आयकर अपीलीय अधिकरण,चण्डीगढ़ न्यायपीठ "ए", चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL,
CHANDIGARH BENCH 'A', CHANDIGARH

श्रीमती दिवा सिंह, न्यायकि सदस्य एवं श्रीमती अन्नपूर्णा गुप्ता, लेखा सदस्य
BEFORE SMT.DIVA SINGH, JUDICIAL MEMBER
AND SMT.ANNAPURNA GUPTA, ACCOUNTANT MEMBER

आयकर अपील सं./ **ITA No.1174/Chd/2017**
निर्धारण वर्ष / Assessment Year : 2013-14

M/s Knitwell India Pvt. Ltd., Plot No.278, Industrial Area-II, Chandigarh.	बनाम	The D.C.I.T., Circle 1(1), Chandigarh.
स्थायी लेखा सं./PAN NO: AACCK4673L		

निर्धारिती की ओर से/Assessee by: Shri Parikshit Aggarwa, CA
राजस्व की ओर से/ Revenue by : Smt.Chanderkanta, SR.DR

सुनवाई की तारीख/Date of Hearing : 27.11.2018
उदघोषणा की तारीख/Date of Pronouncement: 06.02.2019

आदश/ORDER

Per Annapurna Gupta, Accountant Member

The present appeal has been filed by the assessee against the order of the Commissioner of Income Tax (Appeals)-1, Gurgaon (in short 'CIT(A)' dated 22.5.2017 passed u/s 250(6) of the Income Tax At, 1961 (hereinafter referred to as 'Act').

2. Ground Nos.1 and 4 raised by the assessee are general in nature and, hence no adjudication is required.

3. Ground No.2 raised by the assessee reads as under:

> *"2. That on law, facts and circumstances of the case, the Worthy CIT (A) was not justified in confirming the action of the Ld. AO, whereby Ld. AO has erred in making addition of Rs. 22,28,644/- u/s 36(l)(iii) of the Income Tax Act on account of certain advances given."*

4. The assessee in the above ground has challenged the disallowance of interest made u/s 36(1)(iii) of the Act amounting to Rs.22,28,644/-. The facts relating to the same are that the A.O., during assessment proceedings had noted that the assessee had given advance of Rs.2,06,39,953/- to various persons for purchase of plots/flats. The A.O. further noted that no interest was charged on this advance and the advance had no business purpose also. Accordingly, the assessee was asked to explain why proportionate interest on the same may not be disallowed. After considering the assessee's submissions and relying on the decision of the Hon'ble Jurisdictional High Court in the case of CIT Vs. Abhishek Industries Ltd., 286 ITR 1 (P&H), the A.O. disallowed the proportionate interest on this advance and computed the same on the basis of day-to-day balance at Rs.22,28,644/-.

5. The matter was carried in appeal before the Ld.CIT(A), where copy of the bank account from which the advance was given was asked to be furnished. It was noted therefrom that the advance had been made out of Cash Credit bank account of the assessee. The assessee was confronted as to why disallowance should not be confirmed, to which the assessee

contended that all types of funds including interest free funds in the shape of share capital, sale proceeds of goods, collection of debtors, etc. had been credited to this account and, therefore had been utilized for making the impugned advances. The Ld.CIT(A) was not convinced with the explanation of the assessee and stated that since the advance was given for non business purpose out of interest bearing Cash Credit account, it was evident that the borrowed funds had been used for non business purposes and accordingly, upheld the disallowance of interest made by the A.O. The relevant findings of the Ld CIT(A) at para 5.6 of his order are as under:

> *"5.6 I have carefully considered the appellant's submissions. It is evident from the facts recorded above that the advance was given for non business purpose without charging any interest. Further it is also evident from the submissions of the appellant that the advance was given from CC account which is an interest bearing account. At n stage was there any credit balance in this account. It is therefore evident that borrowed funds in the form of funds from CC limit account were diverted fro non business purpose without charging any interest. The AO was therefore fully justified for disallowing the proportionate interest on these advances. As regards, the rate of interest for the purpose of disallowance is concerned, it is evident from the facts recorded above that all the advances were given from CC limit accounts. Therefore, the disallowance in this case is required to be made @ interest paid by the appellant on the CC limit account. The AO is directed to recompute the disallowance accordingly. This ground of appeal is partly allowed."*

6. Before us, the Ld. counsel for assessee reiterated the contentions made before the Ld.CIT(A) stating that it had enough own interest free funds for making the advances. It was pointed out that while the advances given amounted to Rs.2,06,39,953/-, the assessee had made profits during the year amounting to Rs.4 crores which was more than sufficient for making the impugned advances. It was further pointed out that funds had been transferred from its current account maintained in bank ,on which no interest was charged, to the Cash Credit account before making the impugned advances. Our attention was drawn to Paper Book page Nos.109 and 110 which was the copy of the Cash Credit account of the assessee and it was pointed out therefrom that on 18.5.2012 and 22.5.2012 amounts of Rs.1.53 crores and Rs.7.80 lacs respectively were transferred from the current account to the Cash Credit account and immediately thereafter on 25.6.2012, payment was made for two projects, which was reflected at Paper Book page No.111. Our attention was also drawn to Paper Book page No.112 showing a transfer of Rs.1.70 crores from the current account to the Cash Credit account. The Ld. counsel for assessee also drew our attention to the relevant entries of transfer of money from the current account to the Cash Credit account reflected at page Nos.134, 135, 150, 151, 184, 187 and 189. The Ld. counsel for assessee contended, therefore, that the payments were

made from CC account only after transfer of interest free funds from the current account and in the light of the fact that sufficient own interest free funds were available with the assessee, it was to be presumed that the same were used for the purpose of making the investment warranting no disallowance of interest u/s 36(1)(iii) of the Act. The Ld.Counsel for the assessee relied upon the decision of the Hon'ble Apex Court in the case of Munjal Sales Corporation Vs. CIT & Anr. Reported in 298 ITR 298 in support of its above contentions. The Ld. counsel for assessee further relied upon the recent decision of the ITAT Chandigarh Bench in the case of ACIT Vs. M/s Janak Global Resources Pvt. Ltd. in ITA No.470/Chd/2018 in support of its contention that in the light of availability of own funds, the presumption was that non business interest free investments have been made out of the same. The Ld. counsel for assessee pointed out that in the said decision the I.T.A.T. had dealt with the decision of the Hon'ble Jurisdictional High Court in the case of Avon Cycles Ltd. Vs. CIT in ITA No.227 of 20913 dated 20.8.2014, wherein it had been held that where mixed funds were available with the assessee, the disallowance of interest was warranted and had distinguished the same stating that the decision of the Hon'ble Apex Court in the case of Hero Cycles (P) Ltd. Vs. CIT in Civil Appeal No.514 of 2008 dated 5.11.2015 was the law of the land. Our attention

was drawn to the findings of the I.T.A.T. at para 16 of the order as under:

> *"16. In view of the above, we hold that the decision of the Hon'ble Apex Court in the case of Avon Cycles Ltd.(supra) does not displace the presumption theory which has been upheld by the Hon'ble Apex Court in the case of Hero Cycles Pvt. Ltd. (supra) and the same still holds. In view of the above, since the Ld.CIT(Appeals), we find, has allowed the assessee's appeal deleting the disallowance of interest made on finding that it had sufficient own interest free funds for making the investment, which fact has not been controverted by the Revenue, we see no reason to interfere in the order of the Ld.CIT(Appeals) and the ground raised by the Revenue, therefore, is dismissed."*

7. The Ld. DR, on the other hand, relied upon the order of the CIT(A) stating that since clearly advance had been made out of interest bearing CC account, direct nexus of the usage of interest bearing funds had been established and, therefore, disallowance of interest was justified The Ld. DR further stated that the decision of the Hon'ble Punjab & Haryana High Court in the case of Avon Cycles Ltd. (supra), confirming the mixed funds theory was applicable in the present case since it has been upheld by the Hon'ble Apex Court in its decision in the Group Cases with the lead case being Maxopp Investment Ltd. Vs. CIT (2018) 402 ITR 640. The Ld. DR stated that reliance placed by the Ld. counsel for assessee on he decision of the ITAT Chandigarh Bench in the case of M/s Janak Global Resources Pvt. Ltd. (supra) was misplaced since the decision had been rendered on the mis-appreciation of facts on the decision of the

Hon'ble Supreme Court in the case of Hero Cycles Pvt. Ltd. (supra). It was further contended that the decision relied upon by the Ld. counsel for assessee in the case of Munjal Sales Corporation (supra) was also not applicable since the main issue there was the scope of ambit of section 40(b)(iv) vis-à-vis section 36(1)(iii) of the Act and not the issue of mixed fund concept, presumption or direct nexus through bank account which is the issue in the present case. The Ld. DR, therefore, vehemently supported the order of the Ld.CIT(A).

8. We have heard the rival contentions, carefully perused the orders of the authorities below and also gone through various decisions relied upon by both the parties. The issue before us pertains to disallowance of interest u/s 36(1)(iii) of the Act and the fact that the assessee had made investment of Rs.2,06,39,953/- by way of advance for purchase of plots/flats is not disputed. Also not disputed is the fact that the advances had been made out of the interest bearing Cash Credit account of the assessee. The Ld. counsel for assessee has raised no arguments against the findings of the lower authorities that the advance had no business purpose. Therefore, it is an admitted fact that there was no business purpose for making the impugned advance for purchase of plots/flats. Admittedly, no interest had been charged

on the impugned advance also. We find that the assessee's sole contention and argument against the disallowance is that it had used its own interest free funds for making the advances. The assessee had raised this argument before the Ld.CIT(A) and before us has also demonstrated this fact by pointing out that it had made profits to the tune of Rs.4 crores during the year while the advances made amounted to only Rs.2.06 crores. The assessee has also demonstrated through copy of its bank account that it had transferred interest free funds from its current account to its cash credit account before making the impugned advances, thus demonstrating the nexus between interest free funds and advance so made. The Ld.CIT(A) has confirmed the disallowance by simply stating that the funds from the interest bearing Cash Credit account have been used for making the advances and therefore, there was direct nexus between the interest bearing funds and advances made.

9. In the light of the contentions made by the Ld.Counsel for the assessee as above, the findings of the Ld.CIT(A), we hold, are incorrect.The proposition laid down by the Hon'ble Apex court in the case of Hero Cycles 379 ITR 347(SC) that where sufficient own funds are available,the presumption is that the same were used for making interest free non business

advances (referred to as “presumption theory”) calling for no disallowance of interest u/s 36(1)(iii) of the Act, is the law of the land.The decision of then apex court in the case of Avon Cycles(supra) is distinguishable since it was rendered in the context of apportionment of expenses for the purpose of computing disallowance to be made of expenses incurred for earning exempt income u/s 14A of the Act, on the limited set of facts of mixed funds available with the assessee. The issue before the Hon'ble Apex Court in the said case was not whether in the light of availability of sufficient own funds, the presumption that the own funds were employed for making the investment earning exempt income, was available or not. No discussion on this aspect has been done by the Hon ble Apex Court on this issue who have merely noted that the assessee had utilized mixed funds and therefore, held that the principle of apportionment of expenses would apply. The proposition, therefore, laid down in the case of Avon Cycles Ltd. (supra) has to be restricted to the extent of the issue before the Hon'ble Apex Court and the facts before it and not beyond that. It cannot be stretched to be addressing the fact situation where sufficient own interest free funds were available with the assessee which fact was not there before the Hon'ble Apex Court in the said case and which was neither the question raised before it and, therefore,

not addressed by it also. The Hon'ble Apex Court in the case of CIT Vs. Sun Engineering Works Pvt. Ltd., 198 ITR 297 has held that the judgments have to be considered in the context in which they are made and in the light of question that was there before the Court. In the case of Goodyear India Ltld. & Other Vs. State of Haryana & Another reported in 188 ITR 402 (1991) the Hon'ble Apex Court has held that a decision on a question that has not been argued cannot be treated as a precedent. The Hon'ble Kerala High Court in the case of CIT Vs. K Rama Krishana (1993) 202 ITR 997 has held that a precedent is an authority only for what it actually decides and not for what cannot remotely or even logically follow from it. In view of the same, we have not hesitation in holding that the proposition laid down by the Hon'ble Apex Court in the case of Avon Cycles Ltd. (supra) will not apply. On the contrary the decision of the Hon'ble Apex Court in the case of Hero Cycles (supra) categorically laying down that where sufficient own funds are available, the presumption is that the same have been utilized for the purpose of making the advance will hold fort.

The argument of the Ld.DR against the decision of the ITAT in the case of Janak Global(supra) is unacceptable ,since the Ld.DR has only pointed out fallacies in the decision passed by the ITAT. This is

not the appropriate forum for addressing fallacies in orders passed by the coordinate bench in other cases and the Revenue is at liberty to take appropriate steps as prescribed by law to address such a situation. Be as it may, with no distinguishing facts having been brought to our notice in the case of Janak Global(supra) by the Ld.DR, the ratio laid down in the said decision will have to be followed by us, being decision of a coordinate Bench of the I.T.A.T., authored by one of us.

10. In the present case, as stated above, the assessee has demonstrated availability of sufficient own funds by pointing out that while the interest free advances given amounted to Rs.2,06,39,953/-, the assessee had made profits during the yea amounting to Rs.4 crores which was more than sufficient for making the impugned advances. These facts have remained uncontroverted before us. Further the assessee has all along contended that the Cash Credit account from which advances were made contained mixed funds with interest free funds being deposited immediately before the impugned advances being made.

11. In the light of these facts, we find, that the Ld.CIT(A) has taken a microscopic view of the entire issue resting his findings only on the fact that CC account is an interest bearing account. The fact that sufficient own funds were available with the assessee and they were in fact used for

making the advance established the user of interest free funds for making the impugned advances calling for no disallowance of interest. But we find that despite specific pleading made by the assessee in this regard the same was not addressed by the Ld.CIT(A).Therefore the fact of interest free funds from the current account of the assessee being used for making the impugned advances, by transferring them to the cash credit account before the giving of advance ,as shown by the Ld.Counsel for the assessee before us, needs verification and examination. We therefore consider it fit to restore the issue back to the CIT(A) to examine, verify and consider the contention of the assessee and thereafter to decide the issue in accordance with law.

Ground of appeal No.2 therefore is allowed for statistical purposes

12. Ground No.3 raised by the assessee reads as under:

> *"3. That on law, facts and circumstances of the case, the Worthy CIT(A) was not justified in partly regarding disallowance made u/s 14A even when the disallowance should have been totally deleted.*

13. The assessee in the above ground has challenged the disallowance of expenses made u/s 14A purportedly incurred for the purpose of earning exempt income.

14. Brief facts relevant to the issue are that during assessment proceedings, the A.O. noted that the assessee had made investment of Rs.2,97,66,540/- in mutual funds, income from which was exempt. The A.O. further noted that the assessee had earned exempt income of Rs.3,47,582/- during the year. The A.O. asked the assessee to explain why the expenditure incurred in relation to earning of exempt income should not be disallowed u/s 14A of the Act. After considering the assessee's submissions on this issue, the A.O. held the assessee the expenditure incurred in relation to earning the exempt income was required to be disallowed u/s 14A of the Act. The A.O. computed the disallowance under Rule 8D(ii) of the Income Tax Rules, 1962 @ Rs.66,013/- and under Rule 8D(iii) of the Rules @ Rs.1,48,768/-. The total disallowance of Rs.2,14,781/- was accordingly made.

15. Before the Ld.CIT(A), the assessee contended that identical disallowance made in the preceding year i.e. assessment year 2011-12 had been deleted by the CIT(A) since it was found that the investments were made out of current account and not out of any borrowed funds and, therefore, the opening balances could not be considered for the purpose of disallowance u/s 14A of the Act. It was further pointed out that the investment made during the year was all made from the current account except for one

transaction of Rs.5 lacs made from Cash Credit bank account. Therefore, even these investments did not call for any disallowance of interest u/s 14A of the Act. As far the investment made out of Cash Credit account of Rs.5 lacs, it was contended that since the assessee had sufficient interest free funds, no disallowance was warranted. The Ld.CIT(A) found merit in the contention of the assessee vis-à-vis no disallowance of interest to be made on the opening balance of investments and the investments made during the year from the current account of the assessee. He, therefore, deleted the interest disallowed in relation to these investments. For the investment made out of the Cash Credit account of the assessee amounting to Rs.5 lacs, he confirmed the disallowance of interest on proportionate basis. Further since no submissions were made regarding disallowance of expenses under Rule 8D(iii), the same was also upheld. The relevant findings of the CIT(A) at paras 4.3 and 4.4 of his order are as under:

> *"4.3 I have carefully considered the appellant's submissions. As per the submissions filed by the appellant only an amount of Rs.5 lakhs was invested out of borrowed funds interest he form of CC bank account on 20/01/013. The remaining investments were made out of appellant's own funds. It is therefore apparent that no mized funds were used for purpose of making investment in shares/mutual fund. Moreover, as submitted by the appellant similar disallowance made in appellant's own case for AY 2011-12 has been deleted by the CIT(A). In these circumstances, it is held that the disallowance made by the AO under rule*

8D(ii) is not justified and the same is therefore deleted. As regards, the disallowance under rule 8D(iii) is concerned, the appellant has not given any justification with regard to the disallowance. It is not the appellant's case that no administrative expenses was incurred in maintaining the investment, and in the process of dividend income and long term capital gains which are exempt for tax. Such activities do not involve decision making and other related activities. Keeping in view the aforesaid facts, the disallowance made by the AO under rule 8D(ii) is confirmed.

4.4 Further, as per the appellants' submissions, investment of Rs.5 lakhs on 20/01/2013 was made out of CC account which has only borrowed funds as there was a debit balance in the CC account. The interest incurred on investment of Rs 5 lakhs is therefore direct expenditure incurred for earning exempt income. The proportionate interest on this investment is required to be disallowed under rule 8D(i). The AO is directed to recompute the disallowance accordingly. This ground of appeal is partly allowed."

16. Before us, the Ld. counsel for assessee reiterated his contention made vis-à-vis the disallowance of interest u/s 36(1)(iii) of the Act in ground No.2 above that there were sufficient own funds available warranting no disallowance.

17. The Ld. DR, on the other hand, reiterated her arguments made in respect of the disallowance made u/s 36(1)(iii) of the Act in ground No.2 above.

18. We have heard the rival contentions. The assessee has challenged before us disallowance of interest expenses and administrative and other expenses incurred in relation to earning of exempt income u/s 14A of the Act read with Rule 8D(2)(ii) & 8D(2)(iii) of the Income Tax Rules,1962(in short referred to as

"Rules"), respectively. No arguments have been made before us vis a vis disallowance of expenses made as per Rule 8D(2)(iii) of the Rules amounting to Rs.1,48,768/. The same is therefore upheld. As for the disallowance of interest as per Rule 8D(2)(ii), the arguments advanced by both the parties are identical to that advanced vis a vis disallowance of interest u/s 36(1)(iii) of the Act, with the assessee contending user of own funds for the purpose and the Revenue stating user of mixed funds. We have dealt with the arguments of both the parties at length at para 8-11 of our order above and our finding therein will apply to the present issue also. Accordingly this issue is also restored back to the Ld.CIT(A) to be considered afresh in accordance with our directions in para 11 of our order above .

The Ground of appeal No.3 is allowed for statistical purposes.

19. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the Open Court.

Sd/-	Sd/-
दिवा सिंह	**अन्नपूर्णा गुप्ता**
(DIVA SINGH)	**ANNAPURNA GUPTA)**
न्यायकि सदस्य/Judicial Member	**लेखा सदस्य/Accountant Member**

दिनांक /Dated: 6th February, 2019
रती

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

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

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar