

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

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

आयकर अपीलसं./ITA No. 797/CHD/2019

निर्धारणवर्ष / Assessment Year : 2014-15

M/s ISGEC Heavy Engineering Ltd, Radaur Road, Yamunanagar	Vs. बनाम	The DCIT, Circle, Yamunanagar
स्थायीलेखासं./PAN NO: AA ACT5540K		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारितकीओरसे/Assessee by : Sh. Sudhir Sehgal, Advocate

राजस्वकीओरसे/ Revenue by : Shri Arvind Sudershan, JCIT DR

सुनवाईकीतारीख/Date of Hearing : 10.09.2020

उदघोषणाकीतारीख/Date of Pronouncement : 13.10.2020

आदेश/Order

Per Sanjay Garg, Judicial Member:

The present appeal has been preferred by the assessee against the order dated 08.02.2019 of the Commissioner of Income Tax-4, Ludhiana [hereinafter referred to as 'CIT(A)']

2. The assessee in this appeal has taken following grounds of appeal:-

1. That the Ld. Commissioner of Income Tax (Appeals)-4, Ludhiana has erred in upholding the addition of Rs. 63,21,654/- (as reduced by Assessing Officer from Rs. 1,42,26,765/- by passing order u/s 154 of the Income Tax Act), being disallowance u/s 14A of the Income Tax Act as per para 6.1 of his order.

2. *That the Ld. CIT(A) has failed to appreciate the fact that there were sufficient funds available with the assessee company for the purposes of making the investment and, as such, no disallowance u/s 14-A was liable to be made.*
3. *That the Ld. CIT(A) has failed to consider the recent judgment of Apex Court in the case of PCIT V/s Sintex Industries [2018] 93 taxmann.com 24 (SC), in which, it has been held that where there are surplus funds, no question of making any disallowance or expenditure u/s 14A was liable to be made.*
4. *That addition has been upheld against the facts and circumstances of the case and submission filed during the course of hearing has not been considered properly.*
5. *That the Appellant craves leave to add or amend the grounds of appeal before the appeal is finally heard or disposed off.*

3. The sole issue raised in this appeal is relating to the disallowance made by the Assessing Officer of Rs. 79,05,111/- u/s 14A of the Income Tax Act, 1961 (in short 'the Act') read with Rule 8D(2) (iii) of the Income Tax Rules, 1962 in respect of the administrative expenses incurred for earning of tax exempt income of Rs. 7,53,76,223/- which include dividend income of Rs. 7,45,55,286/- earned from investment in wholly subsidiary company M/s Saraswati Sugar Mills Ltd., Reliance Industries Ltd and Agriculture Income of Rs. 8,20,937/-. The assessee did not make suo motu disallowance of expenditure in respect of the aforesaid tax exempt income earned by the assessee. When called upon by the Assessing Officer, as to why the disallowance u/s 14A of the Act

read with Rule 8D are not made in view of the investment made by the assessee, in response, the assessee filed the following submissions:-

“1.00 Details of exempt income:

With regard to Dividend Income of Rs. 7,45,55,286/- we submit that no expenditure has been incurred in relation to this dividend income, which does not form part of the total income, as the dividend is from wholly owned subsidiary company and Dividend is transferred in the account of the assessee.

*As far as agricultural income of Rs. 8,20,937/- is concerned, a separate Profit & Loss Account from the farm operations has been enclosed as Note No. 21.1 to Statement of Profit & Loss. You will note that against Farm income of Rs. 12,86,800/- there is an expenditure of Rs.4,65,864/- and the income claimed to be exempted is only Rs. 8,20,937/-, The cost of the farm land is Rs. 1,47,908/-, which was bought several year back and there cannot be any interest element applicable to that. As per the Punjab & Haryana High Court judgment in the case of CTT v. Hero Cycles Ltd., 2010-(323)-JTR-0518 (see **Annexure-II**), investment out of tax free income will not attract Section 14 A of the Act. Here we can invest funds worth farm land from Farm income every year. Therefore, no part of investment has been made out of borrowed funds.*

2.00 Details of Investments in Companies:

Regarding investments in Companies as mentioned in the Note No. 1 J of the Balance Sheet we have to clarify as under:-

2.01 Investment in Isgec Covema Limited - Rs.2,00,00,000/-:

The investment of Rs. 1.99.99.000/- was made in the year 1996 or before and there is no borrowing outstanding as on date relating to that period. Balance Investment of Rs. 1,000/- was made in year ended 31.03.2014.

2.02 Investment in Isgec Export Limited - Rs. 10,00,000/-:

The investment of Rs. 10.00,000/- was made in the year 1996 and this investment is also out of company's own funds and there is no borrowing outstanding as on date relating to that period.

2.03 Investment in Saraswati Sugar Mills Limited - Rs.70,09,99,000/-:

i) Out of total investment of Rs. 70,09,99,000/-, only investment of Rs.9,99,000/- was made in the year 2000 by way of cash and the same was out of Company's own funds.

ii) The balance investment of Rs.70,00,00,000/- was made for consideration other than cash by way of transfer of assets and liabilities of Saraswati Sugar Mills Unit to Saraswati Sugar Mills Limited (SSML) in the year ending 31st March 2003. The investment represents issue of Shares for consideration other than cash A copy of Return of Allotment fled with Registrar of Companies is enclosed as Annexure-III showing issue of shares for consideration other than cash. Transfer Assets to wholly owned subsidiary company are exempt from tax u/s 47 of the Income Tax Act 1961.

2.04 Investment in Isgec Engineering & Projects Limited - Rs. 3,30,00,000/-:

The investment of Rs. 5,00,000/- was made in the year 2007 and investment of Rs. 3,00,00,000/- was made in the year 2012 and balance investment of Rs. 25,00,000/- was made in year ended 31.03.2014. These investment are out of company's own retained earnings and funds. During the year there is no exempt income from this investment. As decided by the Hon'ble Punjab & Haryana High Court in CIT Vs. Lakhani Marketing, if there is not tax free income there will be no disallowance, copy of judgment enclosed as **Annexure-V**.

2.05 Investment in Isgec Hitachi Zosen Limited-Rs. 51,00,00,000/-

During the year a joint venture agreement was entered into between the company and Hitachi Zosen Corporation, Japan. In pursuant to that a joint venture company namely Isgec Hitachi Zosen Ltd. was formed and the assessee-company has contributed investment of Rs. 51,00,00,000/- as share capital of this joint venture company. The said investment is out of Company's own surplus funds and retained earnings. Further it is strategic investment to enter into joint venture business and joint investment and therefore as decided in case of JM Financial Limited Vs ACIT no disallowance under section 14A can be made. We further submit that purpose of this investment is to get support from Hitachi Zosen Corporation, Japan for business of the company. The company received lots of order because of this business support. .

2.06 The total investment made in cash in these companies is Rs. 56,49,99,000/- as per break-up given below:-

Investments before 2002:

Isgec Covema Limited	Rs. 1,99,99,000/-
Isgec Exports Limited	Rs. 10,00,000/-
Saraswati Sugar Mills Limited	<u>Rs. 9,99,000/-</u>
	<u>Rs. 2,19,98,000/-</u>

Investments after 2002:

Isgec Covema Limited	-	Rs. 1,000/-
Isgec Engineering & Projects Ltd	-	Rs. 3,30,00,000/-

<i>Isgec Hitachi Zosen Ltd. –</i>	<u>Rs. 51,00,00,000/-</u>
	<u>Rs. 54,30,01,000/-</u>
Grand Total -	<u>Rs. 56,49,99,000/-</u>

- i) *These investments has already been explained being out of own sources of funds previous assessments.*
- ii) *Purpose of investment in subsidiary companies is strategic and not investment and therefore, as decided in case of JM Financial Limited Vs. ACIT no disallowance under section 14A can be made.*
- iii) *All these investments have been made either from the tax free dividend earned by the Assessee Company and out of owned funds i.e. net worth generated out of retained earnings i.e. Earnings after tax resulting in increase in net worth and owned funds. A statement of dividend- income and retained earnings is enclosed as **Annexure-VJ**. From this statement it is clear that the entire investment made in cash is out of these funds and no borrowed funds have been used for making these investments. Hence, no expenditure has been incurred with regard to funds invested in these companies.*
- iv) *In support of our contention we refer to the judgment of Hon'ble Punjab & Haryana Court in the- case of Hero Cycles where no expenditure was held to be incurred in case investment in from tax free income and retained earnings. We submit that investments are from surplus represented by net worth of the Company Rs.646,82,21,076 as on 31.03.2014 which is non-interest bearing funds. It. is settled law that if assessee has sufficient reserves and surplus for making investment in tax free securities, no disallowance under section 14A out of interest expenditure can be made.*
- v) *From the aforesaid submission you will appreciate that all the investments have been made out of own funds and hence there is no expenditure attributable to these investments and there is no cause of disallowance of any deduction on account of expenditure, incurred in relation to income which does not form part of the total income.”*

3. The assessee further submitted that even there is no positive net interest income of the assessee. It was further submitted that since the assessee was possessed of sufficient own funds, no disallowance of interest expenditure under Rule 8D(2) was attracted.

4. The Ld. Assessing Officer considering the above submissions of the assessee that the investments were old investments and there was no direct nexus between the borrowed funds and investments made in the past, did not make any disallowance of interest expenditure under Rule 8D(2)(ii) of the Income Tax Rules. However, he held that even in case of old investments, disallowance of expenditure under Rule 8D(2)(iii) read with section 14A was attracted to cover the administrative and other misc. expenses incurred for managing the investments made earlier for earning of tax exempt income. He, accordingly made a disallowance of Rs. 1,42,26,765/- under Rule 8D(2)(iii) read with section 14A of the Act. The said disallowance has been further confirmed by the CIT(A). However, the Assessing Officer, in the meantime, on an rectification application moved by the assessee u/s 154 of the Act on account of calculation mistake, reduced the said disallowance to Rs. 79,05,111/-.

The assessee through this appeal has agitated the said disallowance made by the Assessing Officer though wrongly mentioned the figure as Rs. 63,21,654/- instead of Rs. 79,05,111/-.

5. The Ld. Counsel for the assessee has submitted that the investment made by the assessee were old investments as detailed in the above reproduced submissions of the assessee except the investment of Rs. 51

cores made in Isgec Hitachi Zosen Ltd. The Ld. counsel in this respect has further explained that during the year a joint venture agreement was entered into between the assessee and Hitachi Zosen Corporation, Japan in pursuant to which a joint venture company namely Isgec Hitachi Zosen was formed and the assessee company has contributed investment of Rs. 51,00,00,000/- as share capital of this joint venture company. The said investment was out of the company's own surplus funds and further it was a strategic investment to enter into a joint venture business and not an investment to earn tax exempt income.

The Ld. Counsel, therefore, has submitted that since the assessee has not incurred any expenditure for earning of the aforesaid tax exempt income, no disallowance u/s 14A is attracted.

6. The Ld. DR, on the other hand, has relied upon the findings of the lower authorities.

7. We have heard the rival contentions of the Ld. Authorized Representatives of both the parties and have gone through the record. The main stress of the Ld. Counsel for the assessee has been that the investments made were old investment and that the same were out of the own surplus funds of the assessee. However, it is noted that the lower authorities have not made any disallowance out of the interest expenditure under Rule 8D(2)(ii) of the Income Tax Rules. The

disallowance has been made only in respect of the administrative expenses under Rule 8D(2)(iii) incurred in the management of the earlier investments made for earning of tax exempt income. The Assessing Officer in this respect has applied Rule 8D(2)(iii) directly without considering the submissions of the assessee that the assessee has not incurred any expenditure in this respect and that all the investment were strategic investments for business purposes of the assessee. As per the provisions of section 14A of the I.T. Act, before proceeding to calculate disallowance under Rule 8D(2)(iii), the Assessing Officer was supposed to consider the submissions of the assessee and examine the accounts of the assessee and was required to record his findings / reasoning that he is not satisfied with the plea / submissions of the assessee. However, no such exercise has been done by the Assessing Officer in this case.

It is to be noted that out of the total dividend income of Rs. 7,45,55,286/-, an amount of Rs. 7,45,49,286/- has been earned by the assessee from old investments in wholly owned subsidiary company M/s Saraswati Sugar Mills Ltd. The remaining of only Rs. 6,000/- has been earned from other company M/s Reliance Industries Ltd. However, the fact is also on the file that the assessee has maintained / managed not only old strategic investments for business purpose in wholly owned subsidiary / sister concern but also made old investments in other companies.

8. Considering the submissions of the assessee that not much effort has been made by the assessee to manage the old investments and further considering that the major chunk of the dividend amount was earned from strategic investments made in the subsidiaries, in our view, a lump sum disallowance of Rs. 5 lacs will be reasonable on account of administrative expenses incurred for management of old investments. The disallowance made on account of administrative expenses is accordingly restricted to Rs. 5 lacs only.

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

Order pronounced in the Open Court on 13.10.2020

Sd/-
(एन. के. सैनी / N.K. SAINI)
उपाध्यक्ष /Vice President
Dated : 13.10.2020
"आर.के."

Sd/-
(संजय गर्ग / SANJAY GARG)
न्यायिकसदस्य/ Judicial Member

आदेशकीप्रतिलिपिअग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त/ CIT
4. आयकरआयुक्त (अपील)/ The CIT(A)
5. विभागीयप्रतिनिधि, आयकरअपीलीयआधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्डफाईल/ Guard File

आदेशानुसार/ By order,
सहायकपंजीकार/ Assistant Registrar

