80IB/80IC of the Act on commission earned from ocean freight. Our attention was drawn to paras 7 to 10 of the order dealing with identical issue as under:

*“7. **Ground No.2** : Vide ground No.2, the assessee has agitated the action of the CIT(A) indirecting the Assessing officer to reduce the eligible profits of the undertaking for the purpose of deduction u/s 10B, 80IB and 80IC of the Income-tax Act, 1961 (in short 'the Act') in respect of other income received.*

*8. The Ld. Counsel for the assessee has given details of other income which is mentioned in the ground No.2 itself. A perusal of the aforesaid details will reveal that the assessee claimed rent, Misc. receipts, DEPB, commission and interest income as 'other income' and has claimed deductions in respect of the same u/s 10B, 80IB and 80IC etc., as applicable in respect of the respective unit. The Ld.*

&amp;

ITA Nos.611 to 613/Chd/2019

A.Ys. 2008-09, 2009-10 &amp; 2013-14

*Counsel for the assessee has fairly agreed that except the brokerage from ocean freight, the other items do not constitute income derived from undertaking. So far as the brokerage of ocean freight is concerned, the Ld. Counsel for the assessee has submitted that the same is nothing but refund / rebate out of the freight expenditure incurred by the assessee which has resulted in increase in income of the assessee.*

9. *The Ld. DR also could not rebut the aforesaid arguments of the assessee*

10. *In view of this, out of the items mentioned in ground No.2, the Assessing officer is directed to consider the rebate on ocean freight as income of the undertaking of the assessee. However, the findings of the lower authorities in respect of the remaining items is affirmed.”*

21. It was, therefore, pleaded that the issue stood covered in favour of the assessee by the order of the ITAT in assessment year 2006-07 as above.

As for the disallowance of deduction u/s 80IB/80IC of the Act on interest from others amounting to Rs.42,40,928/-, the Ld.Counsel for the assessee contended that major amount of interest included in the above, amounting to Rs.26,84,428/- ,had been received from Electricity Board on security deposit and being purely of business nature, the same was eligible for deduction u/s 80IB/80IC of the Act.

22. The Ld. DR, on the other hand, relied upon the order of the authorities below contending that in the absence of nexus with the industrial undertaking, the disallowance of

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ITA Nos.611 to 613/Chd/2019

A.Ys. 2008-09, 2009-10 &amp; 2013-14

deduction u/s 80IB/80IC of the Act of the Act on the above incomes had been rightly upheld by the Ld.CIT(A).

23. We have heard the contentions of both the parties. It is settled law that the deduction u/s 80IB/80IC of the Act is eligible on the incomes which have first degree nexus with the industrial undertakings of the assessee. There is no dispute about this proposition at all. In this backdrop, considering that the rental income had been received by the assessee from letting out accommodation to its employees, there is clearly no nexus of the said income with the industrial undertaking of the assessee and the claim of deduction u/s 80IB/80IC of the Act, therefore, we hold has been rightly disallowed by the Ld.CIT(A). But at the same time, we are in agreement with the contention of the Ld.Counsel for the assessee that it is not the entire gross rental receipts which are to be disallowed out of the total profits claimed by the assessee as deductible u/s 80IB/80IC of the Act, but on the profit element in the said income which is embedded in the profits earned by the assessee meaning thereby that the expenses, if any, incurred by the assessee for earning the rental income ought to be reduced from the rental income and it is only the balance which should be denied deduction u/s 80IB/80IC of the Act.

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ITA Nos.611 to 613/Chd/2019

A.Ys. 2008-09, 2009-10 &amp; 2013-14

Accordingly, we direct the AO to reduce expenses, if any, incurred by the assessee for the purpose of earning rental income and disallow only the balance rental income deduction u/s 80IB/80IC of the Act. As for the miscellaneous receipts, the damages against cancellation of orders from customers received by the assessee, we agree with the Ld.Counsel for the assessee, as direct nexus with the industrial undertakings of the assessee and we hold, is eligible for deduction u/s 80IB/80IC of the Act. Similarly, the commission from shipping companies, we have noted, has been held by the ITAT in the case of the assessee itself in the preceding year i.e. assessment year 2006-07 as eligible for deduction u/s 80IB/80IC of the Act. Accordingly, following the said decision we hold the commission from shipping companies to be eligible for deduction u/s 80IB/80IC of the Act. For other receipts no arguments have been forwarded by the assessee and, therefore, the disallowance of deduction u/s 80IB/80IC of the Act of the Act on the same amounting to Rs.1,00,356/- is upheld. As for the interest received from bank and other, we do not find any merit in the claim of the assessee that having been earned on security deposits made with Electricity Board they were purely in the nature of business income and hence eligible for deduction u/s80IB/80IC of the Act. The said

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ITA Nos.611 to 613/Chd/2019

A.Ys. 2008-09, 2009-10 &amp; 2013-14

income as described by the Ld.Counsel for the assessee does not have any first degree nexus with the industrial undertakings of the assessee and, therefore, we hold that the same is not eligible for deduction u/s 80IB/80IC of the Act.

24. In view of the above, we hold that the assessee is eligible to deduction u/s 80IB/80IC of the Act on the damages against cancellation, commission from shipping while it is held not eligible for deduction on the other receipts, interest receipts from bank and others and rental income, which we direct the AO to restrict the disallowance to the net rental income excluding the expenses incurred for earning the same. Ground of appeal No.5 raised by the assessee is partly in above terms.

25. Ground of appeal No.6 raised by the assessee relates to the issue of allocation of head office expenses to units claiming deduction u/s 80IB/80IC of the Act.

26. Briefly stated the AO had allocated head office expenses on the basis of turn over for the purpose of calculating the profits of the units eligible for deduction u/s 80IB/80IC of the Act. The Ld.CIT(A) directed the AO to allocate head office expenses net of head office income for the said purpose following the decision of the ITAT in

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ITA Nos.611 to 613/Chd/2019

A.Ys. 2008-09, 2009-10 &amp; 2013-14

assessee's own case for assessment years 2006-07 and 2007-08 in ITA No.1429/Chd/2010 and ITA No.270/Chd/2011.

27. Before us the Ld.Counsel for the assessee was unable to give any reason for not following the decision of the ITAT in the preceding year as done by the CIT(A). He was unable to point out any distinguishing facts in the present case. In view of the same, since the Ld.CIT(A) has followed the order of the ITAT in the case of the assessee for assessment years 2006-07 and 2007-08 on identical issue and no distinguishing facts have been brought to our notice by the Ld.Counsel for the assessee, we see no reason to interfere in the order of the Ld.CIT(A). Ground of appeal No.6 raised by the assessee is dismissed.

28. Ground of appeal No.7 raised by the assessee relates to the treatment of line/bay charges amounting to Rs.4,00,72,000/- as capital expenditure;

29. Briefly stated, the facts relating to the issue are that the assessee had paid line/bay charges in its unit Anant Spinning Mills and Vardhman Yarns, both located in Madhya Pradesh Electricity Board amounting to Rs.4,00,72,000/-. The assessee had claimed the said expenditure as revenue

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ITA Nos.611 to 613/Chd/2019

A.Ys. 2008-09, 2009-10 &amp; 2013-14

contending before the AO that the said expenditure had been incurred for augmenting the business activities of the assessee company and the ownership of the assets so created vested with the State Electricity Board and the amount was not refundable at any stage. The explanation of the assessee did not find favour with the AO who treated the same as capital expenditure and allowed department on the same.

30. The Ld.CIT(A) upheld the order of the AO.

31. Before us the Ld.Counsel for the assessee pointed out that this issue stood adjudicated in favour of the assessee in its own case by the ITAT in assessment years 2011-12 and 2012-13 in ITA No.787/Chd/2015 and ITA No.483/Chd/2016 dated 14.3.2019. Our attention was drawn to the relevant findings of the ITAT in paras 33 and 34 of the order as under:

*“33. **Ground No.14** : Vide ground No.14, the assessee has agitated the action the CIT(A) in treating the line/bay charges as capital receipt instead of Revenue receipt.*

*34. The Ld. Counsel for the assessee has invited our attention to the decision of the Tribunal in the own case of the assessee for assessment year 2007-08 in ITA No. 1430/Chd/2010 order dated 31.3.2010, wherein, the Tribunal after discussing the details upheld the order of the CIT(A) in that year treating the aforesaid expenditure as*

*Revenue expenditure. No contrary decision has been cited before us. In view of this, the issue is accordingly decided in favour of the assessee and the Assessing officer is direct to treat the aforesaid expenditure as Revenue expenditure.”*

The Ld.Counsel for the assessee, therefore, contended that the issue stood covered in favour of the assessee

32. The Ld. DR though fairly conceded to the above, however, relied upon the orders of the authorities below.

33. In view of the above since identical issue already stands decided in favour of the assessee by the ITAT in assessment year 2011-12 and 2012-13 and no distinguishing facts have been brought to our notice by the Ld. DR, the said decision will apply in the present case Assessing Officer, following which we hold that the line/bay charges to be revenue in nature. Ground of appeal NO.7 raised by the assessee is accordingly, allowed.

34. In effect the appeal of the assessee is partly allowed .

We now shall take up the departmental appeal in **ITA No.611/Chd/2019**.

**ITA No.611/Chd/2019(A.Y.2008-09-Revenue’s Appeal):**

35. Ground No.1 raised by the Revenue reads as under:

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ITA Nos.611 to 613/Chd/2019

A.Ys. 2008-09, 2009-10 &amp; 2013-14

*Q.I. "Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was justified in allowing interest from customers & suppliers amounting to Rs.3,19,43,971/- to be treated as business income as against A.O. treating the same as income from other sources?"*

36. The issue raised in the above ground relates to the treatment of interest received from customers and suppliers and business income of the assessee.

37. At the outset itself, it was pointed out that the AO had treated the said income as 'income from other sources', while the Ld.CIT(A) allowed the assessee's claim of treating the said income as 'business income' for the reason that the income on delayed payment from customers and suppliers was intrinsically linked with the business of the assessee.

Before us at the outset itself it was pointed out by the Ld.Counsel for the assessee that the issues stood covered by the order of the ITAT in the own case of the assessee for assessment years 2006-07 and 2007-08 in ITA No.1429/Chd/2010 and ITA No.270/Chd/2011 dated 18.12.2018 wherein the ITAT had found no infirmity in the order of the CIT(A) treating the interest received on account of delayed payments from customers and suppliers as business income. No distinguishing facts have been brought to our notice by the Ld. DR.

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ITA Nos.611 to 613/Chd/2019

A.Ys. 2008-09, 2009-10 &amp; 2013-14

In view of the same the issue stands covered by the order of the ITAT in the preceding years in favour of the assessee and the order of the Ld.CIT(A) on this issue is, therefore, upheld. Ground of appeal No.1 raised by the Revenue is accordingly dismissed.

38. Ground of appeal No.2 raised by the Revenue reads as under:

*Q.2. "Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was justified in allowing deduction u/s 80IB and 80IC on interest from customers & employee, misc. receipts comprising Brokerage from ocean freights, forex gains, insurance claim & rebate discount ?"*

39. The Revenue in the above ground has agitated the action of the Ld.CIT(A) in allowing deduction u/s 80IB and 80IC on the interest from customers and employees, miscellaneous receipts comprising brokerage from ocean freight, foreign exchange gains, insurance claim and rebate discount.

At the outset itself, the Ld.Counsel for the assessee drew our attention to the details of insurance claim received at Paper Book page No.1 as under:

**Arisht Spinning Mills  
Detail of Insurance Claim received**

Date	Description of Claim	Loss Suffered	Claim Received
7/25/2007	Loss due to fire in Carding	134,107	49,265
10/16/2007	Loss due to fire in H. Plant	586,706	285,612
10/16/2007	Claim for mobile set	1,800	1,800
12/27/2007	Marine Claim due to loss of yarn	105,920	105,920
		<b>828,533</b>	<b>442,597</b>

**Auro Textiles**

<b>Date</b>	<b>Description of Claim</b>	<b>Loss Suffered</b>	<b>Claim Received</b>
9/25/2007	Claim for Mobile Set	3,200	900
		<b>3,200</b>	<b>900</b>

**Auro Spinning Mills**

<b>Date</b>	<b>Description of Claim</b>	<b>Loss Suffered</b>	<b>Claim Received</b>
8/27/2007	FIRE CLAIM OF BLOW ROOM MPM 8 IN HALL 5	163,715	136,281
8/27/2007	FIRE CLAIM OF BLOW ROOM (UNIMIX) IN HALL 4	372,770	362,432
10/26/2007	LOSS OF MOBILE BILL NOKIA	5,600	5,572
11/14/2007	TRANSIT CLAIM OF RIETER CARD COVER SHEET	8,192	7,447
3/31/2008	TRANSIT CLAIM OF AMSLER ATTACHMENTS (CSY)	4,966,956	4,966,956
		<b>5,517,233</b>	<b>5,478,688</b>

40. Referring to the same he pointed out that the entire claim related to the loss in its business units/ business activities and, therefore, the entire claim was eligible for deduction u/s 80IB/IC of the Act. He further pointed out that the issue of allowance of insurance claim also had been dealt with by the ITAT in favour of the assessee in assessee's own case for assessment years 2011/12 and 2012-13 in ITA Nos.787 & 894/Chd/2015 and ITA Nos.483 & 518/Chd/2016 dated 14.3.2019.

As for the claim of deduction u/s 80IB/80IC on interest from customers and Misc.receipts comprising of brokerage,ocean freight ,forex gain,Ld.Counsel for the assessee pointed out that these issues also stood decided by the ITAT in favour of the assessee in assessee's own case for A.Y 2006-07 & 2007-08 in ITA No.35/2011 & 286/2011 dated 18-12-18.

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ITA Nos.611 to 613/Chd/2019

A.Ys. 2008-09, 2009-10 &amp; 2013-14

41. We have gone through the orders of the ITAT to which our attention was drawn and have noted that the ITAT had allowed the assessee's claim of deduction u/s 80IB/ 80IC in case of foreign exchange gain, commission brokerage from ocean freight and interest received from customers and suppliers and that relating to insurance claim in preceding years holding at para 27 of the order in ITA No. 35/2011 as under:

*27. Ground No.2 : Ground No.2 raised by the Revenue is in three parts. The Revenue in the 1st part has agitated the action of the CIT(A) in directing the Assessing officer to treat the interest received from the customers and suppliers to be income derived from industrial undertaking and eligible for exemption u/s 10B and deduction u/s 80IB and 80IC of the Act. Since we have already held that the interest income received on delayed payment is in fact part of the sale consideration / receivable from the customers and we have also held that the same to be treated as business income and since the aforesaid receipts are relating to the sale receipts of the assessee of the produced manufactured, hence, we do not find any infirmity in the order of the CIT(A) in this respect.*

*In the second part of ground No.2, the Revenue has agitated the action of the CIT(A) in directing the Assessing officer to allow deduction u/s 80IB and 80IC and exemption u/s 10B on profit after excluding loses debited in the accounts in respect of which insurance claims were received. The Ld. Counsel for the assessee in this respect has invited our attention to the paper book page 2 wherein the details of the items has been given on which insurance claim was received. However, after perusal of the same, it is not clear as to which of the items constituted capital assets and which of the items constituted trading asset of the assessee. We therefore, restore this issue to the file of the assessee to bifurcate the items between capital assets and trading assets and to allow the claim in respect of insurance claim received on trading assets only.*

*28. The third part of ground No.2 is against the action of the CIT(A) in directing the Assessing officer not to reduce foreign exchange fluctuation gain from eligible profits of units eligible for deduction u/s 80IB and 80IC and exemption u/s 10B of the Act.*

*29. The Ld. Counsel for the assessee has submitted that the foreign exchange fluctuation gain is in respect of export receipts / receivable of the assessee and any gain in respect of receivable on account of foreign exchange fluctuation in fact contributes to the profits of the assessee from the sale/ export of the products. We find force in the aforesaid*

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ITA Nos.611 to 613/Chd/2019

A.Ys. 2008-09, 2009-10 &amp; 2013-14

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

We have also gone through the order of the ITAT in ITA No.787/2015 at para 23 as under:

*“23. **Ground No.9.** Vide this ground the assessee has agitated the action of the lower authorities in treating the income from the profits of the units eligible for deduction u/s 80IB / 80IC of the Act.*

*So far as the claim of deduction in respect of the insurance claim, which admittedly was on account of loss of trading assets is concerned, it has been held time and again that if the loss therein is indemnified by way of compensation received from insurance company that can be said to be not a separate income, rather, the same will have effect for reducing loss / expenditure. Hence, if the assessee has booked the aforesaid loss, in relation to which insurance claim has been received, as expenditure, then the amount received by the assessee from insurance company will be eligible for deduction u/s 80IB/80IC of the Act. This issue is accordingly restored to the file of the Assessing officer for verification of the facts.*

*So far as the issue relating to the gains on the foreign exchange rate fluctuation is concerned, the Ld. Counsel for the assessee has submitted that gain on foreign exchange rate fluctuation has been received on account of proceeds of exports receivable and that the same was a part of the sale consideration. The Ld. counsel has further submitted that this issue is squarely covered in favour of the assessee in the own case of the assessee for assessment years 2006-07 and 2007-08 vide common order of the Tribunal dated 18.12.2018 (supra).”*

Considering the above we agree with the Ld.Counsel for the assessee that the issue of claim of deduction u/s 80IB/80IC of the Act on interest income received from customers and misc. receipts in the nature of ocean freight, forex gain already stand decided in favour of the assessee by the ITAT

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ITA Nos.611 to 613/Chd/2019

A.Ys. 2008-09, 2009-10 &amp; 2013-14

in preceding years in the case of the assessee itself. We therefore see no reason to interfere in the order of the LD.CIT(A) with respect to allowance of the aforesaid claims. As for claim of deduction u/s 80IB/80IC of the Act on insurance claim received , the issue is restored back to the AO with the direction to adjudicate it in accordance with the direction of the ITAT in the case of the assessee on the identical issue in A.Y 2011-12 dealt with in ITA no.787/chd/2015.

This ground of appeal is partly allowed for statistical purposes.

42. Ground No.3 raised by the Revenue reads as under:

*"3. "Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was justified in treating the reimbursement of interest under TUF scheme of the Ministry of Textiles, Government of India, as capital receipt instead of revenue receipt without giving an opportunity to assessing officer to examine the claim of assessee?"*

43. The issue raised in the above ground relates to the treatment of the reimbursement of interest received by the assessee under the TUF Scheme of the Ministry of Textilels, Government of India, which the assessee had claimed to be capital in nature as opposed to the AO treating the same as revenue in nature and subjecting it to tax and which claim of the assessee was upheld by the Ld.CIT(A).

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ITA Nos.611 to 613/Chd/2019

A.Ys. 2008-09, 2009-10 &amp; 2013-14

Our attention was drawn to the findings of the Ld.CIT(A) at paras 23 to 25 of the order pointing out therefrom that the Ld.CIT(A) after examining the objects of the TUF Scheme from the resolution of the Ministry of Textiles (No.28/1/99CIT dated 31.3.1999) had found that the purpose of this subsidy was upgradation of plant and machinery and thus the capital apparatus of the assessee company. Thereafter referring to the decision of the Hon'ble Jurisdictional High Court in the case of CIT Vs. Sham Lal Bansal wherein identical issue of treatment of subsidy was examined by the Hon'ble High Court and found to be capital in nature and further relying on the decision of the Hon'ble High Court of Calcutta in the case of CIT Vs. Gloster Jute Mills Ltd. (2018) 96 Taxmann.com 303 wherein also the subsidy was treated to be a capital receipt, the Ld.CIT(A), it was pointed out, held that the interest received under TUF Scheme was a capital receipt. The Ld.Counsel for the assessee further pointed out that this issue had been settled by the ITAT also in favour of the assessee in its own case for assessment years 2002-03 to 2005-06 in ITA Nos.1479 to 1482/Chd/2018 dated 29.5.2019 treating the interest received as capital in nature. Our attention was drawn to paras 10 to 13 of the order containing the findings of the ITAT in this regard as under:

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ITA Nos.611 to 613/Chd/2019

A.Ys. 2008-09, 2009-10 &amp; 2013-14

“10. We have heard both the parties and have also gone through the order of the Ld.CIT(A). The issue before us relates to the nature of interest subsidy received under the TUF Scheme of the Government of India. The factual findings of the CIT(A) that the purpose of the interest subsidy was upgradation of plant & machinery and thus the capital apparatus of the assessee company, has not been controverted by the Revenue. The Ld.CIT(A), we find, has relied upon the decision of the Hon'ble Jurisdictional High Court in the case of CIT Vs. Sham Lal Bansal, ITA No.472/2010 (P&H) and the decision of the Hon'ble High Court of Calcutta in the case of CIT Vs. Gloster Jute Mills Ltd.(2018) 96 Taxman.com 303 for holding the interest subsidy to be capital in nature. We have gone through the decision of the Hon'ble Jurisdictional High Court in the case of CIT Vs. Sham Lal Bansal(supra), copy of which order was placed before us, and we agree with the Ld.CIT(A) that in the said case also, the issue related to nature of subsidy received under TUF Scheme of the Ministry of Textiles. The Hon'ble High Court, held that for the purpose of determining the nature of the subsidy, the purpose for which the subsidy was given was to be determined and relied upon the decision of the Hon'ble Supreme Court in the case of Sahni Steel & Press Works Ltd. Vs. CIT (1997) 94 Taxman 368 and CIT Vs. Ponni Sugars & Chemicals Ltd. (2008) 174 Taxman 87 for the aforesaid proposition. Thereafter the Hon'ble High court noted that the purpose of the TUF Scheme was to induce the entrepreneur to undertake investment in modernizing the plant and machinery and was definitely not for the purpose of day to day business of the assessee. Accordingly the Hon'ble High Court held that the nature of the subsidy was capital.

11. In the case of Gloster Jute Mills(supra), copy of order of which was also placed before us, the Hon'ble High Court examined the features of the TUF Scheme and found the purpose was to induce the entrepreneur to undertake investment in modernizing the plant and machinery and assets and, therefore was clearly a capital receipt.

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ITA Nos.611 to 613/Chd/2019

A.Ys. 2008-09, 2009-10 &amp; 2013-14

12. *The aforesaid two decisions relied upon by the CIT(A), we find therefore, have already dealt with the nature of the subsidy received under TUF S Scheme and after analyzing the terms of the scheme and finding that the purpose of the scheme was to induce modernization of plant and machinery used in textile industry, held the same to be capital in nature following the proposition laid down by the apex court for determining the nature of subsidy in the case of Sawhney steels(supra) and Ponni Sugars(supra). The Ld. DR has been unable to bring to our notice any contrary decision either of the Hon'ble Jurisdictional High Court or the Hon'ble Apex Court on this issue nor was the decisions relied upon by the Ld.CIT(A) distinguished before us.*

13. *In view of the same, we have no hesitation in upholding the order of the CIT(A) that considering the objective of the TUF Scheme and judicial decisions of the Hon'ble Jurisdictional High Court and Hon'ble High Court of Calcutta, the interest received under TUF Scheme is capital in nature. Grounds of appeal raised by the Revenue are, therefore, dismissed."*

44. The Ld. DR fairly conceded that the issue stood decided in earlier years in favour of the assessee as pointed out by the Ld.Counsel for the assessee though he vehemently relied upon the order of the AO.

45. We have heard the rival contentions. Since admittedly the issue of treatment of interest received under TUF Scheme has already been adjudicated by the ITAT in assessee's own case in the preceding years right from assessment years 2002-03 to 2005-06 in ITA Nos.1479 to 1482/Chd/2018 (supra) treating the same as capital receipt and no distinguishing facts have been brought to our notice, we have no hesitation in

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ITA Nos.611 to 613/Chd/2019

A.Ys. 2008-09, 2009-10 &amp; 2013-14

upholding the order of the CIT(A) treating the interest subsidy as capital in nature. Ground of appeal No.3 raised by the Revenue is, therefore, dismissed.

46. Ground of appeal No.4 raised by the Revenue reads as under:

4. *"Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was justified in treating the sale tax subsidy of Rs. 9,60,79,071/- as capital receipts without comparing the scheme of Gujrat Government with that of Punjab Government scheme made by Hon'ble Punjab 85 Haryana High Court in the case of M/s Abhishek Industries Ltd., 286 ITR1?"*

47. The issue raised in the above ground relates to the treatment of sales tax subsidy received by the assessee amounting to Rs.9,60,79,071/- which the Department claims to be revenue in nature, while the Ld.CIT(A) has on the other hand, upheld the claim of the assessee treating it as capital in nature.

At the outset itself, the Ld.Counsel for the assessee pointed out that identical issue had arisen in the case of the assessee for assessment years 2011-12 and 2012-13 wherein the matter had travelled up to the ITAT, which had decided the issue in favour of the assessee treating the sales tax subsidy as capital receipt in their order passed in ITA Nos.787 & 894/Chd/2015 for assessment year 2011-12 and in ITA Nos.483 & 518/Chd/2016 for assessment year 2012-

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ITA Nos.611 to 613/Chd/2019

A.Ys. 2008-09, 2009-10 &amp; 2013-14

13 both dated 14.3.2019. Copy of the order was placed before us. Our attention was drawn to the relevant findings of the ITAT at para 32 of the order and at paras 35 and 36 of the order as under:

*“32. **Ground Nos.12 & 13:** Vide ground Nos.12 & 13, the assessee has agitated the action of the CIT(A) in treating the sales tax subsidy as Revenue receipt instead of capital receipt as claimed by the assessee. This issue is now well settled by the decision of the Hon'ble Supreme Court in 'CIT-I Vs. M/s Chaphalkar Brothers, Pune and Others' in Civil Appeal Nos. 6513-6514 of 2012 order dated 7.12.2017, wherein, it has been held that the sales tax subsidy is a government incentive to set up new industrial units in specified areas and to be is treated as capital receipt. Further, the Ld. counsel for the assessee has also invited our attention to the decision of the Tribunal dated 18.12.2018, (supra) wherein after considering the relevant decisions it has been so held that the sales tax subsidy is a capital receipt. This issue is accordingly decided in favour of the assessee.”*

*“35. The assessee apart from above ground has also raised additional ground which reads as under:-*

*“That the authorities below have erred in treating Sales Tax Subsidy of Rs. 1,67,984/- under Madhya Pradesh Industrial Promotional Assistance Scheme – 2004 as Revenue receipt instead of capital receipt.”*

*36. This issue is relating to sales tax subsidy received from M.P. government. This issue is identical to that has been taken in ground No.12 of the appeal. Accordingly, the sales tax subsidy in respect of M.P. Unit is also ordered to be treated as capital receipt.”*

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ITA Nos.611 to 613/Chd/2019

A.Ys. 2008-09, 2009-10 &amp; 2013-14

48. The Ld.Counsel for the assessee pointed out that the ITAT had held the sales tax subsidy in respect of the scheme of the Madhya Pradesh Government as being capital in nature following the decision of the Hon'ble Apex Court in the case of CIT Vs. M/s Chaphalker Brothers Pune & Others in Civil Appeal Nos.6513 & 6514 of 2012 dated 7.12.2017 wherein it had been held that the sales tax subsidy is a Government incentive to set up new industrial unit in specified area and it is to be treated as capital receipt.

The Ld. DR fairly conceded to the above though he contended that the Ld.CIT(A) ought to have examined the scheme of the Gujarat Government under which subsidy have been received in the present case and thereafter adjudicated the issue.

49. We have heard the contentions of both the parties. We have also gone through the orders of the ITAT in the case of the assessee in assessment years 2011-12 and 2012-13 to which our attention was drawn and we have noted that the ITAT in the said years has treated sales tax subsidy to be capital in nature taking note of the ratio laid down by the Hon'ble Apex Court in the case of in the case of M/s Chaphalker Brothers Pune & Others (supra) wherein any subsidy received as an incentive for setting up an industrial

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ITA Nos.611 to 613/Chd/2019

A.Ys. 2008-09, 2009-10 &amp; 2013-14

unit was treated to be a capital receipt . The ITAT held that the sales tax subsidy was also an identical incentive for setting up industrial units and, therefore, was capital in nature. Since this issue has already been adjudicated as above and in the case of the assessee itself in the succeeding assessment years and Ld. DR has not brought to our notice any distinguishing facts, the issue stands covered by the decision of the ITAT as above in favour of the assessee. Ground of appeal No.4 raised by the Revenue is also dismissed.

50. Ground of appeal No.5 raised by the Revenue reads as under:

*5. Whether on the facts and circumstances of the case and in law, 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?"*

51. The issue raised in the above ground relates to the inclusion of surcharge and cess for the purpose of determining the quantum of MAT credit to be carried forward for set off in subsequent years. The AO had excluded surcharge and cess from the quantum of Mat credit to be carried forward for set off in subsequent years which the Ld.CIT(A) held was incorrect since he noted that the ITAT had held in the case of VMT Spinning Company Ltd. for

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ITA Nos.611 to 613/Chd/2019

A.Ys. 2008-09, 2009-10 &amp; 2013-14

assessment year 2007-08 in ITA No.1147/Chd/2014 dated 8.12.2016 that the surcharge and cess were to be included in MAT credit. He accordingly directed the AO to calculate and carry forward MAT credit in terms of the aforesaid order of the ITAT.

52. Before us the Ld. DR was unable to bring to our notice any contrary judgment of either the Hon'ble High Court or the Hon'ble Apex Court in this regard. In view of the above, since the issue already stands decided by the ITAT in the case of VMT Spinning Company Ltd. (supra) holding that the Mat credit shall include surcharge and cess, The issue in the present ground stands covered by the decision of the ITAT, which we hold that the Ld.CIT(A) has rightly followed and allowed the assessee's claim. Ground of appeal NO.5 raised by the Revenue is, therefore, dismissed.

53. In effect, the appeal of the Revenue is partly allowed for statistical purposes.

We now shall take up the cross appeals assessee's appeal in **ITA No.485/Chd/2019 & ITA No.612/Chd/2019 relating to assessment year 2009-10.**

**ITA No.485/Chd/2019(A.Y.2009-10-Assessee's Appeal):**

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ITA Nos.611 to 613/Chd/2019

A.Ys. 2008-09, 2009-10 &amp; 2013-14

54. Ground No. 2 raised by the assessee in ITA No.485/2019 reads as under:

*“2. That the Ld.CIT(A) erred in law and on facts in upholding the applicability of section 14A of the Income Tax Act, 1961 read with Rule 8D and making disallowance thereunder ignoring the contentions/submissions of the assessee.*

55. It was common ground between the parties that the above ground was identical to ground No.2 raised by the assessee in its appeal for A.Y 2008-09 in ITA No.484/Chd/2019 ,dealt with us above.Our decision rendered therein at para 12-13 above will apply mutatis mutandis to this ground No.2 raised by the assessee. Accordingly disallowance of interest made as per Rule 8D(2)(ii) of the Income Tax Rules ,1962,is directed to be deleted. Further the disallowance of administrative expenses as per Rule 8D(2)(iii) of the Rules, is directed to be restricted to Rs. 5lacs in all considering the past history of the identical disallowance upheld by the ITAT and applying it to the facts of the present case wherein the assessee has earned exempt income to the tune of Rs.11.18 crs. Ground of appeal No.2 raised by the assessee is allowed in the above terms.

56. Ground No. 3 raised by the assessee in ITA No.485/2019 reads as under:

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ITA Nos.611 to 613/Chd/2019

A.Ys. 2008-09, 2009-10 &amp; 2013-14

*“3. That the Ld.CIT(A) has erred in law and on facts in upholding the action of AO for treating interest received amounting to Rs.21,26,96,516/- as 'Income from Other Sources' instead of 'Income from Business and Profession'.”*

57. It was common issue between the parties that the above ground is identical to ground No.3 raised by the assessee in its appeal for A.Y 2008-09 in ITA No.484/Chd/2019 ,dealt with by us above.Our decision rendered therein at para 16 of our order above will apply mutatis mutandis to this ground No.3 raised by the assessee. Accordingly the plea of the assessee of treating the impugned interest income as assessable under the head Business Income is rejected but at the same time its plea of netting the said income is accepted and the AO is directed to allow netting subject to there being direct nexus between the interest income and expenditure incurred .Ground of appeal No.3 raised by the assessee is allowed in the above terms.

58. Ground No. 5 raised by the assessee in ITA No.484/2019 reads as under:

*“5. That the Ld. CIT(A) has erred in law and on facts in confirming the action of the AO in reducing Rental income of Rs.58,87,394/-, Interest from Others of Rs.1192962/- and Miscellaneous receipts of Rs.1,26,569/- from the profits of the units eligible for deduction u/s 80IC of the Income Tax Act, 1961.”*

59. It was common ground between the parties that the issue raised in the above ground is identical to ground No.5 raised by the assessee in its appeal for A.Y 2008-09 in ITA No.484/Chd/2019, dealt with us above. Our decision rendered therein at para 23-24 of our order above will apply mutatis mutandis to ground No.5 raised by the assessee. Ground of appeal No.5 raised by the assessee is partly allowed in the above terms.

60. Ground No. 6 raised by the assessee in ITA No.484/2019 reads as under:

*“6. That the Ld. CIT(A) has erred in law and on facts in upholding the action of the AO in allocating head office expenses to units claiming deduction u/s 80IB/80IC of the Act.”*

61. It was common ground between the parties that the issue raised in the above ground is identical to ground No.6 raised by the assessee in its appeal for A.Y 2008-09 in ITA No.484/Chd/2019, dealt with us above. Our decision rendered therein at para 27 will apply mutatis mutandis to ground No.6 raised by the assessee in ITA No.485/Chd/2019. Ground of appeal No.6 raised by the assessee is accordingly dismissed

62. Ground No.7 raised by the assessee in ITA No.484/2019 reads as under:

*“7. That the Ld.CIT(A) has erred in law and on facts in upholding the action of AO for treating line/bay charges amounting to Rs. 66,61,050/- as capital expenditure instead of revenue expenditure.”*

63. It was common ground between the parties that the above ground is identical to ground No.7 raised by the assessee in its appeal for A.Y 2008-09 in ITA No.484/Chd/2019, dealt with us above. Our decision rendered therein at para 33 will apply mutatis mutandis to ground No.6 raised by the assessee in ITA No.485/Chd/2019. Ground of appeal No.7 raised by the assessee is allowed in the above terms.

64. In effect the appeal of the assessee is partly allowed.

**ITA No.612/Chd/2019(A.Y.2009-10-Revenue's Appeal):**

65. Ground No.1 raised by the Revenue in ITA No.612/2019 reads as under:

1. *“Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was justified in allowing interest from customers & suppliers amounting to Rs.4,00,63,000/- to be treated as business income as against A.O. treating the same as income from other sources?”*

66. It was common ground between the parties that the issue raised in the above ground is identical to ground No.1 raised by the Revenue in its appeal for A.Y 2008-09 in ITA No.611/Chd/2019 ,dealt with by us above. Our decision

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ITA Nos.611 to 613/Chd/2019

A.Ys. 2008-09, 2009-10 &amp; 2013-14

rendered therein at para 37 will apply mutatis mutandis to ground No.1 raised by the Revenue in ITA No.612/Chd/2019. Ground of appeal No.1 raised by the Revenue is accordingly dismissed.

67. Ground No. 2 raised by the Revenue in ITA No.612/2019 reads as under:

2. *"Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was justified in allowing deduction u/s 80IB and 80IC on interest from customers & employee, misc. receipts comprising Brokerage from ocean freights and insurance claim?"*

68. It was common ground between the parties that the above ground is identical to ground No.2 raised by the Revenue in ITA No.611/Chd/2019, dealt with by us above. Our decision rendered therein at para 41 will apply mutatis mutandis to ground No.2 raised by the Revenue in ITA No.612/Chd/2019. Ground of appeal No.2 raised by the Revenue is accordingly partly allowed for statistical purposes.

69. Ground No.3 raised by the Revenue in ITA No.612/2019 reads as under:

3. *"Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was justified in treating the reimbursement of interest under TUF scheme of the Ministry of Textiles, Government of India, as capital receipt instead*

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ITA Nos.611 to 613/Chd/2019

A.Ys. 2008-09, 2009-10 &amp; 2013-14

*of revenue receipt without giving an opportunity to assessing officer to examine the claim of assessee?"*

70. It was common ground between the parties that the issue raised in the above ground is identical to ground No.3 raised by the Revenue in ITA No.611/Chd/2019, dealt with by us above. Our decision rendered therein at para 45 will apply mutatis mutandis to ground No.3 raised by the Revenue in ITA No.612/Chd/2019. Ground of appeal No.3 raised by the Revenue is accordingly dismissed.

71. Ground No.4 raised by the Revenue in ITA No.612/2019 reads as under:

4. *"Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was justified in treating the sale tax subsidy of Rs.11,58,16,9337- as capital receipts without comparing the scheme of Gujrat Government with that of Punjab Government scheme made by Hon'ble Punjab 85 Haryana High Court in the case of M/s Abhishek Industries Ltd., 286 ITR1?"*

72. It was common ground between the parties that the issue raised in the above ground is identical to ground No.4 raised by the Revenue in ITA No.611/Chd/2019, dealt with by us above. Our decision rendered therein at para 49 will apply mutatis mutandis to ground No.4 raised by the Revenue in ITA No.612/Chd/2019. Ground of appeal No.4 raised by the Revenue is accordingly dismissed.

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ITA Nos.611 to 613/Chd/2019

A.Ys. 2008-09, 2009-10 &amp; 2013-14

73. Ground No.5 raised by the Revenue in ITA No.612/2019 reads as under:

5. *"Whether on the facts and circumstances of the case and in law, 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?"*

74. It was common ground between the parties that the issue raised in the above ground is identical to ground No.5 raised by the Revenue in ITA No.611/Chd/2019, dealt with by us above. Our decision rendered therein at para 52 will apply mutatis mutandis to ground No.5 raised by the Revenue in ITA No.612/Chd/2019. Ground of appeal No.5 raised by the Revenue is dismissed.

75. The appeal of the Revenue is partly allowed for statistical purposes.

**ITA No.486/Chd/2019(A.Y.2013-14-Assessee's Appeal):**

76. Ground No.2 raised by the assessee in ITA No.486/2019 reads as under:

“2. *That the Ld.CIT(A) erred in law and on facts in upholding the applicability of section 14A of the Income Tax Act, 1961 read with Rule 8D and making disallowance there under ignoring the contentions/submissions of the assessee.*”

77. It was common ground between the parties that the above ground was identical to ground No.2 raised by the

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ITA Nos.611 to 613/Chd/2019

A.Ys. 2008-09, 2009-10 &amp; 2013-14

assessee in its appeal for A.Y 2008-09 in ITA No.484/Chd/2019 ,dealt with us above.

Our decision rendered therein at para 12-13 above will apply mutatis mutandis to this ground No.2 raised by the assessee. Accordingly disallowance of interest made as per Rule 8D(2)(ii) of the Income Tax Rules ,1962,is directed to be deleted. Further the disallowance of administrative expenses as per Rule 8D(2)(iii) of the Rules, is directed to be restricted to Rs. 5 .50 lacs in all considering the past history of the identical disallowance upheld by the ITAT and applying it to the facts of the present case wherein the assessee has earned exempt income to the tune of Rs.13.15 crs. Ground of appeal No.2 raised by the assessee is allowed in the above terms.

78. Ground No. 3 raised by the assessee in ITA No.486/2019 reads as under:

*“3. That the Ld.CIT(A) has erred in law and on facts in upholding the action of AO for treating interest received amounting to Rs. 19,40,80,702/- as 'Income from Other Sources' instead of 'Income from Business and Profession'.”*

79. It was common issue between the parties that the above ground is identical to ground No.3 raised by the

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ITA Nos.611 to 613/Chd/2019

A.Ys. 2008-09, 2009-10 &amp; 2013-14

assessee in its appeal for A.Y 2008-09 in ITA No.484/Chd/2019 ,dealt with by us above.Our decision rendered therein at para 16 of our order above will apply mutatis mutandis to this ground No.3 raised by the assessee. Accordingly the plea of the assessee of treating the impugned interest income as assessable under the head Business Income is rejected but at the same time its plea of netting the said income is accepted and the AO is directed to allow netting subject to there being direct nexus between the interest income and expenditure incurred .Ground of appeal No.3 raised by the assessee is allowed in the above terms.

80. Ground No.4 raised by the assessee in ITA No.486/2019 reads as under:

*“4. That the Ld. CIT(A) has erred in law and on facts in confirming the action of the AO in reducing Rental income of Rs.1,56,47,787/- and Miscellaneous receipts of Rs.61,52,573/- from the profits of the units eligible for deduction u/s 80IC/80IA of the Income Tax Act, 1961.”*

81. It was common ground between the parties that the issue raised in the above ground is identical to ground No.5 raised by the assessee in its appeal for A.Y 2008-09 in ITA No.484/Chd/2019,dealt with us above.Our decision rendered therein at para 23-24 of our order above will apply mutatis mutandis to ground No.4 raised by the assessee.

Ground of appeal No.4 raised by the assessee is partly allowed accordingly.

82. Ground No.5 raised by the assessee in ITA No.486/2019 reads as under:

*“5. That the Ld.CIT(A) has erred in law and on facts in upholding the action of AO for treating line/bay charges amounting to Rs.2,89,25,454/- as capital expenditure instead of revenue expenditure.”*

83. It was common ground between the parties that the above ground is identical to ground No.7 raised by the assessee in its appeal for A.Y 2008-09 in ITA No.484/Chd/2019, dealt with us above. Our decision rendered therein at para 33 will apply mutatis mutandis to ground No.5 raised by the assessee. Ground of appeal No.5 raised by the assessee is allowed in the above terms.

84. Ground Nos.6 raised by the assessee in ITA No.486/2019 read as under:

*“6. That the authorities below here erred in treating interest reimbursement of Rs.1,76,12,549/- related to TUFs under Madhya Pradesh Scheme - 2012 as revenue receipt instead of capital receipt.*

85. At the outset it was pointed out by the Ld.DR that there is no grievance of the assessee on the impugned issue since the Ld.CIT(A) has treated the interest received under TUFs Scheme as capital receipt at para 38-43 of his order.

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ITA Nos.611 to 613/Chd/2019

A.Ys. 2008-09, 2009-10 &amp; 2013-14

The Ld.Counsel for the assessee was unable to controvert the above.

In view of the same the ground of appeal No.6 is dismissed as infructuous.

Ground of appeal No.7 reads as under:

7. *That the authorities below here erred in treating sales tax subsidy of Rs.2,82,71,552/- under Madhya Pradesh Industrial Promotion Assistance Scheme - 2004 as revenue receipt instead of capital receipt."*

It was common ground between the parties that the above ground was covered by the decision in the departmental appeal in ITA No.611/Chd/2019 being identical to ground Nos 4 raised by the Revenue in ITA No.611/Chd/2019, dealt with by us above. Our decision rendered therein at para 49 of our order above, will apply mutatis mutandis to additional ground Nos. 7 raised by the assessee in ITA No.486/Chd/2019. Ground of appeal Nos. 7 raised by the assessee is accordingly allowed.

86. The appeal of the assessee is accordingly partly allowed as above.

**ITA No.613/Chd/2019(A.Y.2013-14-Revenue's Appeal):**

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ITA Nos.611 to 613/Chd/2019

A.Ys. 2008-09, 2009-10 &amp; 2013-14

87. Ground No.1 raised by the Revenue in ITA No.613/2019

reads as under:

*"1. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was justified in allowing interest from customers & suppliers amounting to Rs.5,23,34,571/- and interest earned from employee against housing loan granted to them to be treated as business income as against A.O. treating the same as income from other sources?"*

88. It was common ground between the parties that the issue raised in the above ground is identical to ground No.1 raised by the Revenue in its appeal for A.Y 2008-09 in ITA No.611/Chd/2019 ,dealt with by us above.Our decision rendered therein at para 37 will apply mutatis mutandis to ground No.1 raised by the Revenue in ITA No.612/Chd/2019. Ground of appeal No.1 raised by the Revenue is accordingly dismissed.

89. Ground No.2 raised by the Revenue in ITA No.613/2019

reads as under:

*"2. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was justified in allowing deduction u/s 80IA and 80IC on interest from customers & employee, misc. receipts comprising Brokerage from ocean freights, forex gains and insurance claim?"*

90. It was common ground between the parties that the above ground is identical to ground No.2 raised by the Revenue in ITA No.611/Chd/2019,dealt with by us

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ITA Nos.611 to 613/Chd/2019

A.Ys. 2008-09, 2009-10 &amp; 2013-14

above. Our decision rendered therein at para- 41 will apply mutatis mutandis to ground No.2 raised by the Revenue in ITA No.612/Chd/2019. Ground of appeal No.2 raised by the Revenue is partly allowed for statistical purposes.

91. Ground No.3 raised by the Revenue in ITA No.613/2019 reads as under:

*"3. "Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was justified in treating the reimbursement of interest under TUF scheme of the Ministry of Textiles, Government of India, as capital receipt instead of revenue receipt without giving an opportunity to assessing officer to examine the claim of assessee?"*

92. It was common ground between the parties that the issue raised in the above ground is identical to ground No.3 raised by the Revenue in ITA No.611/Chd/2019, dealt with by us above. Our decision rendered therein at para 45 will apply mutatis mutandis to ground No.3 raised by the Revenue in ITA No.612/Chd/2019. Ground of appeal No.3 raised by the Revenue is accordingly dismissed.

In effect the appeal of the Revenue is partly allowed for statistical purposes.

93. In effect, the appeals of the assessee in ITA No.484 to 486/Chd/2019 are partly allowed and the appeals of the

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ITA Nos.611 to 613/Chd/2019

A.Ys. 2008-09, 2009-10 &amp; 2013-14

Revenue in ITA Nos.611 to 613 are partly allowed for statistical purposes.

Order pronounced on 28<sup>th</sup> May 2020.

Sd/-

**संजय गर्ग****(SANJAY GARG)****न्यायकि सदस्य/Judicial Member****दिनांक /Dated: 28<sup>th</sup> May, 2020****\*रती\***

Sd/-

**अन्नपूर्णा गुप्ता****(ANNAPURNA GUPTA)****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

आदेशानुसार/ By order,

सहायक पंजीकार/ Assistant Registrar