आयकर अपीलीय अधिकरण,चण्डीगढ़ न्यायपीठ , चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH
BENCH 'B' CHANDIGARH

BEFORE: SHRI A.D.JAIN, VICE PRESIDENT AND
SHRI VIKRAM SINGH YADAV, ACCOUNTANT MEMBER

आयकर अपील सं./ ITA No. 1033/CHD/2017
निर्धारण वर्ष / Assessment Year : 2013-14

(PHYSICAL HEARING)

The DCIT, Circle 1(1), Chandigarh.	बनाम VS	M/s Stylam Industries Ltd., SCO 14, Sector 7-C, Chandigarh.
स्थायी लेखा सं./PAN /TAN No: AAACG5969R		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

आयकर अपील सं./ ITA No. 960/CHD/2017
निर्धारण वर्ष / Assessment Year : 2013-14

M/s Stylam Industries Ltd., SCO 14, Sector 7-C, Chandigarh.	बनाम VS	The DCIT, Circle 1(1), Chandigarh.
स्थायी लेखा सं./PAN /TAN No: AAACG5969R		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri Vineet Krishan, Advocate
राजस्व की ओर से/ Revenue by : Shri Dharam Vir, JCIT, Sr.DR

आयकर अपील सं./ ITA No. 389/CHD/2019
निर्धारण वर्ष / Assessment Year : 2014-15

(HYBRID HEARING)

The DCIT, Circle 1(1), Chandigarh.	बनाम VS	M/s Stylam Industries Ltd., SCO 14, Sector 7-C, Chandigarh.
स्थायी लेखा सं./PAN /TAN No: AAACG5969R		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri Vineet Krishan, Advocate
राजस्व की ओर से/ Revenue by : Shri K.Mehboob Ali Khan,CIT-DR

आयकर अपील सं./ ITA No. 394/CHD/2019
निर्धारण वर्ष / Assessment Year : 2014-15

(**PHYSICAL HEARING**

M/s Stylam Industries Ltd., SCO 14, Sector 7-C, Chandigarh.	बनाम VS	The DCIT, Circle 1(1), Chandigarh.
स्थायी लेखा सं./PAN /TAN No: AAACG5969R		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri Vineet Krishan, Advocate
राजस्व की ओर से/ Revenue by : Shri Dharam Vir, JCIT, Sr.DR

तारीख/Date of Hearing : 09.07.2024
उदघोषणा की तारीख/Date of Pronouncement : 04.09.2024

आदेश/ORDER

PER BENCH

These are cross appeals for assessment years 2013-14 and 2014-15 against the order of the CIT(A)-1 Chandigarh dated 02.03.2017 and 15.01.2019 respectively.

ITA No. 1033/CHD/2017
Department's Appeal A.Y. 2013-14

2. In this appeal, the Department has raised the following grounds of appeal :

1. On the facts and in the circumstances of the case, the Ld.CIT(A) has erred in allowing appeal of the assessee without appreciating the facts of the case.

2. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in deleting the addition on account of commission of Rs.2,20,71,855/- paid by the assessee to NRIs without deducting TDS in view of the explicit provisions of sections 5 8s 9 of the Income Tax Act, 1961.

3. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in deleting the addition u/s 14A made on account investment made in shares, income (if) earned from such type investment is exempt without taking cognizance of the CBDT's Circular 5 of 2014 wherein it has been clarified that disallowance is to be made even when no exempt income has been earned by the assessee.

4. It is prayed that the order of the Ld.CIT(A) be cancelled and that of the assessing officer may be restored.

5. The appellant craves leave to add or amend any grounds of appeal before the appeal is heard or is disposed off.

3. Ground Nos. 1, 4 and 5 are general.

4. Ground No. 2 pertains to the issue of the ld. CIT(A) having deleted the addition of export commission of Rs.2,20,71,855/- paid by the assessee to NRIs without deducting TDS.

5. The AO disallowed the expenditure on the commission on exports amounting to Rs.2,20,71,855/-, invoking the provisions of Section 40(a)(ia) of the Income Tax Act, 1961. The assessee had made payments on the commission as follows :

Sr. No.	Party	Address
1.	Fabirizio Beccuui	Mr. Febrizio c/o Vega Representanze Industriali, 10126 Troino Italy, Corso Massimo D' azelio 102, Ph.-+390116670373
2.	Suriyon Kittikovittana	Suriyon Kitti Kovittana, 10220, Bankok, Thailand-101200
3.	Salah Trading Agencies	Salah Trading Agencies, P.O. Box 5287, Manama, Kindom of Bahrain-Tel +973-17537929
4.	Stefan Meisels Ltd	Stafan Meisels, c/o Stefan Meisels Ltd, POB 6730, EFRAT 90435, Israel, Tel.+97229938072
5.	Puerto Rico Agencies Co.	Puerto Rico Agencies Co.
6.	Pan Pacific Trading	Pan Pacific Trading, LA, Mnda, Guaynabo, Pueto rico-009190220
7.	Geaves Direct Limited-UK	Lyon house-81, Haltwhiste Road, South Woodham Ferrers, Foireig, Uganda, 606930, POB-210760, 50532 Cologne, Germany-189721
8.	Mahmound Nagy Hussain Humash	Mahmound Nagy Hussain Humash, Yaman

5.1 The AO was of the opinion that these payments were subject to TDS under Section 195 of the Act. Since no TDS had been deducted, the AO disallowed the payments under Section 40A(ia) of the Act. While doing so, the AO observed as follows :

> *"2.6 The provisions of section 195 are applicable to all payees whether individual or of any other status who are covered under the definition of nonresident as per section 6 of the Income Tax Act. Under this section there is no threshold limit of the amount paid for deduction of TDS i.e. the TDS needs to be deducted on the entire amount without any threshold limit.*
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> *2.7 Further another contention of the assessee that the payments have been made abroad is again baseless since the assessee has made payment in India through its bank account in India maintained in State Bank of Patiala (CC 55023969844). As per the provisions of section I 95 the TDS has to be deducted at the time of credit or payment whichever is earlier. Thus the contention of the assessee are unacceptable.*
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> *2.8 The provisions of section 195 has to be read in consonance with the provisions of section 5(2) and section 9(1) of the Act which deals with the 'total income of non-resident' and 'income deemed to accrue or arise in India', respectively. The tax deduction becomes mandatory u/s 195 since the income of the non-resident is deemed to accrue or arise in*

India. It is important to mention here that the non-resident deductee can avail the benefit of DTAA (Double Taxation Avoidance Agreement) to avoid taxation on same income in both countries. Presently India has comprehensive DTAAs with more than 80 countries.Mowever to avail the benefit of DTAA the non-resident deductee has to submit documents with the deductor which includes Tax Residency Certificate (TRC), passport copy, etc.

2.9 In the instant case the assessee has failed to produce any such document to justify his claim of non-deduction of TDS. The circular No.23 of CBDT has been withdrawn vide another circular No. 7/2009 vide which it has been clarified that the circular No.23. could not be interpreted to allow relief to the tax payer which is not in accordance with the provision of section 9 of the Income Tax Act.

2.10 Under section 9(I)(i) income accruing or arising directly or indirectly, through or from any business connection in India or source of income in India shall be deemed to accrue or arise in India. The words 'accrue' or 'arise' occurring in section 5 have more or less a synonymous sense and income is said to accrue or arise when the right to receive it comes into existence. As per section 5 and section 9 of the Act the income is deemed to accrue or arise in India even if the services by commission agents have been rendered abroad. Further since the right to receive the commission arises in India, the income of such commission agents is deemed to accrue or arise in India and accordingly tax deduction would be mandatory u/s 195. In this regard reliance is placed on the judgement of authority of advance ruling in the case of SKF Boilers and Driers Pvt. Ltd. A.A.R. No. 983-984 of 2010 dated 22.02.2012 wherein it is held that the income arising on account of commission payable to the non-resident agents is deemed to accrue and arise in India, and is taxable under the Act in view of the specific provision of section 5(2)(b) read with section 9(1)(i) of the Act. The provision of section 1 95 would apply, and the rate of tax will be as provided as under the Finance Act for the relevant year."

6. The ld. CIT(A) has deleted the addition made by the AO and this has given rise to Ground No. 2 before us raised by the Department.

7. The ld. DR has contended that the ld. CIT(A) has erred in deleting the addition of Commissioner of Rs.2,20,71,855/- paid by the assessee to NRIs without deducting TDS; that the provisions of Sections 5 and 9 of the Income Tax Act are

exigible in this regard; that as per the provisions of Section 195 of the Income Tax Act, TDS has to be deducted at the time of credit or payment, whichever is earlier; that the provisions of Section 195 have to be read in consonance with those of Section 5(2) and Section 9(1); that as correctly noted by the AO, since the income of the non-resident is deemed to accrue or arise in India, TDS becomes mandatory under the provisions of Section 195; that to avail the benefit of the DTAA, the non-resident deductee has to submit documents with the deductor, but herein, the assessee has not produced, at any stage, any such document, as would enable justification of its claim of not making TDS; that CBDT circular No. 23 of 2006 is of no aid to the assessee; that the said circular number was withdrawn vide Circular No.7 of 2009; that the latter circular clarifies that the earlier circular could not be interpreted to allow relief to the taxpayer, which relief is not in accordance with the provisions of Section 9 of the Act; that under the provisions of Section 9(1)(i), income accruing or arising directly or indirectly, through or from any business connection in India or any source of income in India shall be deemed to accrue or arise in India; that as per both Sections 5 and 9 of the

Act, even if the services by Commission Agents have been rendered abroad, income is deemed to accrue or arise in India; that this is so, since the right to receive the commission arises in India; that reliance in this regard was correctly placed by the AO on the decision of the authority for advance rulings in the case of 'S.K.F. Boilers & Driers P. Ltd.", A.R.R No. 983 and 984 of 2010, dated 22.02.2012 which is directly on the issue. It has been contended that therefore, the order passed by the ld. CIT(A), deleting the addition correctly made by the AO, concerning the commission of Rs.2,20,71,855/-, paid by the assessee to NRIs without making TDSD, be ordered to be reversed and the addition correctly made by the AO be revived.

8. On the other hand, the ld. Counsel for the assessee has placed strong reliance on the impugned order.

8.1 It has been contended that as correctly held by the ld. CIT(A), Sections 5 and 9 of the Income Tax Act, rendered abroad, cannot be taxed in India; that as further correctly held by the ld. CIT(A), once this is so, the provisions of Section 195 are not attracted and so, no question of making TDS on such payments under Section 195 of the Act arose;

that the services of the agents were rendered in their respective countries and not in India; that there is nothing on record to show that these services were technical in nature; that the AO had utterly failed to show that there was any business connection in India; that as such, there was no basis for the AO to make the addition in question, which has been rightly deleted by the ld. CIT(A); and that there being no merit whatsoever in the ground raised by the Department, the same be rejected while confirming the well reasoned order passed by the ld. CIT(A).

9. We have heard the parties on this issue in the light of the material placed on record. The factum of the service being rendered by the eight agents, or the amount involved is not in dispute. The issue is as to whether the remittance is from the services rendered have rightly been held by the ld. CIT(A) to be not taxable in India.

9.1 As per the provisions of Section 195 of the Act, any person responsible for paying to a non-resident, who is not a company or a foreign company, any interest, as provided in the Section, shall deduct income tax thereon at the rates enforce.

9.2 The AO holds the assessee liable under Section 195, observing that all payees covered under the definition of 'Non Resident" as laid down in Section 6 of the Act, are subject to the provisions of Section 195. As per the AO, Section 5 deals with the total income of a non-resident and Section 9(1) concerns income deemed to accrue or arise in India, the provisions of Section 195 are to be read in consonance with these two provisions. The AO holds that since the income of the assessee non-resident is deemed to accrue or arise in India, TDS under Section 195 is mandatory.

9.3 The AO holds that according to Sections 5 and 9, even if the services have been rendered abroad by the Commission Agents, the income therefrom is deemed to accrue or arise in India and that since the right to receive the commission arises in India, TDS is mandatory under Section 195, the income of the Commission Agents being deemed to accrue or arise in India.

10. The ld. CIT(A) has held that the aspect of income deemed to accrue or arise in India, as contained in Section 5(2)(b) of the Act has to be read alongwith the provisions of Section 9 of the Act; that read together, Sections 5 and 9 of

the Act make it clear that remittance made to a non-resident for services rendered abroad, which services are not of the nature specified in Section 9, cannot be brought to tax in India. The ld. CIT(A) has held that incomes which are not chargeable to tax in India are not exigible under the provisions of Section 195.

10.1 The observations of the ld. CIT(A) have not been successfully refuted by the Department before us. It remains undisputed that the assessee is making its sales abroad. It has utilized the services of agents who are non-residents. They are residents of Italy, Thailand, Israel and Germany etc. The services were rendered by these agents to the assessee in order to promote the assessee's sales in the respective country of the agent. Payment of commission was done by the assessee to the agents abroad, through banking channels. It has been found as a fact that the payment was made from the bank account of the assessee directly as a foreign remittance to the agents abroad, as available from the bank certificates furnished by the assessee. The remittance to the agents was in foreign currency, i.e., in the currency of the respective country of the agent. The remittance, it is note worthy, was made directly to the agents

and no deposit was made in their accounts. As such, there was no question of the remittance having either been received in India or being deemed to have been received in India, as correctly held by the ld. CIT(A), to which there is no rebuttal. Then, since the services were rendered outside India, it does not amount to a case of income either accruing or arising in India. So, it only remains to be seen as to whether the ld. CIT(A) has correctly held the income of the non-resident to be not accruing or arising in India as per the provisions of Section 9. The first requirement is that of a business connection in India or any property in India or any asset or source of income in India or the transfer of a capital situated in India. It is evident on record and not disputed that the matter does not concern the income in question to have accrued or arisen, whether directly or indirectly through or from any business connection in India or any property in India or any asset or source of income in India or through the transfer of a capital asset situated in India. Then, since the payments were not by way of either salary, or dividend, or interest, or royalty or technical services, other provisions of Section 9 do not get attracted. This being so, the remittance in question cannot be taxed in India. The

Department, again has not been able to refute this. As a necessary corollary, then, since the income of the non-residents is not exigible to tax in India, the provisions of Section 195 do not get attracted and there was no liability on the assessee to make TDS on the payment made.

11. The decision of the A.A.R. in the case of 'S.K.F. Boilers & Driers P Ltd.' (supra) is, as duly taken note of the ld. CIT(A), clearly distinguishable on facts. That decision, places reliance on the decision in the case of 'Rajiv Malhotra', rendered by the A.A.R., and reported at 284 ITR 564. In that case, the services were rendered in India, which is the primary fact which is not present in the case at hand, as discussed herein, undisputedly, the services by the agents of the assessee were rendered outside India, as also discussed by us in the preceding paragraphs. Further, neither has anything been brought on record that there was any business connection of the agents in India, nor have the services rendered been shown to be services technical in nature.

11.1 Therefore, despite referring to and relying on the provisions of Sections 5 and 9 of the Act, as stated in

Ground No.2, the Department has not been able to make out a case as to how the matter at hand gets covered within the provisions of these two Sections. The findings of the ld. CIT(A) on this issue remains un-hinged and firm. These findings are, therefore, confirmed.

12. The grievance sought to be raised by the Department by way of Ground No.2 is found to be shorn of merit. Accordingly, Ground No. 2 is rejected.

13. Coming to Ground No.3, the AO made addition of Rs.9,39,450/- under Section 14A of the Act. The facts relating to such addition are that of examination of assessee's Balance Sheet for the year ending 31.03.2009, the AO found that the assessee had made investment of Rs.2,45,49,077/- in M/s Amravati Infrastructure Development Fund Ltd. He also found that an investment of Rs.2,43,36,672/- had been made on 31.03.2012. These investments had been shown in the Balance Sheet as long term advances. The assessee was queried as to why the provisions of Section 14A be not applied and disallowance of expenditure be not made by applying Rule 8D of the Rules, since income from M/s Amravati Infrastructure Development

Fund Ltd. was exempt. The assessee responded that no exempt income had been earned from the investment. The AO refused to accept the stand taken by the assessee. He observed that the matter of earning of exempt income had become irrelevant in view of CBDT Circular No.5 dated 11.02.2014, as per which Rule 8D of the Rules read with Section 14A of the Act provides for disallowance of all expenditure even where no exempt income had been earned. The AO held that the provisions of Section 14A would apply even if no exempt income had been earned. Reliance, in this regard had been placed on the Memorandum explaining the provisions of the Finance Bill, 2001, whereby, the provisions of Section 14A had been proposed to be inserted in the Act. Reliance was also placed on Circular No.14 issued relating to the provisions of the Finance Act, 2001. The assessee's contention that no borrowed funds had been used for making the investment, was also turned down citing Clause (ii) of Rule 8D. Reference was also made to the Memorandum explaining the provisions of the Finance Bill, 2006. The AO observed that thereby, it had been made mandatory for the AO to determine the amount of expenditure incurred in relation to such income which does not form part of the total

income in accordance with such method as may be prescribed by Rule 8D of the Rules.

13.1 It was in accordance with the above that the AO made disallowance of expenditure of Rs.9,39,450/- by applying the provisions of Section 14A of the Act read with Rule 8D of the Rules. Moreover, the Rule of consistency is also applicable. No such addition was made in the earlier years, under the same facts and circumstances. Therefore, the facts and circumstances remaining unchanged, a diametrically opposite view of that taken in the earlier years.

14. The ld. CIT(A) has deleted the addition made by the AO, observing that since the assessee had not earned any exempt income during the year, the case was covered by the judgement of the Hon'ble Punjab & Haryana High Court in the case of “M/s Lakhani Marketing Inc” 226 taxman 45 (P&H).

15. The ld. DR contending that the ld. CIT(A) has erred in deleting the addition correctly made by the AO under Section 14A of the Act, made on account of investment made in shares; that while doing so, the ld. CIT(A) has failed to take into consideration CBDT Circular No. 5 of 2014,

wherein, it has been clarified that disallowance has to be made even when no exempt income has been earned by the assessee.

