

IN THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD "D" BENCH  
(Conducted Through Virtual Court)  
**Before: Shri Mahavir Prasad, Judicial Member  
And Shri Amarjit Singh, Accountant Member**

**ITA Nos. 2107, 2108 & 2816 /Ahd/2015  
Assessment Years 2009-10, 2010-11 & 2011-12**

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| DCIT,<br>Circle-1(1)(1),<br>Ahmedabad<br>(Appellant) | Vs | M/s. Arvind Products Ltd.<br>(Now merged with Arvind<br>Ltd.), Arvind Mills<br>Premises, Naroda Road,<br>Ahmedabad-380025<br>PAN: AABCA2391L<br>(Respondent) |
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**Cross Objection Nos. 159, 160 & 191/Ahd/2015  
(in ITA Nos. 2107, 2108 & 2816 /Ahd/2015)  
Assessment Years 2009-10, 2010-11 & 2011-12**

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| M/s. Arvind Products Ltd.<br>(Now merged with Arvind<br>Ltd.), Arvind Mills<br>Premises, Naroda Road,<br>Ahmedabad-380025<br>PAN: AABCA2391L<br>(Appellant) | Vs | DCIT,<br>Circle-1(1)(1),<br>Ahmedabad<br>(Respondent) |
|---|----|---|

**Revenue by: Dr. Shyam Prasad, Sr. D.R.  
Assessee by: Shri Vartik Chokshi, A.R.**

Date of hearing : 27-04-2021  
Date of pronouncement : 30-06-2021

**आदेश/ORDER**

**PER : AMARJIT SINGH, ACCOUNTANT MEMBER:-**

These three appeals filed by revenue and three cross objections filed by assessee for A.Y. 2009-10 to 2011-12, arise from order of the CIT(A)-1, Ahmedabad dated 06-04-2015, in proceedings under section 143(3) of the Income Tax Act, 1961; in short “the Act”.

2. The brief fact of the case is that return of income declaring total loss of Rs. -13,59,35,856/- was filed on 24<sup>th</sup> Sep, 2009. The case was subject to scrutiny assessment and notice u/s. 143(2) of the Act was issued on 23<sup>rd</sup> August, 2010. Assessment u/s. 143(3) of the Act was finalized on 28<sup>th</sup> December, 2011 and total loss of the assessee was assessed at Rs. -11,49,38,164/- after making various additions by the Assessing Officer. The assessee filed appeal before the Id. CIT(A) against the disallowance and additions made by the Assessing Officer. The Id. CIT(A) has partly allowed the appeal of the assessee. Further facts of the case are discussed while adjudicating the grounds of appeals filed by revenue as under.

**ITA No. 2107/Ahd/2015 A.Y. 2009-10 filed by revenue & C.O. 159/Ahd/2015 filed A.Y. 2009-10 filed by assessee**

**Ground No. 1(Disallowance deleted by CIT(A) u/s. 14A of Rs. 20,381/- & Ground No. 1 of C.O. (Disallowance confirmed by CIT(A) u/s. 14A of Rs. 2,58,478/-)**

3. During the course of assessment, the Assessing Officer noticed that assessee earned dividend income to the amount of Rs. 1,92,663/-. The Assessing Officer further noticed that assessee has earned dividend income

from the investment of Rs. 36,24,000/- made in the equity shares of M/s Atul Limited. On query, the assessee explained that it had not made any new investment in the years under consideration and investment was made from its own funds. It was also submitted that no administration expenditure should be disallowed since the assessee company has made long term investment in the group companies which did not require day to day monitoring of the investment. The Assessing Officer has not accepted the explanation of the assessee and computed the disallowance as per provision of section 14A and Rule 8D of the I.T. Rule, 1962 to the amount of Rs. 2,78,859/-.

4. Aggrieved assessee has filed appeal before the Id. CIT(A). The Id. CIT(A) has restricted the disallowance to the extent of Rs. 2,58,478/- after netting of interest.

5. During the course of appellate proceedings, Id. Departmental Representative has supported the order of lower authorities. On the other hand, the Id. counsel has contended that assessee has earned exempt income in the form of dividend of Rs. 1,92,663/-. He has further submitted that looking to the various decisions of ITAT Ahmedabad disallowance cannot be made more than the exempt income.

6. Heard both the sides and perused the material on record. It is undisputed fact that during the year under consideration the assessee company has earned exempt income in the form of dividend to the amount of Rs. 1,92,663/- only. However, the Id. CIT(A) has sustained the addition

to the extent of Rs. 2,58,487/-. After considering the decision of Jivraj Tea Ltd. vs. DCIT ITA No. 886/Ahd/2012 dated 28-05-2014 wherein it is held that disallowance u/s. 14A cannot be exceeded the exempt income we restrict the disallowance to the extent of the exempt income in the form of dividend earned by the assessee during the year under consideration to the amount of Rs. 1,92,663/-. Accordingly, this ground of appeal of the revenue is dismissed and the cross objection filed by assessee is partly allowed.

**Ground No. 2 (Addition deleted by the Id. CIT(A) in computing book profit u/s. 115JB of Rs. 2,78,859/-) filed by revenue**

7. During the course of appellate proceedings before us at the outset the Id. counsel has submitted that no addition of disallowance made u/s. 14A can be made while computing book profit u/s. 115JB of the Act as held by Special Bench decision of Delhi ITAT in the case of ACIT vs. Vineet Investment Pvt. Ltd. (2017) 165 ITD 27/82 taxmann.com. The Id. counsel is fair enough not to controvert this undisputed fact that this issue is covered in favour of the assessee by the decision of Special Bench of the ITAT Delhi as referred above. Therefore, we do not find any merit in the appeal of the revenue, therefore, the same stands dismissed.

**Ground No. 3 (Disallowance deleted by CIT(A) u/s. 40(a)(ia) of Rs. 41,87,539/-) filed by revenue & Ground No. 2 of C.O. (Disallowance confirmed by CIT(A) of Rs. 4,05,359/-)**

8. During the course of assessment on verification of the detail filed the Assessing Officer observed that assessee company has not deducted tax at source under the head freight charges and port/terminal handling charges by

claiming the same as reimbursement of expenses. On query, the assessee explained that all these payments made to six parties mentioned at page no. 9 of the assessment order were in the nature of reimbursement of expenses therefore provision of deduction of tax at source was not applicable to reimbursement of actual expenditure. The Assessing Officer has not accepted the explanation of the assessee. He was of the view that the payment made by the assessee was in the nature of fees for technical services as per provisions of Article 7 of DTAA and deemed to accrue in that contracting state when the payer is the resident of that contracting state. Therefore, payment of Rs. 22,33,260/- made to the non-residents was considered in the nature of fees for included services/fees for technical services on which tax was required to be deducted as per provision of section 195 of the Act. Accordingly, the Assessing Officer has disallowed the total amount of payment of Rs.23,59,638/- made to the clearing and forwarding agents as per provision of section 40(a)(ia) of the Act.

9. The assessee has filed appeal before the Id. CIT(A). The Id. CIT(A) has allowed the claim of the assessee except restricting the disallowance to the extent of Rs. 4,05,359/- stating that M/s. Chinubhai Kalidas and Brothers to whom assessee paid Rs. 19,54,279/-, no other party has raised different invoices for reimbursement of expenses. Therefore, out of the total disallowance of Rs. 23,59,638/-, the Id. CIT(A) has deleted payment of Rs. 19,54,279/- made to M/s. Chinubhai Kalidas & Brothers.

10. Heard both the sides and perused the material on record. Without reiterating the facts as elaborated above, the Id. CIT(A) has restricted

disallowance u/s. 40(a)(ia) of the Act on account of non-deduction of tax to the extent of Rs. 4,05,359 after verifying that assessee has not filed supporting details and invoices of reimbursement of expenditure. In this regard, it is observed that Id. CIT(A) has not demonstrated the specific deficiencies in the details filed by the other parties in respect of payment made of Rs. 4,05,359/-, therefore, we restore this issue to the file of Assessing Officer for adjudicating afresh after verification of specific detail and the claim of payment of taxes by payee. Accordingly, the appeal of the revenue is dismissed and cross objection filed by the assessee is allowed for statistical purposes.

**ITA No. 2107/Ahd/2015 filed by revenue**

**Ground No. 4 ( Deletion of disallowance u/s. 36(i)(iii) of Rs. 1.56 crores.**

11. During the course of assessment proceedings, the Assessing Officer observed that assessee has given interest free loan of Rs. 13 crores to M/s. Lalbhai Realty Finance Ltd. an associated concern of the assessee company. On query, the assessee explained that it has advanced the loan to its sister concern out of the interest free funds and no disallowance should be made. The Assessing Officer has not agreed with the submission of the assessee stating that assessee has not produced any evidence that the funds were given from interest free funds, therefore, the Assessing Officer has computed interest @ 12% on the amount of advance given to the sister concern and added Rs. 1.56 crores u/s. 36(1)(iii) of the Act to the total income of the assessee company.

12. The assessee has filed appeal before the Id. CIT(A). The Id. CIT(A) has allowed the appeal of the assessee.

13. Heard both the sides and perused the material on record. The Assessing Officer has made addition of Rs. 1.56 crores after computing interest @ 12% on interest free loan of Rs. 13 crores advanced to its sister concern M/s. Lalbhai Realty Finance Ltd. The Id. CIT(A) has deleted the disallowance after verification of undisputed fact that assessee was having sufficient interest free funds to the amount of Rs. 75.25 crores in the form of share capital and reserves and surplus. The revenue had not disproved these undisputed fact that assessee was having sufficient interest free fund out of which the impugned loan was advanced to its sister concern. In the light of the above facts and findings, we do not find any infirmity in the decision of Id. CIT(A), therefore, the appeal of the revenue stands dismissed.

**ITA No. 2107/Ahd/2015 filed by revenue**

**Ground No. 5 (Carry forward LTC loss of Rs. 1,60,45,749/- as assessee had not filed revised return of income revising claim )**

14. During the course of assessment, the assessee has submitted revised working of loss of Rs. 1,60,45,749/- on sale of shares of Anoop Engineers and requested the Assessing Officer to allow carry forward loss of Rs. 14,08,73,426/- instead of Rs. 13,59,35,856/-. However, the Assessing Officer has not dealt with this issue in the assessment order.

15. The assessee has filed appeal before the Id. CIT(A). The Id. CIT(A) has directed the Assessing Officer to verify such business loss/unabsorbed depreciation/capital gain losses of earlier years and pass an appropriate order with carry forward of the same in the order giving effect to this appeal order.

16. Heard both the sides and perused the material on record. In view of the direction of the Id. CIT(A) to the Assessing Officer to allow the claim of the assessee after verifying the revised working, we do not find any reason to interfere in the finding of Id. CIT(A). Therefore, this ground of appeal of revenue is dismissed.

**CO 159/Ahd/2015 A.Y. 2009-10 filed by assessee**

**Ground No. 3 (Sustaining the addition of Rs. 5,25,935/- u/s. 41(1) of the act)**

17. During the course of assessment, the Assessing Officer has made addition of Rs. 5,25,935/- in respect of sundry creditors standing in the name of Sarvesh Cotton Mills Ltd. as this trading liability was outstanding since 2006-07. The Assessing Officer has disallowed the outstanding liability u/s. 41(1) of the Act on the reasoning that as per the provisions of the Limitation Act the liability to pay its debt has ceased to exist.

18. The assessee has filed appeal before the Id. CIT(A). The Id. CIT(A) has sustained the addition stating that assessee failed to provide contra confirmation from the party to substantiate that this liability was still existing.

19. Heard both the sides and perused the material on record. Considering the fact that auditor has remarked in the Audit report in form NO. 3CD that the said liability was still existed subject to confirmation we restore this issue to the file of Assessing Officer to adjudicate afresh after giving opportunity to the assessee to make compliance as recommended in the



Audit report. Therefore, this ground of appeal is allowed for statistical purposes.

**ITA No. 2108/Ahd/2015 A.Y. 2010-11 filed by revenue & C.O.  
160/Ahd/2015 A.Y. 2010-11 filed by assessee**

20. As the facts and issues involved in grounds of appeal vide ITA No. 2107/Ahd/2015 Assessment Year 2009-10 are similar as in ITA No. 2708/Ahd/2015 Assessment Year 2010-11 therefore after applying the decision adjudicated vide ITA No. 2107/Ahd/2015 as supra in this order, this appeal of the revenue is disallowed.

21. The ground no. 1 of cross objection of the assessee regarding disallowance confirmed by CIT(A) u/s 14A of Rs. 11,77,806/- is partly allowed by restricting the disallowance u/s. 14A up to the exempt income in the form of dividend of Rs. 1,92,663/- earned during the year under consideration. The ground no. 2 of cross objection is not pressed therefore the same stands dismissed.

**Ground no. 3 of the cross objection pertained to not granting credit for TDS amounting to Rs. 2,55,328/-**

22. Heard both the sides and perused the material on record connected with the issue filed by the assessee during the course of assessment proceedings and appellate proceedings. Since this issue of granting credit for TDS has not been specifically

adjudicated by the lower authority, therefore, we restore this issue to the file of the Assessing Officer for deciding afresh after verification of the supporting material after providing due opportunity to the assessee. Accordingly, this ground of the cross objection is allowed for statistical purposes.

**ITA NO. 2816/Ahd/2015 A.Y. 2011-12 filed by revenue & CO No. 191/Ahd/2015 filed by the assessee**

23. As the facts and issues involved in grounds of appeal no 1 to 3 vide ITA No. 2107/Ahd/2015 Assessment Year 2009-10 are similar as in ITA No. 2816/Ahd/2015 Assessment Year 2011-12 therefore after applying the decision adjudicated vide ITA No. 2107/Ahd/2015 as supra in this order, these grounds of appeal of the revenue is dismissed. The ground No. 1 of the cross objection of the assessee regarding disallowance confirmed by Id. CIT(A) of Rs. 14,90,330/- is partly allowed by restricting the disallowance u/s. 14A up to the exempt income in the form of dividend of Rs. 2,57,000/- earned during the year under consideration as adjudicated in the ground of cross objection referred above.

**Ground No. 4 (provision for not reduced while calculating the book profit of Rs. 15,04,672/-)**

24. The Assessing Officer has calculated book profit u/s. 115JB at Rs. 31,59,677/- while calculating book profit, the Assessing Officer has not

given effect of provision for doubtful debt written back of Rs. 15,04,671/- in computing book profit.

25. The assessee has filed appeal before the Id. CIT(A). The Id. CIT(A) has directed the Assessing Officer to verify the contention of the assessee that the provision was made in assessment year 2010-11 and same was added while computing book profit u/s. 115JB of the Act and the same was reversed in the year under consideration, if it is found correct, the Assessing Officer is directed to reduce book profit at Rs. 15,04,671/-. After hearing both the sides and taking into consideration the detailed finding of the Id. CIT(A), we do not find any infirmity in the decision of Id. CIT(A) in directing the Assessing Officer to consider the claim of the assessee after verification of the facts available on the record. Accordingly, this ground of appeal of Revenue stands dismissed.

26. In the result, appeal ITA 2107, 2108 and 2816/Ahd/2015 filed by revenue are dismissed and C.O. 159, 160 & 191/Ahd/2015 filed by assessee are partly allowed for statistical purposes.

Order pronounced in the open court on 30-06-2021

**Sd/-**  
**(MAHAVIR PRASAD)**  
**JUDICIAL MEMBER**  
**Ahmedabad : Dated 30/06/2021**

**Sd/-**  
**(AMARJIT SINGH)**  
**ACCOUNTANT MEMBER**

**आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-**

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार  
आयकर अपीलीय अधिकरण,  
अहमदाबाद