IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH, MUMBAI

BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER &
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER

ITA No.5301/Mum/2014
ITA No.6491/Mum/2018
(A.Ys. 2010-11 & 2011-12)

Navin Fluorine International Limited, 2nd Floor, Sunteck Centre 37/40, Subash Road, Vile Parle (East) Mumbai – 400 057	Vs.	The DCIT-7(1) Room No. 622, 6th Floor, Aayakar Bhavan, M.K. Road, Mumbai- 400 020
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AABCP0464B		
Appellant	..	Respondent

ITA No.5555/Mum/2014
ITA No.7038/Mum/2018
(A.Ys. 2010-11 & 2011-12)

The DCIT-7(1) Room No. 622, 6th Floor, Aayakar Bhavan, M.K. Road, Mumbai- 400 020	Vs.	M/s Navin Fluorine International Limited, 2nd Floor, Sunteck Centre 37/40, Subash Road, Vile Parle (East) Mumbai – 400 057
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AABCP0464B		
Appellant	..	Respondent

Appellant by :	Ashok Mehta
Respondent by :	S.N. Kabra

Date of Hearing	04.05.2022
Date of Pronouncement	24.05.2022

आदेश / O R D E R

PER BENCH:

The present appeals filed by the assessee and the revenue are directed against the order passed by the ld. CIT(A) which in turn arises from the order passed by the A.O. u/s 143(3) of the Income Tax Act, 1961, for A.Ys. 2010-11 & 2011-12. We shall first take up the appeal i.e ITA No. 5301/Mum/2014 as a lead case and its finding will be applied to other cases. The assessee has assailed the impugned order on the following grounds before us:

"1. Inadmissible expenditure U/S.14A of the Income Tax Act. 1961 (the Act) - Rs.37,91,963/-:

1.1 On the facts and circumstances of the case and in law, the Ld. C.I.T. (Appeals) ought to have held that the appellant has not incurred expenditure in relation to income which does not form part of total income and consequently, ought to have held that no amount of expenditure is inadmissible U/s.14 of the Act. Accordingly, the Ld. C.I.T. (Appeals) ought to have directed the Ld. AO to delete the disallowance of Rs.37,91,963/- made U/S.14A of the Act by invoking Rule 8D(2)(iii) of the Rules.

*1.2 **Without prejudice to the above and in the alternate**, on the facts and circumstances of the case and in law, the Ld. C.IT.(Appeals) ought to have held that the investments of Rs.6,000 Lakhs in the Optionally Convertible Fully Redeemable Non-Cumulative Preference Shares of Rs.10/- each fully paid-up of Mafatlal Industries Limited (the Preference Shares) were not capable to earn income which would not have form part of total income (tax free income) for the year ended 31st March, 2010. Accordingly, the Ld. CIT (Appeals) ought to have directed the Ld. AO to exclude the Preference Shares of Rs.6,000 Lakhs in quantifying the average value of investments in terms of Rule 8D(2) of the Rules for working out the inadmissible expenditure U/S.14A of the Act at an amount equal to 0.5% of the average value of investments as per Rule 8D(2)(iii) of the Rules.*

1.3 Without prejudice to the above and in the alternate, on the facts and circumstances of the case and in law, the Ld. CIT.(Appeals) ought to have held that the investments on which no dividend income has been received during the year should be excluded in quantifying the average value of investments in terms of Rule 8D(2) of the Rules and accordingly, ought to have directed the Ld. AO to exclude the same in quantifying the average value of investments in terms of Rule 8D(2) of the Rules for working out the

inadmissible expenditure U/S.14A of the Act at an amount equal to @ 0.5% of the average value of investments as per Rule 8D(2)(iii) of the Rules.

2. Assessing unmoved creditors for three consecutive years as income U/s.41(1) - Rs.61,38,615/-:

On the facts and circumstances of the case and in law, the Ld. C.I.T.(Appeals) ought to have held that the unmoved creditors for three consecutive years not written back to the Profit and Loss Account for the year ended 31st March, 2010, cannot be assessed as "income" U/s.41(1) of the Act for the assessment year under reference and accordingly, ought to have directed the Ld. AO to delete the addition made of Rs.61,38,615/- U/s.41(1) of the Act.

3. Amount received on sale of Carbon Credit - Rs.1,72,08,06,734/-:

On the facts and circumstances of the case and in law, it should be held that the amount of Rs.1,72,08,06,734/- received on sale of Carbon Credit is a "capital receipt" to be excluded in computing the book profit of the appellant U/S.115JB of the Act.

4. It is humbly prayed that the reliefs as prayed for hereinabove and/or such other reliefs as may be justified by the facts and circumstances of the case and as may meet the ends of justice should be granted.

5. The petitioner craves leave to amend or alter any ground or add a new ground, which may be necessary."

2. The fact in brief is that return of income declaring total income of Rs.128,98,66,679/-was filed on 7.10.2010. The case was subject to scrutiny assessment and notice u/s 143(2) of the Act was issued on 25.08.2011. The assessee is engaged in the business of manufacturing and trading of chemical and refrigerant gases. The remaining relevant facts are discussed while adjudicating the ground of appeals filed by the assessee as follows:

Ground No. 1: Disallowance of Rs.37,91,963/- u/s 14A of the Act by invoking Rule 8D(2)(iii) of the I.T. Rules:

3. During the course of assessment the A.O noticed that assessee has earned dividend income of Rs.43,34,000/- as exempt income and against the same assessee has disallowed a sum of Rs.871,240/- u/s 14A of the

Act. The assessee was asked to explain the basis of calculation of disallowance computed u/s 14A of the Act. Regarding computation of disallowance u/s14A read with Rule 8D(2)(iii) the assessee submitted that none of the investment were acquired during the year except investment of Rs.12.74 lac of Mafatlal Services Ltd. and the entire expenditure incurred during the year was related to the business of the assessee, therefore, no expenditure could be allocated as attributable to earning tax free investment. However, the A.O has not agreed with the submission of the assessee and computed disallowance of Rs.37,91,963/- u/s 14A of the Act.

4. Aggrieved, the assessee filed appeal before the ld. CIT(A). However, the ld. CIT(A) has dismissed the appeal of the assessee.

5. Heard both the sides and perused the material available on record. The assessee has filed alternative plea that investment on which no dividend income has been received during the year should be excluded in quantifying the average value of investment in terms of Rule 8D(2) of the I.T. Rule for working out the inadmissible expenditure u/s 14A of the Act read with Rule 8D(2)(iii) of the Rules. The ld. Counsel submitted that the similar issue on identical fact has been adjudicated by the coordinate bench of the ITAT for A.Y. 2009-10 vide ITA No. 7797/Mum/2012 dated 09.08.2017. With the assistance of the ld. Representative we have gone through the above cited decision of the ITAT. The relevant part of the decision is reproduced as under:

> *"20. On hearing both sides we are of the view that the investments not yielded dividend income should be excluded from the purview of computation of average investments and this is the position as held by the Special Bench of Delhi Bench of ITAT in the case of ACIT v. Verit Investments Private Limited [82 taxman.com 415]. The Special Bench held that only those investments which yielded exempt income during year should be considered for computing average value of*

investments under Rule 8D2(iii). Thus following Special Bench decision, we direct the Assessing Officer to re-compute the disallowance under Rule 8D2(iii) accordingly. However, in any case the disallowance u/s 14A should not exceed exempt income. In this case the exempt income reported by the assessee is ₹. 28,89,600/-, therefore the disallowance should not exceed this amount.

Following the decision of coordinate bench of the ITAT in the assessee's own case on identical fact and issue as supra, we direct the A.O to re-compute the disallowance under Rule 8D(iii) in accordance with the direction given by the coordinate bench of the ITAT as referred above. Therefore, this ground of appeal of the assessee is allowed for statistical purposes.

Ground No. 2: Addition of Rs.613,8,615/- u/s 40(1) of the Act:

6. During the course of assessment the A.O has obtained the detail of unmoved creditors for more than 3 year from the assessee. On perusal of the detail filed the A.O noticed that unmoved creditors for more than 3 years were to the amount of Rs.105,10,349/-. Out of which amount of Rs.61,38,615/- was written back by the assessee during the year ended 31.03.2012 and has been offered to tax in the said year. The A.O was of the view that the act of the assessee writing back these liabilities in the year ended 31st March, 2012 established the fact that the same were not payable. Therefore addition of Rs.61,38,615/-on account of unmoved creditors outstanding for more than 3 years was made u/s 41(1)(a) of the Act.

7. The assessee filed the appeal before the ld. CIT(A). The ld. CIT(A) has dismissed the appeal the assessee.

8. Heard both the side and perused the material available on record. During the course of the appellate proceedings before us at the outset

the ld. counsel submitted that identical issue on similar facts has been adjudicated by the coordinate bench of the ITAT for A.Y. 2009-10 vide ITA No. 7797/Mum/2012 dated 09.08.2017.

On the other hand, the ld. D.R could not contrary disprove the fact that issue is covered by the decision of coordinate bench of the ITAT in favour of the assessee. We have perused the above cited decision of the ITAT. The relevant part of the decision is reproduced as under:

> *"23. Ld. DR vehemently supported the orders of the authorities below.*
>
> *24. We have heard the rival submissions, perused the orders of the authorities below. Almost on identical facts in the case of CIT v. Enam Securities (P.) Ltd (supra) the Bombay High Court held that on the brokerage liability outstanding and returned back to P&L account and taxes paid in subsequent Assessment Years, there is no remission or cessation of liability in the earlier Assessment Years. The facts in this case are that the assessee has shown outstanding brokerage liability for the Assessment Year 1994-95 to 1997-98 at 62.87 laks, but shown as outstanding at ₹.7.74 laks in the Assessment Year 1999-2000. The assessee in the course of Assessment Proceedings for the Assessment Year 2002-03 submitted that for the Assessment Year 2004-05 a sum of ₹ .62.87 laks was returned back into profit and loss account and paid the tax. However, the Assessing Officer held that the liability exists for the Assessment Year 2002-03 and brought to the tax such amount in the Assessment Year 2002-03 itself. In these circumstances, the High Court held that there is no cessation of liability in the Assessment Year 2002- 03. Therefore, respectfully following the said decision we hold that there is no cessation of liability of the trade creditors in this Assessment Year and the assessee has already returned back these trade creditors on 31.03.2012 relevant to the Assessment Year 2012-13. Thus, we direct the Assessing Officer to delete the addition made u/s 41(1) of the Act this Assessment Year*

Respectfully following the decision of the order of the ITAT as referred above, we direct the A.O to delete the addition u/s 41(2), therefore ground of appeal of the assessee is allowed.

9. Ground No. 3 is not pressed by the assessee, therefore, the same stand dismissed.

ITA No. 6491/Mum/2018

Ground No. 1:

10. By applying the finding of ITA No.5301/Mum/2014 as mutatis mutandis, this ground of appeal is allowed for statistical purpose.

11. Ground No. 2 is not pressed, therefore the same stand dismissed.

ITA No.7038/Mum/2018 (Revenues' Appeal)

Ground No. 1: Deleting disallowance of Rs.42,23,584/- under Rule 83(2)(ii) r.w.s 14A of the Act:

12. During the course of appellate proceedings before us at the outset the ld. Counsel submitted that identical issue on similar fact has been adjudicated by the coordinate bench of the ITAT in the case of the assessee itself for A.Y. 2007-08 vide ITA No. 5553/Mum/2010. The relevant operating para is reproduced as under:

> *"9. On the perusal of the relevant material placed before us, we find that, so far as disallowance of interest is concerned, admittedly, assesee's own funds far exceeds the investment made and, therefore, in line of the ratio laid down by the Hon'ble Jurisdictional High Court in the aforesaid cases, we hold that, no disallowance of interest should be made. Accordingly, we direct the Assessing Officer to delete the disallowance of interest. As regards the indirect expenditure, we agree with the contention of the ld. Counsel that 2% of the dividend income would be sufficient to cover the disallowance of expenditure for the purpose of section14A under the facts and circumstances of the case, as there was no systematic activity for making the investment. Accordingly, we direct the Assessing Officer to restrict the disallowance of the 2% of the dividend income. With this direction, ground No. 2 is treated as partly allowed.*

The ld. Counsel has also mentioned that similar issue on identical facts has also adjudicated by the ITAT in the case of the assessee itself for A.Y.2008-09 and 2009-10 vide ITA No. 1192/Mum/2012 and 7797/Mum/2012. The relevant operating para is reproduced as under:

> *"12. We have heard the rival submissions, perused the orders of the authorities below. It is abundantly clear from the submission of the assessee and the statistics provided before us that the investments have come down during this Assessment Year, capital and reserves are much more than the investment and the borrowals have also come down. In the circumstances, there should not be any disallowance under Rule 8D2(ii) towards interest as held by the jurisdictional High Court in the case of CIT v. HDFC (Supra). Respectfully following the said decision we direct the Assessing Officer to delete the disallowance under Rule 8D2(ii)."*

The similar issue adjudicated in AY 2009-10 vide ITA No. 7792/Mum/2012 is also reproduced as under:

> *"18. On hearing the parties, we are of the considered view that there should not be any disallowance under Rule 8D2(ii) in respect of interest as the own funds far exceeds investments and there is substantial reduction in borrowals during this Assessment Year. Hence we direct the Assessing Officer to delete the interest disallowance made under Rule 8D2(ii) r.w. section 14A of the Act."*

Respectfully following the decision of coordinate bench of the ITAT on similar fact and identical issue in the case of the assessee itself as supra we don't find any merit in the appeal of the revenue, therefore, this ground of appeal of the revenue stand dismissed.

Ground No. 2 (Disallowance of Rs.37,95,148/- under Rule 8D(2)(iii):

13. By applying the finding of ITA No. 7038/Mum/2018 as mutatis mutandis, the same stand dismissed.

Ground No. 3: Deleting the addition made by the A.O on account of sale of carbon credit by treating it as capital in nature instead of revenue:

14. The assessee company is engaged in the business of manufacturing and trading of chemical and refrigerant gases. One of the gases produced by the assessee company is HCFC-22 and during the process, by-product gas HFC-23 is generated which has global warming potential (CDM project). As per Kyoto Protocol, production of gases which are

responsible for global warming makes the business entity entitled to avail CER i.e Certified Emission Reduction. On implementation of the CDM project, the assessee company has generated CERs which was sold to various entities. The A.O has treated the profit arisen to the assessee on sale of carbon credit of Rs.69,71,56,345/- as revenue receipt.

15. On appeal, the ld. CIT(A) stated that since the same related to world environment concern the sale proceeds received on sale of CER is capital receipt not chargeable to tax. The relevant part of the decision of CIT(A) is reproduced as under:

> *"The assessee company is engaged in the business of manufacture and trading of chemicals and refrigerant gases. One of the gases produced by the assessee company is HCFC-22 and during the process, a by-product gas HFC-23 is 'generated which has global warming potential (COM Project). As per Kyoto protocol, production of gases which are responsible for global warming makes the business entity entitled to avail CER i.e. Certified Emission Reduction. On implementation of the COM Project, the assessee company has generated CERs which are sold to various entities in Annex. I Countries. Since the same relates to world environment concern the sale proceeds received on sale of CER is a capital receipt not chargeable to tax. Reliance is placed on the following legal decisions:*
>
> *(a) My Home Power Ltd. V/s. DCIT (Hyderabad ITAT) (2012) 81 DTR 173.*
> *Note: Affirmed by Hon. High Court (365 ITR 82.)*
>
> *(b) Pr. CIT V/s. Rajasthan State Mines & Minerals Ltd. (Rajsthan High Court) (13.10.2017) (ITA No. 151 of 2016).*
>
> *(c) CIT V/s. Subhash Kabani Power Corporation Ltd. (Karnataka High Court) (2016) 137 DTR 305.*
>
> *(d) Aditya Birla Nuvo Ltd. & ANR V/s. DCIT & ANR (Mumbai ITAT) (2015) 45 CCH 0222.*
>
> *(e) DCIT V/s. Binani Industries Ltd. (Kolkata ITAT) (2016) 137 DTR 185.*
>
> *(f) ACIT V/s. L.H. Sugar Factory Ltd. (Lucknow ITAT "B" Bench) (2016) 46 CCH 354.*
>
> *(g) Arun Textiles P. Ltd. V/s. DCIT (Chennai ITAT) (2015) 68 taxmann.com 434.*
>
> *(h) ITO V/s. Perpetual Energy Systems Ltd. (Hyderabad ITAT) (2015) 43 CCH 176.*
>
> *(i) ACIT V/s. Intex (Chennai ITAT) (2015) 154 ITD 365.*
>
> *(j) DCIT V/s. Sree Rayalaseema Green Energy Ltd. (Hyderabad ITAT) (2014) 58 taxmann.com 62.*

(k) India Dyeing Mills Pvt. Ltd. V/s. ACIT (Chennai ITAT) (2014) 41 CCH 454.

(l) Arun Textiles P. Ltd. V/s. ACIT (Chennai ITAT) (2014) 58 taxmann.com 223.

(m) Adisankara Spinning Mills P. Ltd. V/s. DCIT (Chennai ITAT) (2014) 41 CCH 327/67 SOT 175.

(n) Ambika Cotton Mills Ltd. V/s. DCIT (Chennai ITAT "C" Bench) 27 ITR (Trib) 44/61 SOT 0031.

(o) Sri Velayudhaswamy Spinning Mills (P) Ltd. V/s. DCIT (Chennai ITAT) (2013) 40 Taxmann.com 141.

(p) Shree Cement Ltd. V/s. Addl. CIT (Jaipur ITAT) (2014) 152 ITD 561.

4.5.1.2 Further, in assessee company's own case for the immediately preceding assessment year i.e. 2010-11, the then Ld. CIT(A) has held that the amount received on sale of CER is a capital receipt not chargeable to tax.

4.5.1.3 In view of the above, it is submitted that, it should be held that amount received on sale of CER of Rs.69,71,56,345/- is a capital receipt not chargeable to tax and hence, the addition made should be deleted in its entirety.

4.5.2 <u>Decision</u>

In my considered view, Tribunal's including jurisdictional ITAT, Mumbai have held that the Carbon Credit is in connection with protection of world environment and accordingly, does not relate to the business. Accordingly, amount received towards sale of Carbon Credit is a capital receipt not chargeable to tax. Following the principles laid down by the above decisions, including that of jurisdictional ITAT, I hold that amount received on sale of CER of Rs.69,71,56,345/- is a capital receipt not chargeable to tax. Accordingly, this ground of appeal is allowed."

16. During the course of appellate proceedings before us the ld. D.R has placed reliance on the order of A.O. The ld. Counsel contended that identical issue on similar facts has been adjudicated by the Hon'ble Bombay High Court in favour of the assessee i.e Carbon Credit Entitlement is capital receipt not chargeable to Income tax i.e Pr.CIT VS. Dodson Lindblom Hydro Power P. Ltd. (Bombay High Court) 27.02.2019 (ITA No. 1820, 1821 & 1840 of 2016).

17. With the assistance of the ld. Representative we have gone through the decision of Hon'ble Bombay High Court as referred supra. The relevant part of the decision is reproduced as under:

"3. Income Tax Appeal No.1820 of 2016 relates to Assessment Year 2007-2008. Revenue has urged the following questions for our consideration :-

(i) Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT, is correct in holding that sale of carbon credit is to be considered as Capital Receipt and not liable for tax under any head of income under Income Tax Act, 1961?

(ii) Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT, is correct in holding that there is no cost of acquisition or cost of production to get entitlement for the Carbon Credits, without appreciating that generation of Carbon Credits is intricately linked to the machinery and processes employed in the production process by the assessee?

4. Though two questions are framed, singular issue is whether the receipts of the Assessee arising out of sale of carbon credit is to be considered as capital receipt and therefore not liable to tax. This issue is considered by the several High Courts starting from the judgment of Andhra Pradesh High Court in the case of ***Commissioner of Income Tax v/s. My Home Power Ltd*** *reported in* ***(2014) 365 ITR 82 (AP)*** *holding the receipts to be capital in nature. This was further elaborated by the Division Bench of Karnataka High Court in the case of* ***Commissioner of Income Tax v/s, Subhash Kabini Power Corporation Ltd,*** *reported in* ***(20161 385 ITR 592 (Karn)*** *and followed by Allahabad High Court and Rajasthan High Court, (Allahabad High Court decision is in the case of* ***Principal Commissioner of Income Tax v/s. LH Sugar Factory Pvt. Ltd*** *reported in* ***(2017} 392 ITR 568 (All)).***

5. In view of such consistent view of the different High Courts in the country, we see no reason to take a different stand. No question of law arises in these Appeals. Hence, not entertained. The Income Tax Appeals are dismissed."

After taking into consideration the detailed finding and judicial decision referred in the order of the ld. CIT(A) and following the decision of Hon'ble Bombay High Court as supra we don't find any merit in the appeal of the revenue. Therefore, this ground of appeal of the revenue stand dismissed.

18. The appeal of the revenue stand dismissed.

ITA No.5555/Mum/2014 (Revenues' Appeal)

Ground No. 1:

19. By applying the finding of ITA No.7038/Mum/2018 as mutatis mutandis, this ground of appeal stand dismissed.

Ground Nos. 2 & 3:

20. By applying the finding of ITA No. 7038/Mum/2018 as mutatis mutandis, both the grounds of the revenue stand dismissed.

21. In the result, the appeals of the assessee is partly allowed while for the appeals of the revenue is dismissed.

Order pronounced in the open court on 24.05.2022

Sd/-	Sd/-
(AMIT SHUKLA)	(AMARJIT SINGH)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Mumbai, Dated 24.05.2022
PS: Rohit

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त(अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,
सत्यापित प्रति //True Copy//

(Asst. Registrar)
ITAT, Mumbai