आयकर अपीलीय अधिकरण,"एच" न्यायपीठ, मुंबई
IN THE INCOME TAX APPELLATE TRIBUNAL "H" BENCH, MUMBAI

श्री बी. आर. बास्करन, लेखा सदस्य यवं श्री अमरजीत सिंह, न्यायिक सदस्य, के समक्ष
BEFORE S/SHRI B.R.BASKARAN, ACCOUNTANT MEMBER
AND AMARJIT SINGH, JUDICIAL MEMBER

आयकर अपील सं/ I.T.A. No.6199/M/2011 & I.T.A. No. 8469/M/2011
(**निर्धारण वर्ष /** Assessment Year: 2007-08 & 2008-09)

TML Drivelines Limited (earlier known as HV Axles Limited), 3rd Floor, Nanavati Mahalaya, 18, Homi Mody Street, Hutatma Chowk, Mumbai - 400001	**बनाम**/ Vs.	Dy. Commissioner of Income Tax 2(1) Aayakar Bhavan, M.K.Marg, Mumbai - 400020

आयकर अपील सं/ I.T.A. No. 8324/M/2011
(**निर्धारण वर्ष /** Assessment Year: 2008-09)

Dy. Commissioner of Income Tax 2(1) Aayakar Bhavan, M.K.Marg, Mumbai - 400020	**बनाम**/ Vs.	TML Drivelines Limited (earlier known as HV Axles Limited) 3rd Floor, Nanavati Mahalaya, 18, Homi Mody Street, Hutatma Chowk, Mumbai - 400001
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACH7625P		
(अपीलार्थी **/Appellant**)	..	(प्रत्यर्थी / **Respondent**)

Assessee by:	Ms. Aarti Sathe
Department by:	Shri Vijay Kumar Sone

सुनवाई की तारीख / Date of Hearing: 05.01.2016
घोषणा की तारीख /Date of Pronouncement: 18.05.2016
आदेश / O R D E R

PER AMARJIT SINGH, JM:

This order shall disposed of above mentioned three appeals filed by the assessee as well as revenue. Since the said appeals issues are the same and the matter of controversy is also similar in nature therefore these appeals are being taken up together for adjudication for the sake of convenience.

2. The assessee M/s. H.V.Axles is engaged in the Manufacturing of automobile and auto parts. The assessment of the assessee was completed by the order dated 15.12.2010 for A.Y.2007-08 and 31.12.2010 for A.Y.2008-09. The assessee challenged the disallowance u/s. 14 of the Income Tax Act, 1961(in short "the Act") before the Commissioner of Income Tax (Appeals)-4, Mumbai [hereinafter referred to as the "CIT(A)"] which was confirmed therefore the assessee has filed the present appeal before us.

ITA NO. 6199/Mum/2011 & 8469/Mum/2011

3. We have heard the arguments advanced by the learned representative of the parties and perused the record. Learned representative of the assessee has argued that no administrative

expenses were incurred to earn the exempt income therefore no expenses are required to be deducted in view of the provision u/s.14A of the Act. It is also argued that the learned Assessing Officer had failed to do any exercise to connect the expenses incurred to earn the exempt income therefore in the said circumstances the expenditure which were not incurred to earn exempt income is not required to be assessed in view of the provision of section 14A of the Act. It is also argued that the Assessing Officer did not examine the correctness of the claim of the assessee with regard to incurring the expenditure to earn the exempt income whereas it seems to be utilized on his own fund to earn the exempt income therefore the expenditure is not liable to be disallowed in provision in section 14A of the Act. Reliance placed upon the law settled in [2009] 313 ITR 340 (Bom) in the case of Bombay Commissioner of Income Tax Vs. Reliance Utilities and Power Ltd. However, on the other hand learned representative of the department has refuted the said contentions. On appraisal of the order in question it came into the notice that for the A.Y.2007-08 the assessee has claimed exemption of dividend income to the tune of Rs.45,92,284/- and for the A.Y.2008-09 the assessee has claimed the exemption of dividend income to the tune of Rs.2,39,43,775/-. However, no expenses have been shown to be incurred to earn the said exempt income. The Assessing Officer applied the observations made in the case of Godrej & Boyce Mfg. Co. Ltd. Vs. Dy. CIT [2010] 194 taxman 203 decided by the Hon'ble Bombay High Court.

Both the orders nowhere speaks about the expenses incurred to earn the exempt income specifically. The balance sheet of both the years are on the file as annexure -1 and 2 which speaks that the assessee was having sufficient surplus amount in comparison to the investment made in mutual fund to earn the exempt income. Therefore, the said circumstances and in view of the above mentioned law settled in [2009] 313 ITR 340 (Bom) in the case of Bombay Commissioner of Income Tax Vs. Reliance Utilities and Power Ltd. We are of the view that the claim of the assessee is required to be examined a fresh in accordance with law. Therefore the finding of the learned CIT(A) on this account has been ordered to be set aside and learned Assessing Officer is hereby directed to decided the matter afresh in accordance with law. This issue is decided in favour of the Assessee against the Revenue. In the result the appeals of the assessee are allowed.

ITA NO. 8324/Mum/2011

4. The sole point which has been raised by the revenue is that the learned CIT(A) has failed to appreciate the provisions of explanation 6 to sub-section (1) of section 43 of the Act where used plant and machinery is transferred from the holding company to subsidiary company, the WDV in the books or in the block of assets of the transferor company shall be considered as the actual cost in the hand of the transferee company in respect of such assets. In this regard the finding of the learned CIT(A) is hereby mentioned below:-

"The Assessing Officer has applied the provisions of section 47(iv) of the Act to consider the nature of transfer and thereby applied the Explanation 6 to sub-section (1) of section 43 for the purpose of working out the actual cost to the subsidiary company. Explanation 6 to sub-section (1) of section 43 provides as under:

"Explanation 6 to sub-section (1) : When any capital asset is transferred by a holding company to its subsidiary company or by a subsidiary company to its holding company, then, if the conditions of clause (iv) or, as the case may be, of clause (v) of section 47 are satisfied, the actual cost of the transferred capital asset to the transferee company shall be taken to be the same as it would have been if the transferor company had continued to hold the capital assets for the purpose of its subsidiary."

Where a 100 per cent holding company of a subsidiary company transfer certain assets to such subsidiary company even for a price or consideration higher than the WDV, the capital gains on such transfer has been exempted under section 47(iv). The reason being the identity of the ownership of the companies precluded its being considered as involving any gain to the transferor company. As capital gain was exempt in the hands of the transferor company and in order to ensure that the

transferee company does not claim depreciation on a higher cost, it was provided by the insertion of Explanation (6) to sub-section (1) of section 43 of the Act, that in such cases the WDV in the hands of the transferor company, shall be the cost of Acquisition in the hands of the transferee company. The Assessing Officer's action is right as far as the situation as on the date of transfer is concerned. But by 30-9-1994, the assessee company ceased to be the subsidiary of the transferor holding company. Section 47 grants exemption from section 45 while section 47A withdraws the exemption granted under section 47 on the occurrence of the events mentioned therein. Section 47 reads as under:-

"47. Nothing contained in section 45 shall apply to the following transfers:

(i) to (iii) **	**	**

(iv) any transfer of a capital asset by a company to its subsidiary company, if—

(a) The parent company or its nominees hold the whole of the share capital of the subsidiary company, and
(b) The subsidiary company is an Indian company,"

Clause (ii) of section 47A provides that the exemption granted under section 47 shall be withdrawn if the

subsidiary company ceases to be so from the holding company within a period of 8 years from the date of transfer of the capital asset and it shall be treated as the income of the year in which the transfer has taken place. The fact that the assessee has ceased to be the subsidiary of the holding company on 30-09-1994 was brought to the notice of the Assessing Officer during the assessment proceedings but he rejected the same on the ground that the subsequent events will not have e any material change with respect to changing of cost of acquisition of the capital assets acquired from the holding company. But, in our opinion, the Assessing Officer should have considered the subsequent events. The application of the provisions of section 47 is not final but is subject to the occurrence of events under section 47A. if the events mentioned in section 47A occur, the exemptions granted under section 47 of the Income-tax Act are withdrawn. What is the effect of such withdrawals? In the case of the transferor company, the income is to be treated as the income of the year in which the transfer has taken place. This shows that the subsequent event has the effect of withdrawing the emption granted under section 47 and the income goes back to the date of transfer. Thus, provisions of section 47 are withdrawn on occurrence of the events mentioned under section 47A and the transaction has to be treated as a transfer under section 47(v) or (vi) of the Act as the case may be and the transferor company is liable to pay the capital gains tax. In the present case due to ceasure of the assessee-company

being a subsidiary of the transferor company, the provisions of section 47(iv) have ceased to apply, and the transaction has to be considered as a transfer. Section 47A provides for the withdrawal of exemption and the resultant treatment to be given to the income in the hands of the transferor company. What is the consequential effect on the transferee company? What should be the value of cost of acquisition in its hands? The answer lies in section 49(3). Section 49(3) reads as under:--

"49(3) Notwithstanding anything contained in sub-section (1) where the capital gain arising from the transfer of a capital asset referred to in clause (iv) or, as the case may be, clause (v) of section 47 is deemed to be income chargeable under the head "Capital gains" by virtue of the provisions contained in section 47A, the cost of acquisition of such asset to the transferee company shall be the cost for which such asset was acquired by it."

Sub-section(3) provides that in the hands of the transferee, the valuation/cost of the asset regarding which the exemption granted under section 47(iv) has been withdrawn under section 47A of the Act, it shall be the cost for which such asset was acquired by it. Thus, in the present case, the cost for which the assessee has acquired the asset should be the cost of acquisition for the purpose of computation of deprecation."

The decision in the case of Essar Oil Ltd. as above squarely covered the case of the assessee. Therefore, the A.O. is directed to take the cost of acquisition of such assets as have been acquired by it from

M/s. Tata Motors Ltd. at the cost at which they have been acquired means the actual consideration paid by the assessee company and accordingly allow the depreciation claimed by the assessee. In result, the ground of appeal is allowed."

5. It is clear that the finding of the learned CIT(A) is based upon the observations made in Essar Oil Limited Vs. Deputy Commissioner of Income Tax, Special Range, 27 [2007] 13 SOT 691, Income Tax Appellate Tribunal, Mumbai "D" bench and the finding of the said judgment has duly been confirmed by the Jurisdictional Bombay High Court in ITA No.3160 of 2009 in case Commissioner of Income Tax 5 Vs. M/s. Essar Oil Ltd. decided on 7th July, 2011. Considering the facts of the case before us we agree that the case of the assessee is duly covered by the case of Essar Oil Ltd. (Supra). Therefore, we do not find any infirmity and illegality in the finding given by the learned CIT(A), hence we dismissed the appeal filed by the revenue.

7. Accordingly, appeals of the Assessee are hereby allowed and appeal of the Revenue is hereby dismissed.

Order pronounced in the open court on 18th May, 2016

Sd/-	Sd/-
(B.R.BASKARAN)	(AMARJIT SINGH)
लेखा सदस्य / ACCOUNTANT MEMBER	न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 18th May, 2016

MP

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

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

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई **/ ITAT, Mumbai**