16. The ld. Counsel for the assessee, on the other hand has placed strong reliance on the impugned order. We find that the ld. CIT(A) has placed reliance on the decision of the Hon'ble jurisdictional High Court in the case of "CIT Vs Lakhani Marketing Inc" (supra). In that decision, it has been held by the Hon'ble High Court that apropos expenditure incurred in relation to income not includible in total income, i.e., investment in shares, as in the present case, the Tribunal was correct in holding that unless and until there is a receipt of exempt income for the concerned assessment years, i.e., dividend from shares, Section 14A of the Act cannot be invoked. No contrary decision has been brought to our notice. Further, the undisputed facts are that the investment made was of Rs.2,45,49,077/-. As against this, the income during the year was of Rs.6,57,17,670/-. Income for the immediately preceding assessment year, i.e., assessment year 2012-13, was of Rs.3,69,48,862/-. The income for assessment year 2011-12 was of Rs.3,48,09,400/-, that for assessment year 2010-11 was of Rs.4,96,37,318/-;

the investment was made out of interest free funds available with the assessee. The share capital of the assessee was of Rs.7,31,62,000/-, there were reserves and surplus of Rs.20,51,03,272/-; therefore, there was availability of an amount of Rs.27,82,65,272/- of interest free funds available with the assessee. It also remains undisputed that no borrowings were made for making the investments and, therefore, no expenditure had been incurred to earn any income and no dividend or other exempt incomes were earned for the investment. The stress of the AO has been on the fact that the provisions of Section 14A of the Act are applicable despite no income having been earned. This, as held by the Hon'ble jurisdictional High Court in “Lakhani Marketing Inc” (supra), is not sustainable. Further, since surplus funds were available with the assessee, the reliance by the assessee on the following decisions is found to be well placed, decision of the Hon'ble Punjab & Haryana High Court in the case of “CIT Vs Winsome Textile Inds Ltd.”, 319 ITR 204, wherein also, it was held that the assessee had admittedly not made any claim for exemption and, therefore, Section 14A could have no application. Moreover, as contended on behalf of the assessee and not disputed by the

Department, in the assessee's own case for assessment year 2011-12, vide order dated 24.11.2016, the ld. CIT(A) has itself deleted the addition made under Section 14A under similar facts and circumstances.

17. In view of the above, the action of the ld. CIT(A) deleting the addition of Rs.9,39,450/- made by the AO by invoking the provisions of Section 14A of the Act found to be justified and the same is confirmed. Accordingly, Ground No. 3 is found to be without merit and the same is rejected.

18. In view of the above, the appeal of the Department in ITA No. 1033/CHD/2017 is dismissed.

ITA 960/CHD/2017

19. This is assessee's cross appeal to the Department's above appeal in ITA 1033/CHD/2017 for assessment year 2013-14.

20. The assessee has taken the following grounds of appeal :

> *1. That the order passed under section 250(6) of the Income Tax Act, 1961 by the Learned Commissioner of Income Tax (Appeals)-I Chandigarh in Appeal No. 262/15-16 dated 02.03.2017 is contrary to law and facts of the case.*

2. That in the facts and circumstances of the case, the Ld. Commissioner of Income Tax (Appeals) gravelly erred in upholding the disallowance of interest @ 12% per annum on notional basis on the following advances given by appellant.

Narration	***Advance***
Advance against land	*Rs. 73,42,000/-*
HSIDC, Panchkula	*Rs.2,92,578/-*
Zeal Exim Pvt. Ltd.	*Rs.9,50,000/-*

The appellant had sufficient funds of its own, therefore no disallowance is called for.

20.1 Ground No. 1 is general in nature.

21. The solitary grievance of the assessee by way of Ground No. 2 is that the ld. CIT(A) has gone wrong in confirming the disallowance of interest @ 12% per month on notional basis, on the three advances given by the assessee.

22. The AO made disallowance of Rs.6,49,590/- under Section 36(1)(iii) of the Income Tax Act. The AO observed that the assessee had given loans and advances to various parties, amounting to Rs.92,24,578/- plus Rs.24,98,733/- = Rs.1,17,23,311/-, as follows :

Narration	Advance
Advance against land	Rs. 73,42,000/-
Application money for HUDA	Rs. 6,40,000/-
HSIIDC, Panchkula	Rs, 2,92,578/-
Zeal Exim Pvt. Ltd.	Rs. 9,50,000/-
Total	Rs. 92,24,578/-

22.1 The AO disallowed interest on these advances, @ 12%. The AO placed reliance on the decision of the Hon'ble Punjab & Haryana High Court in the case of “M/s Abhishek Industries Ltd.” 286 ITR 1 (P&H). The AO observed that the interest paid by the assessee corresponding to the interest free advances, was to be allowed on a proportionate basis, the advances having not been made for business purposes.

23. The ld. CIT(A), confirmed the disallowance of interest on Rs.73,42,000/- advanced against land, Rs.2,92,578/- advanced to HSIDC, Panchkula and Rs.9,50,000/- advanced to “Zeal Exim P.Ltd.” which confirmations have been challenged by the assessee by way of Ground No. 2.

24. Apropos the advance against land, of Rs.73,42,000/-, the ld. CIT(A) has observed (page 15 para 5.4 of the impugned order) that the assessee had purchased the plot of land in its name for expansion of its business; that the purchase was completed on 27.02.2013, i.e., at the end of Financial Year 2012-13; that however, it could not be treated as a revenue expenditure; that the purchase of the land was a capital purchase for future expansion of business

and, therefore, it was a capital expenditure; that the assessee had spent the money for this purchase of land, from its loan of CC Limit Account in SBOP, i.e., out of an interest bearing fund, and that there was a direct nexus of the investment of the funds and the source of the funds; that the purchase was of a capital asset not put to use during the year and the interest was not allowable as a revenue expenditure under Section 36(1)(iii) of the Act, in accordance with its proviso.

24.1 Concerning the advance of Rs.2,92,578/- made to HSIDC, Panchkula, the ld. CIT(A) observed that the assessee had made interest in an industrial plot taken from HSIDC and the amount of Rs. 2,92,578/- reflected the payment of Stamp Duty, that the plot had been purchased for business purposes but it had not been put to use during the year and the money had been paid out of interest bearing funds, from the assessee's CC Account in the State Bank of Patiala; that thus, interest bearing funds were used for making investment in a capital asset which was not put to use during the year. It was held that the disallowance is called for as per the proviso to Section 36(1)(iii) of the Act. Holding so, the ld. CIT(A) confirmed the disallowance.

24.2 Regarding the advance of Rs.9,50,000/- made to "Zeal Exim P.Ltd." (supra), the ld. CIT(A) observed that again the money had been paid out of interest appearing in SBOP, CC Account of the assessee, for which payment of advance, the assessee had not been able to explain the business expediency. Therefore, the disallowance was confirmed.

24.3 On behalf of the assessee, it has been contended that the share capital and reserves and surplus of the assessee were much more than the investment made; that the assessee had sufficient own funds and, therefore, the presumption is that the interest free advances were given out of the own funds of the assessee, for which, the disallowance made requires to be deleted. Reliance has been placed on "Munjal Sales Corporation Vs CIT" 298 ITR 298 (S.C.), "DCIT, Central Circle-2(1), Bangalore Vs JSR Construction P. Ltd." 71 Taxman 184, "ACIT Vs Omaxe Bikes Ltd." 156 ITD 566 (CHD).

25. The ld. DR, on the other hand, has placed strong reliance on the impugned order, stating that the ld. CIT(A) has correctly confirmed the disallowance in these three cases, since in the first transaction, i.e., purchase of land,

there was a capital purchase for future expansion of business; that capital asset in the share of land was purchased but not put to use during the year; that the expenditure was a capital expenditure and was not allowable as a revenue expenditure; that the investment in the industrial plot from HSIDC was again for the purchase for business purposes, but, the asset was not put to use during the year and the payment was out of interest bearing funds, as in the earlier case of purchase of land; that therefore, here also, the disallowance made was correctly made under the proviso to Section 36(1)(iii) of the Act. It has been contended that apropos the advance made to "M/s Zeal Exim P.Ltd." (supra), no business expediency for making the advance has been proved.

26. Having considered the rival submissions made on the basis of the material available on record, where the facts are not disputed, we find that the availability of own funds of the assessee more than the advances for the year needs to be ascertained. Thus, a presumption of the advances having been made from such own funds/surplus, cannot be denied in case of such availability of funds executing advances. In this regard, "Munjal Sales Corporation Vs CIT" (supra) is

clear. “JSR Construction P. Ltd.” (supra) is also to the same effect, as also is “Omaxe Bikes Ltd.” (supra). No decision to the contrary has been brought to our notice. For assessment year 2011-12, a similar addition was made and the ld. CIT(A)-II vide order dated 24.11.2016, passed in Appeal No. 541 for A.Y. 2013-14 deleted the addition. For assessment year 2012-13, addition of advance made to “M/s Zeal Exim P.Ltd.” (supra), has been deleted by the Tribunal vide order (APB 119-121) dated 28.11.2017, passed in ITA No. 922/CHD/2017, holding that from the balance sheet of the assessee, the assessee was seen to have share capital and reserves and surplus for exceeding the advances given, and that so, since the assessee had sufficient own funds, no disallowance was called for. For A.Y. 2014-15 also, the addition was deleted, though this time by the CIT(A), following the Tribunal Order (supra)for A.Y. 2012-13. The facts remain the same for A.Y. 2013-14 as well. The AO is, accordingly, directed to ascertain the position of availability of the funds of the assessee exceeding the advances, as alleged and to grant relief to the assessee in accordance with law.

