IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH-H : NEW DELHI

BEFORE SHRI SAKTIJIT DEY, VICE PRESIDENT AND
SHRI M. BALAGANESH, ACCOUNTANT MEMBER

ITA Nos.2444/Del/2022, 2445/Del/2022 & 2446/Del/2022
Assessment Years : 2011-12, 2012-13 & 2016-17

M/s Dabur Invest Corp, 4th Floor, Punjabi Bhawan, 10, Rouse Avenue, New Delhi – 110 002. PAN : AADFD2529G.	Vs.	Joint Commissioner of Income Tax, Range-46, New Delhi.
(Appellant)		(Respondent)

ITA Nos.2450/Del/2022, 2451/Del/2022 & 2452/Del/2022
Assessment Years : 2011-12, 2012-13 & 2016-17

Assistant Commissioner of Income Tax, Circle 46(1), New Delhi.	Vs.	M/s Dabur Invest Corp, 4th Floor, Punjabi Bhawan, 10, Rouse Avenue, New Delhi – 110 002. PAN : AADFD2529G.
(Appellant)		(Respondent)

Assessee by	:	Shri M.P. Rastogi and Shri Shivam Malik Advocates.
Revenue by	:	Shri N.G. Joseph Gangte, CIT-DR.

Date of hearing	:	24.10.2024
Date of pronouncement	:	28.10.2024

ORDER

Per Saktijit Dey, Vice President :

These are three sets of cross-appeals arising out of three separate orders passed by National Faceless Appeal Centre (NFAC), Delhi pertaining to assessment years 2011-12, 2012-13 and 2016-17.

2. The grounds raised in all these appeals are more or less common. The substantive dispute arising in these appeals revolves around two issues –

firstly, validity of reopening of assessment under Section 147 of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') and secondly, the nature of option money received from M/s Commercial Union International Holdings Ltd. (CUIH), whether revenue or capital receipt. Of course, there is an additional issue relating to disallowance under Section 14A of the Act.

3. Before we proceed to deal with the issues, it is necessary to briefly narrate the facts. The assessee, as stated, is a residential partnership firm deriving income from investment in shares, mutual funds, other investments, interest and dividend income. Till the year 2000, the Government of India did not allow any private party to enter into insurance business except the government companies. However, in the year 2001, the Government liberalized its policies and made it open for private parties to enter into insurance business, of course, under the watch and control of Insurance Regulatory & Development Authority (IRDA). Intending to enter into insurance business, assessee entered into a joint venture agreement with CUIH to co-promote a joint venture company for the purpose of regulating their relationship inter se in respect of the company proposed to be floated. As per the agreement, the assessee had to subscribe 74% of the total paid up equity capital of the company, whereas, CUIH had to subscribe 26% of the total paid up capital of the company. As per the agreement, shares could be divested after ten year period, and if CUIH continues to pay the option price on the shares, then the rights/option of CUIH would require the assessee to sell the shares to CUIH shall remain in force.

4. Subsequently, on account of the change in government policy with regard to investment made by foreign enterprises, which is more liberal, CUIH was allowed by Foreign Investment Promotion Board (FIPB) to increase its shareholding in M/s Aviva Life Insurance Co. (India) Ltd. from 26% to 49% by way of transfer of 23% shareholding currently held by the assessee for a consideration of ₹940 Crores subject to the condition that the investment will be made out of the remittance of foreign exchange received through normal banking channels in terms of RBI Notification dated 3rd May, 2000 and subject to compliance with IRDA Rules and Regulations. In terms with the agreement

and acquisition of shares, the assessee continued to receive option money from CUIH, which the assessee capitalized in its accounts. In the notes on accounts, the assessee disclosed the accounting treatment and also mentioned that such option money is to be adjusted against the reduction of shareholding in Aviva Life Insurance Co. (P) Ltd. in favour of CUIH and revenue will be accounted for in the year of transfer of shares. Thus, the assessee filed its return of income from assessment year 2005-06 onwards treating the option money received from CUIH as capital receipt. In fact, in assessments completed under Section 143(3) of the Act, for assessment year 2005-06, 2006-07 and 2008-09, the Assessing Officer accepted assessee's claim. Even, in the impugned assessment years, assessee filed its return of income treating the option money received from CUIH as capital receipt. In fact, while completing assessments under Section 143(3) of the Act for these assessment years, the Assessing Officer accepted assessee's claim. However, while taking up the assessment proceedings for assessment year 2015-16, the Assessing Officer changed his stance and upon interpreting the joint venture agreement and relying upon the decision of the Coordinate Bench in the case of Mahindra Telecommunication Investment Pvt. Ltd. Vs. ITO – 180 TTJ 434, he held that the option money received from CUIH is revenue in nature and has to be treated as business income. Accordingly, he brought such receipt to tax.

5. Based on the view taken in assessment year 2015-16 by the Assessing Officer, the Commissioner of Income-tax initiated proceedings under Section 263 of the Act in assessment year 2013-14 and 2014-15 and set aside the assessment orders with a direction to pass fresh assessment orders following the view taken by the Assessing Officer in assessment year 2015-16. Based on the assessment order for assessment year 2015-16 and the orders passed under Section 263 of the Act for assessment years 2013-14 and 2014-15, the Assessing Officer reopened the assessments for the impugned assessment years under Section 147 of the Act, being of the view that the option money received from CUIH, being in the nature of revenue receipt, has to be brought to tax, ultimately, the Assessing Officer passed the assessment orders bringing to tax the option money received from CUIH.

6. Though the assessee contested the assessment orders, both on the validity of reopening of assessment as well as on merits, however, learned first appellate authority did not entertain assessee's grounds on validity of reopening of assessment. However, learned first appellate authority agreed with the assessee that the option money received from CUIH is capital receipt. Nevertheless, he held that since the interest expenses on secured and unsecured loans capitalized by the assessee were taken from sister concern and related parties at higher rate of interest, while assessee's own funds were lying idle, the capitalized interest expenses have to be disallowed.

7. Being aggrieved with the aforesaid decision of learned first appellate authority, both the assessee and Revenue are in appeal before us.

8. Before us, learned counsel for the assessee, at the very outset, submitted that the foundation on which the Assessing Officer reopened the assessment under Section 147 of the Act stands obliterated by the decisions of the Tribunal. He submitted, not only the Tribunal has quashed the orders passed under Section 263 of the Act for assessment year 2013-14 and 2014-15 holding that the option money received by the assessee from CUIH as capital receipt, even the addition of option money made by the Assessing Officer in assessment year 2015-16 has been deleted by the Tribunal while deciding assessee's appeal. Thus, he submitted, in view of the decisions of the Tribunal, the very foundation for reason to believe by the Assessing Officer has gone. Hence, the reassessment proceedings have been rendered invalid. He submitted, in assessee's own case in assessment year 2022-23, the Assessing Officer, while completing assessment under Section 143(3) of the Act, has himself followed the decision of the Tribunal in assessment year 2015-16 and held that the option money received from CUIH is capital receipt and can only be taxed when the resultant capital gain arises from sale of shares.

9. Learned DR strongly relied upon the observations of the Assessing Officer and learned first appellate authority. He further submitted that the

Department has not accepted the decisions of the Tribunal in assessment year 2015-16.

10. We have considered rival submissions and perused the materials on record. On going through the reasons for reopening of assessment recorded by the Assessing Officer, which are identical in all the assessment years under dispute, it is very much clear that the basis for reopening is to assess the option money received by the assessee from CUIH. The belief formed by the Assessing Officer that option money received by the assessee has to be treated as revenue receipt is entirely based on the view taken by the Assessing Officer in assessment year 2015-16 while concluding that the option money received from CUIH is revenue receipt and not capital receipt as claimed by the assessee, as also, the orders passed under Section 263 of the Act for assessment year 2013-14 and 2014-15. Undisputedly, while deciding the appeal of the assessee contesting the view taken by the Assessing Officer in assessment year 2015-16, the Tribunal, in ITA No.8058/Del/2018 dated 11th February, 2021 has held the option money received by the assessee as capital receipt, which requires adjustment only at the time of transfer of shares by CUIH while working out the resultant capital gain thereon :-

> *"71. In view of this, ground number 1 and 2 of the appeal of the assessee is allowed holding that the option money received by the assessee is capital receipt which requires an adjustment only at the time of transfer of the shares by Dabur to CUIH while working out resultant capital gain thereon."*

11. Inasmuch as, while deciding assessee's appeals against the orders passed under Section 263 of the Act for assessment year 2013-14 and 2014-15, the Tribunal, in ITA No.1763 & 1764/Del/2018 dated 11th March, 2019, has expressed similar view while quashing the orders passed under Section 263 of the Act. The Tribunal has very clearly and categorically held that the option money received by the assessee is capital in nature. While coming to such conclusion, the Tribunal also took note of the fact that on actual transfer

of shares to CUIH in financial year 2016-17, the resultant capital gain would arise. It is also material to note that while completing assessment under Section 143(3) of the Act in assessee's own case in assessment year 2022-23,the Assessing Officer himself in assessment order dated 23rd March, 2024, has followed the decision of the Tribunal in assessment year 2015-16 and held that the option money received is in the nature of capital receipt.

12. Viewed in the aforesaid perspective, the very basis of reopening of assessment under Section 147 of the Act relying upon the assessment order passed for assessment year 2015-16 and orders passed under Section 263 of the Act for assessment year 2013-14 and 2014-15, in our view, is unsustainable. When the Tribunal, while dealing with the issue relating to nature of option money on two different occasions has clearly and categorically held that the receipts are in the nature of capital receipt, the very basis for reopening of assessment stands obliterated. In any case of the matter, while completing the original assessments, the Assessing Officer has treated the option money as capital receipts. Therefore, the reopening of assessment under Section 147 of the Act merely to treat the option money as revenue receipt is nothing but pure change of opinion. Thus, in our view, the assumption of jurisdiction under Section 147 of the Act in all these years is invalid. Accordingly, we quash the assessment orders passed for the impugned assessment years. All the appeals are allowed on legal grounds.

13. In the result, the appeals of the assessee are allowed whereas the appeals of the Revenue, having become infructuous, are dismissed.

Above decision was pronounced in the open Court on 28th October, 2024.

Sd/-	Sd/-
(M. BALAGANESH)	**(SAKTIJIT DEY)**
ACCOUNTANT MEMBER	**VICE PRESIDENT**

VK.

Copy forwarded to: -

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT

Assistant Registrar