

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "A" MUMBAI

BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)
AND
MS. KAVITHA RAJAGOPAL (JUDICIAL MEMBER)

ITA No. 2684/MUM/2023
Assessment Year: 2017-18

Dy. CIT-23(1),
Piramal Chambers, Room No.
513, Parel, Mumbai-400012.

Vs.

Aditya Birla Real Estate Fund,
Plot C-22, G Block, The IL and FS
Financial Centre, Bandra Kurla
Complex, Bandra (E),
Mumbai-400051.

PAN NO. AACTA 6619 B
Respondent

Appellant

Assessee by : Mr. Madhur Agrawal,
Mr. Hardik Nirmal
Mr. Amol Mahajan
Revenue by : Mr. Manish Sareen, CIT-DR
Date of Hearing : 27/02/2024
Date of pronouncement : 01/03/2024

ORDER

PER OM PRAKASH KANT, AM

This appeal by the Revenue is directed against order dated 31.05.2023 passed by the Ld. Commissioner of Income-tax (Appeals) – National Faceless Appeal Centre, Delhi [in short ‘the Ld. CIT(A)’] for assessment year 2017-18, raising following grounds:

- Whether on the facts and circumstances of the case and in law, the Hon'ble CIT(A) erred in deleting the addition made by the AO and allowing the exemption of Rs. 44,63,29,740/- u/s 10(23FB) of the Act.*



2. *Whether on the facts and circumstances of the case and in law, the Hon'ble CIT(A) erred in not upholding the status of three investee companies of the assessee as NON- VCU for the reasons discussed in detail in the assessment order.*
3. *Whether on the facts and circumstances of the case and in law, the Hon'ble CIT(A) erred in allowing the exemption u/s 10(23FB) of the Act on assumption that the deduction claimed in 2016-17 has been allowed in the subsequent year on the basis that the assessee has reversed the interest income received from M/S. Amrapali Smart City Developers Put Ltd. (On the basis that the receipt was very doubtful), which in fact such reversal didn't happen in the A. Y. 2017-18.*
4. *Whether on the facts and circumstances of the case and in law, the Hon'ble CIT(A) has erred in deleting the addition made by the Assessing Officer and allowing the exemption of Rs. 44,63,29,748/- u/s. 44,63,29,748/- 10(23FB) of the Act, in spite of fact that the said M/s. Amrapali Smart City Developers Put. Ltd Company -VCU not carried any real estate business and derived any income during the year under consideration, where the chapter - III specially mentioned that income of any clause u/s 10 shall not be included in total income of a previous year.*
5. *Whether on the facts and circumstances of the case and in law, the Hon'ble CIT(A) has erred in deleting the addition, when CSN Estate Put Ltd in which the Assessee has invested which intum has lent the money to third party, which hows that it is engaged in finance activity and such act of lending money to third party is clear violation o SEBI (Venture Capital Funds / Regulation Act, 1996*
6. *Whether on the facts and circumstances of the case and in law, the Hon'ble CIT(A) has erred in deleting the addition made by the Assessing Officer, since SEBA has not taken any adverse view, where as per the provision of Act income derived by the assessee from such investment is not eligible for exemption u/s 10(23FB) of the Act.*
7. *Whether on the facts and circumstances of the case and in law, the Hon'ble CIT(A) has erred in deleting the addition made by the Assessing Officer, whereas the section 10(23FB), has been amended from 01.04.2008 restricting the scope of investment to only in Venture Capital Undertakings.*
8. *Whether on the facts and circumstances of the case and in law, the Hon'ble CIT(A) has erred allowing the exemption u/s 10(35) of the Act. of Rs.2,24,18,067/-earned from distribution from units held in mutual funds.*
9. *The appellant prays that the order of the Hon'ble CIT(A), on the above grounds be set. aside and that of the Assessing Officer be restored.*

2. Briefly stated, facts of the case are that the assessee is registered as a Venture Capital Fund (VCF) and derived its income



from investment in optional convertible debantures (OCD) of Venture Capital Undertaking (VCU), which was claimed as exempt u/s 10(23FB) of the Income-tax Act, 1961 (in short 'the Act'). The assessee also derived income from dividend from investment in mutual fund which was claimed as exempt u/s 10(35) of the Act. In the scrutiny assessment completed u/s 143(3) of the Act, the Assessing Officer disallowed exemption amounting to Rs.44,63,29,740/- out of total exemption claimed of Rs.106,55,43,135/- u/s 10(23FB) of the Act. The Assessing Officer also denied exemption claimed in respect of dividend from the mutual fund amounting to Rs.2,24,18,067/-. Aggrieved, the assessee filed appeal before the Ld. CIT(A). The Ld. CIT(A) following the finding of the Income-tax Appellate Tribunal (in short 'the Tribunal') in preceding assessment year deleted the additions.

3. Aggrieved the Revenue is in appeal before the Tribunal.

4. We have heard rival submission of the parties on the issue in dispute and perused the relevant material on record.

4.1 As regards to the issue of disallowance of exemption claimed to the extent of Rs.44,63,29,740/- u/s 10(23FB) of the Act is concerned, during the year under consideration the assessee has shown income of Rs.106,55,43,135/- from investment in different Venture Capital Undertakings. However out of those, the Assessing Officer has treated the investment in respect of three parties namely



M/s CSN Estates Pvt. Ltd., Startechinfraprojects Pvt. Ltd. and Amrapali Smart City Developers Pvt. Ltd. as not eligible for exemption u/s 10(23FB) of the Act. We find that in the year under consideration no income has been received in respect of Startechinfraprojects Pvt. Ltd. In respect of M/s Amrapali Smart City Developers Pvt. Ltd. , the assessee made investment of Rs.150 crores in the form of OCDs and derived income of Rs.20,09,74,740/-. The Assessing Officer found that said VCU is not carrying out any real estate business and no financial were maintained by the company. He further observed that no provision of the business was carried out by the company and the director of the company were also in jail, therefore, the company cannot be treated as VCU within the definition of section 2(n) of the Securities and Exchange Board of India (Venture Capital Fund) Regulations, 1996. Similarly, in respect of CSN Estates Pvt. Ltd., the assessee against investment of Rs.100 crores, derived income of Rs.24,53,55,000/- from the said company. The Assessing Officer observed that said VCU has violated the provision and acted as pass through entity as said entity has further lent the amount of Rs.120,46,54,374/- to a company called as Lemon Tree Land and Developers Pvt. Ltd.

4.2 However, we find that the Ld. CIT(A) has deleted the addition observing as under:

“1. As can be seen from the above, the issue of disallowance of exemption u/s. 10(23FB) of the Act in respect of the aforesaid 3



companies namely Amrapali Smart City Developers Pvt. Ltd., CSN Estates Pvt. Ltd., StarteckInfraprojects Pvt. Ltd. was in dispute for A.Y. 2016-17 and the said issue has been decided in favour of the appellant by the Hon'ble Tribunal in the above mentioned case. Since the issue is decided by the Hon'ble Tribunal in case of the appellant for the immediate preceding year, A.Y. 2016-17, respectfully following the findings, reasoning and adjudication. of the CIT(A) and Hon'ble Tribunal, I decide the said issue in favour of the appellant and delete the disallowance of Rs. 44,63,29,740/- made by the Assessing Officer and direct the Assessing Officer to allow exemption u/s. 10(23FB) of the Act. In result, these grounds are treated as allowed.”

4.3 We find that the Ld. CIT(A) has followed the binding precedent of the Tribunal in the case of the assessee for immediately preceding assessment year i.e. assessment year 2016-17. The order of the Tribunal is still in operation and has not been reversed by any higher appellate forum, therefore, we do not find any infirmity in the order of the Ld.CIT(A) on the issue in dispute. Accordingly, the ground Nos. 1 to 7 of the appeal of the Revenue are dismissed.

5. In ground No. 8, the Revenue is aggrieved with the deletion of disallowance of Rs.2,24,18,067/- in respect of dividend income from mutual fund which was claimed as exempt.

5.1 We have heard rival submission of the parties on the issue in dispute and perused the relevant material on record. We find that the Ld. CIT(A) has followed the finding of the Tribunal in assessment year 2016-17 on the issue in dispute. The relevant finding of the Ld. CIT(A) is reproduced as under:

“1. As can be seen from the submissions made and the assessment order for A.Y. 2016-17 placed on record, the exemption in respect of dividend income from the mutual funds of Rs. 6,64,92,670/- was denied by the Assessing Officer on the identical ground that the appellant being VCF was only eligible for



exemption u/s. 10(23FB) of the Act if the conditions therein were complied. As such, the appellant cannot be granted exemption u/s. 10(35) of the Act if they are entitled to exemption u/s. 10(23FB) of the Act. Against the said disallowance, my predecessor had decided the issue in favour of the appellant vides his order dated 18-09-2019. In an appeal filed by the Assessing Officer before the Hon'ble Tribunal in ITA No. 7504/Mum/2019, the Hon'ble Tribunal, vide its order dated 13.08.2021, held as under.

17. We have heard both the parties and perused the records. Learned Departmental Representative relied upon the order of the Assessing Officer. However, he could not point out as to why assessee shall not be allowed exemption under section 10(35) of the Act with respect to dividend income.

18. Upon careful consideration we note that the Assessing Officer's view that VCF was eligible for deduction under a specific section 10(23FB) and therefore it cannot claim deduction under another section 10(35) of the Act is totally inapplicable in the facts and circumstances of the case. Exemption under section 10(23FB) and exemption under section 10(25) of the Act operates in different fields. Learned CIT(A) is correct in holding that operations of these sections are independent. Assessee's income in VCU is exempt under section 10(23FB) of the Act and the dividend income is exempt under section 10(35) of the Act. Hence, there is no infirmity in the assessee's claim of exemption on dividend income under section 10(35) of the Act. Learned CIT(A)'s order in this regard is cogent. Decisions referred by the Assessing Officer has been duly distinguished by learned CIT(A). We do not find any infirmity in the same. Accordingly, we uphold the order of learned CIT(A)."

1. Since the aforesaid issue is decided by the Hon'ble Tribunal in case of the appellant for A.Y. 2016-17, respectfully following the findings of the Hon'ble Tribunal, the appellant is held eligible for exemption u/s. 10(35) of the Act on the income of Rs. 2,24,18,067/-. As a result the said grounds of appeal are held allowed."

5.2 Since, the Ld. CIT(A) has followed a binding precedent on the issue in dispute, we do not find any infirmity in the order of the Ld. CIT(A) and accordingly, the finding of the Ld. CIT(A) on the issue in



dispute is upheld. The ground No. 8 of appeal of the Revenue is accordingly dismissed.

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

Order pronounced in the open Court on 01/03/2024.

Sd/-
(KAVITHA RAJAGOPAL)
JUDICIAL MEMBER

Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER

Mumbai;
Dated: 01/03/2024
Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,
(Assistant Registrar)
ITAT, Mumbai