27. Therefore, the appeal is treated as allowed for statistical purposes.

ITA-389/CHD/2019& ITA-394/CHD/2019

28. These are cross appeals for assessment year 2014-15 filed against the order of the ld. CIT(A) dated 15.01.2019. ITA 389/CHD/2019 has been filed by the Department whereas ITA 394/CHD/2019 has been filed by the assessee.

ITA 389/CHD/2019 (Department's Appeal)

29. The Department has taken the following grounds in this appeal :

1. *On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in allowing the appeal of the assessee without appreciating the facts of the case.*

2. *On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in deleting the addition of Rs. 3,33,48,160/- made u/s 40(a)(ia) on account of non-deduction of TDS ignoring the detailed finding of the assessing officer that as per section 5 and section 9 of the Act the income is deemed to accrue or arise in India even if the services by the commission agents have been rendered abroad. Further since the right to receive the commission arises in India, the income of such commission agents is deemed to accrue or arise in India and accordingly tax deduction would be mandatory u/s 195.*

3. *On the facts and in the circumstances of the case, the Ld.CIT(A) has erred in deleting the addition made on account of VAT penalty, ignoring the detailed finding of the assessing officer that the said expenses were penal in nature and had arisen due to the default on part of the assessee.*

4. *On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in deleting the addition of Rs. 30,930/- made u/s 36(l)(iii) of the I.T.Act, 1961 on account of application money paid to HUDA, observing that the assessee made advances from the current account representing the non-interest bearing funds ignoring that the current account is a mixed kitty account*

where interest bearing and interest free funds can be parked for further payment.

5. *On the facts and in the circumstances of the case, the Ld. CLT(A) has erred in deleting the addition of Rs. 1,27,752/- made u/s 36(l)(iii) of the I.T.Act, 1961 on account of application money paid to HUDA and advances made to Zeal Exim (P) Ltd. ignoring that the assessee has not maintained any separate account for interest bearing and interest free funds and hence the amount advanced cannot be said to be made from interest free funds only.*

6. *On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in deleting the addition of Rs. 1,27,752/- made u/s 36(l)(iii) of the I.T.Act, 1961 on account of application money for HUDA and advances made to Zeal Exim (P) Ltd. ignoring that the assessee has failed to establish any business expediency for advancing such a huge sum.*

30. Ground No. 1 is general.

31. Ground No. 2 is covered by our findings in Ground No. 2 in the Department's appeal for assessment year 2013-14, in ITA 1033/CHD/2017, dealt with by us in the preceding portion of this order. Therefore, following our findings on Ground No. 2 in the Department's appeal in ITA 1033/CHD/2017, the present Ground No.2 raised by the Department is rejected.

32. Ground No.3 challenges the deletion of the addition made on account of VAT penalty. Here, the AO found that the assessee had debited, an amount of Rs.3,710/- on account of VAT penalty. On query, the assessee submitted that this expenditure was compensatory in nature. The AO, however, held the VAT penalty to be penal in nature, having

arising due to a penalty on the part of the assessee for not making deposit within the stipulated time. The ld. CIT(A) has held the penalty to be in the nature of a fine which is compensatory. The ld. CIT(A), to hold this, followed "Lachhmandas Mathuradas", 254 ITR 799 (S.C.) and "Gillco Developers & Builders Pvt. Ltd. Vs DCIT" 175 TTJ 81 (CHD).

33. Before us, the Department has not been able to make out any case as to how the ld. CIT(A) is wrong in holding the penalty in question to be compensatory payment. No decision contrary to those relied on by the ld. CIT(A) has been cited before us. Therefore, finding no error therein, the Commissioner's action of deleting the addition is confirmed while allowing Ground No.3.

Ground Nos. 4,5 and 6

34. These grounds concern the addition on account of application money paid by the assessee to HUDA and advances made to "M/s Zeal Exim P.Ltd."(supra).

34.1 Regarding the application money paid to HUDA, the ld. CIT(A), for the year under consideration, has deleted the disallowance made by the AO by following the CIT(A)'s order for assessment year 2013-14, where the assessee had

contended that the amount had been paid from the assessee's Current Account in HDFC Bank, in January,2012. The ld. CIT(A) observed that since the funds had been invested from the assessee's Current Account, in which, the assessee's own funds were deposited, it could not be said that borrowed funds were used for making the advance; that no interest was payable by the assessee of this money; and that therefore, the disallowance of interest on this score had not been correctly made by the AO. The ld. CIT(A) deleted the addition.

34.2 While doing so, the ld. CIT(A) found no difference in the facts for both the years, i.e.,, assessment year 2013-14 and 2014-15.

35. For assessment year 2013-14, the above deletion of disallowance of application money paid to HUDA was not challenged by the Department before the Tribunal. The facts on this issue for both, assessment year 2013-14 and assessment year 2014-15 are the same. The amount involved in both the years is the same, i.e., Rs.6,40,000/-.

35.1 By way of Ground No.4, the Department has alleged that the ld. CIT(A) has erred in deleting the addition

by observing that the assessee made advances from the Current Account representing the non-interest bearing funds, ignoring that the Current Account is mixed kitty account where interest bearing and interest free funds can be parked for further payment. This position can well be verified and the AO is directed to ascertain the position of availability of the funds of the assessee exceeding the advances as alleged and to grant relief to the assessee in accordance with law.

35.2 So far as regards the advances made to "M/s Zeal Exim P.Ltd."(supra), the AO made the same disallowance of Rs.9,50,000/-, as for assessment year 2013-14. For assessment year 2012-13, the ld. CIT(A) had confirmed the disallowance. However, the Tribunal, vide order dated 28.11.2017, had deleted the disallowance holding that sufficient interest free funds were available with the assessee. Finding the facts to be similar for assessment year 2014-15, the ld. CIT(A), following the aforesaid Tribunal order for assessment year 2012-13, has deleted the disallowance.

35.3 Again, facts on this issue are the same for assessment years 2011-12, 2012-13, 2013-14 and 2014-15. So, for assessment year 2014-15 also, the AO is directed to ascertain the position of availability of the funds of the assessee exceeding the advances as alleged and to grant relief to the assessee in accordance with law. Ground Nos. 4, 5 and 6 are, therefore, partly accepted.

35.4. In the result, appeal is partly allowed.

ITA 394/CHD/2019 (Assessee's appeal)

36. This is assessee's appeal for assessment year 2014-15 against the order dated 15.01.2019 of the CIT(A)-1 Chandigarh. The assessee has taken the following grounds of appeal :

> *1. That the order passed under section 250(6) by the Ld. Commissioner of Income Tax (Appeals)-I, Chandigarh in Appeal No. 105 85/16-17 dated 15.01.2019 is contrary to law and facts of the case.*
>
> *2. That in the facts and circumstances of the case, the Ld. Commissioner of Income Tax (Appeals) gravelly erred in sustaining the disallowance of Rs. 56,229/- made by the Ld Assessing officer under Section 36(i)(iii) of the Income Tax Act on advance against the land given by the appellant. Although, the appellant had sufficient interest free funds of its own to make such advances.*

36.1 Ground No. 1 is general.

37. The grievance of the assessee by way of Ground No. 2 is against the action of the ld. CIT(A) in confirming the disallowance of Rs.56,229/- made by the AO under Section 36(1)(iii) of the Act on advance against land given by the assessee. According to ld. Counsel for the assessee, this ought not to have been done since the assessee had sufficient interest free funds of its own to make such advances.

38. The ld. DR has placed reliance on the impugned order.

39. Ground No. 2 is covered by our findings in Ground No. 2 in the assessee's appeal for assessment year 2013-14, in ITA 960/CHD/2017, dealt with by us in the preceding portion of this order. Therefore, following our findings on Ground No. 2 in the assessee's appeal in ITA 960/CHD/2017, the appeal of the assessee in ITA 394/CHD/2019 is treated as allowed for statistical purposes.

40. In the result, the Department’s appeal in ITA No.1033/CHD/2017 for assessment year 2013-14 is dismissed. The assessee's appeal for assessment year 2013-14 in ITA No.960/CHD/2017 is partly allowed. The

Department's appeal for assessment year 2014-15, in ITA No.389/CHD/2019 is partly allowed, and the assessee's appeal for assessment year 2014-15 in ITA No.394/CHD/2019 is treated as allowed for statistical purposes.

Order pronounced on 04.09.2024.

Sd/- Sd/-

(VIKRAM SINGH YADAV)
ACCOUNTANT MEMBER

(A.D.JAIN)
VICE PRESIDENT

"Poonam"

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

1. अपीलार्थी/ The Appellant
2. .प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
5. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar