

Gurbax Singh
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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

ITA No.433 of 2010
Date of decision: 17.4.2017

M/s Nahar Spinning Mills Limited

....Appellant

Vs.

The Commissioner of Income Tax, Ludhiana

.....Respondent

CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr. Sanjay Bansal, Sr. Advocate
with Mr.Amit Parshad, Advocate for the appellant-assessee.

Mr. Rajesh Katoch, Senior Standing Counsel for the respondent-revenue.

Ajay Kumar Mittal,J.

1. This appeal has been preferred by the assessee under Section 260A of the Income Tax Act, 1961 (in short, "the Act") against the order dated 23.9.2009, Annexure A.3 passed by Income Tax Appellate Tribunal, Bench, 'A' Chandigarh (in short, "the Tribunal"), for the assessment year 2006-07, claiming following substantial questions of law:-

“a) Whether on the facts and in the circumstances of the case, the Tribunal was legally correct in holding that the disallowance of ₹ 1,35,270/- made under Section 14A of the Act on estimation basis for earning the dividend income which was exempt under section 10(34) [wrongly mentioned as (33)] of the Act inspite of the fact that no expenses were

incurred by the appellant for earning the said dividend income?

b) Whether on the facts and circumstances of the case, the Tribunal was legally correct in holding that the estimation made by the Assessing Officer of the expenditure such as printing and stationery, postage and telegraph expenses and auditor's remuneration have any nexus to earn the dividend income?

c) Whether on the facts and in the circumstances of the case, the appellate Tribunal was justified in law in holding that the sum of ₹ 12,20,670/- being the value of 8860 pieces sent to Prime Minister Relief Fund for earthquake in Jammu and Kashmir was eligible for deduction under section 37 of the Act 1961?

d) Whether on the facts and circumstances of the case, the Tribunal was legally correct in negating the claim of appellant under section 80G of the Act in respect of donation made by it towards Prime Minister Relief Fund for Jammu & Kashmir Earthquake Relief at the call given by the government authorities?

2. A few facts relevant for the decision of the controversy involved as narrated in the appeal may be noticed. The assessee-company is engaged in the business of manufacture and trading of textiles hosiery garments, yarn and knitted clothes. It filed its e-return of income tax on 22.11.2006 declaring total income of ₹ 12,81,94,033/- and the paper return was filed on 29.12.2006 which was in time. During the relevant assessment year, the appellant had shown dividend income of ₹ 2,85,44,745/- on the investments. During the assessment proceedings, the Assessing Officer directed the assessee to work out expenses incurred to earn the dividend

income which was claimed to have been exempt under section 10(34) of the Act and also to give the explanation as to why the disallowance under section 14A of the Act should not be made. The assessee replied that no expenses were incurred to earn the said dividend income and therefore no expenses could be disallowed under section 14A of the Act. The Assessing Officer rejected the plea of the assessee and estimated the amount out of administrative expenses on proportionate basis and disallowed ₹ 1,35,270/- on the basis of decision of the Tribunal in the case of M/s Nahar Industrial Enterprises Limited for the assessment year 1997-98. In first appeal before the Commissioner of Income Tax (Appeals) [CIT(A)], the order passed by the Assessing officer was sustained. The Tribunal in its order dated 23.9.2009 in the second appeal filed by the assessee also sustained the disallowance made by the Assessing Officer on estimate basis and without any nexus of expenditure vis-a-vis dividend income earned by the appellant. Further, the assessee claimed deduction of ₹ 12,20,670/- under section 37(1) of the Act on account of contribution made by the assessee of 8860 pieces of woolen hosiery garments towards Prime Minister's Relief Fund. During the assessment proceedings, the explanation alongwith documentary evidence was filed vide letter dated 10.12.2007 which had been reproduced by the Assessing Officer in its assessment order. In the same letter, an alternative claim was also made by the assessee that since the donation was made towards Prime Minister's Relief fund out of the amount recoverable from the institution and was debited to Donation account, therefore deduction under Section 80G of the Act may be allowed. The Assessing Officer rejected the claim of the assessee and made an addition of ₹ 12,20,670/- to the total income of the assessee. The CIT(A) in the first appeal sustained the order of the Assessing Officer on the basis of an order passed by the Tribunal in the

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assessee's own case for the assessment year 2000-01. The Tribunal also dismissed the appeal of the assessee on this issue by following its own order in ITA No.595/CHD/2005 dated 14.9.2007. Hence the instant appeal by the assessee.

3. We have heard learned counsel for the parties.

4. With regard to Question (a) & (b) relating to disallowance of ₹ 1,35,270/- made under section 14A of the Act for earning the dividend income which was exempt under section 10(34) of the Act, the Assessing Officer had recorded that the assessee had incurred certain expenses for earning the said dividend income which were inadmissible in view of Section 14A of the Act. The Assessing Officer after considering the totality of facts and circumstances had disallowed ₹ 1,35,270/- under Section 14A of the Act following the decision of the Tribunal in the case of *M/s Nahar Industrial Enterprises Limited* for the assessment year 1997-98 on similar grounds. On appeal by the assessee, the disallowance of ₹ 1,35,270/- made by the Assessing Officer under Section 14A of the Act was upheld. Further appeal carried by the assessee to the Tribunal was rejected and order of the Assessing Officer and the CIT(A) was upheld on this count. It has been recorded by the Tribunal that the disallowance had been computed on a reasonable basis and the same did not show any irrational or irrelevant considerations. Thus, the Tribunal did not interfere with the determination of the amount as made by the Assessing Officer and the CIT(A). The relevant findings recorded by the Tribunal on this issue read thus:-

“We have considered the rival submission carefully. We find that the quantum of disallowance has been considered by the CIT(Appeals) in Para 3.3 of his order as under:-

‘Coming to the quantum of disallowance, the Addl. CIT has worked out such disallowance on the basis of very

logical and scientific method following the decision of the Hon'ble jurisdictional ITAT in the case of Nahar Industrial Enterprises Limited for the assessment year 1997-98. Though in the written submissions it is contended that printing and stationery as well as postage and telegram expenses have no nexus vis a vis earning of dividend income and that therefore, expenses mentioned in these items should be excluded while computing disallowance under section 14A of the Act, this contention of the learned AR cannot be accepted. It is seen that in the case of M/s Nahar Industrial Enterprises for the assessment year 1997-98, which has been relied upon by the Addl. CIT, the Hon'ble jurisdictional bench of ITAT Chandigarh has considered the administrative expenses under these two heads also for necessary disallowance under the provisions of Section 14A of the Act. The Hon'ble ITAT has therefore not held that these expenses had no nexus vis a vis earning of dividend income. Therefore, the Addl. CIT was fully justified in considering even the expenses under these two heads of computing proportionate disallowance under section 14A of the Act. In view of the above discussion, the disallowance of ₹ 1,35,270/- made by the AO under the provisions of Section 14A of the Act is upheld. This ground of appeal is therefore dismissed.'

7. We have considered the discussion made by the CIT(Appeals). Ostensibly, the exercise of ascertaining expenditure in relation to an exempt income does involve an element of estimation, which in the present case has been resorted to by the income tax authorities. The assessee does not challenge the approach in principle, but only seeks to lower the estimation. In this content, we find that the disallowance has been computed on a reasonable basis and the same does not show any irrational or irrelevant considerations. In our considered opinion, no interference is called for in the estimation made by the CIT(Appeals). Infact, the CIT(Appeals) has also considered the reliance placed by the assessee on the

decision of the Tribunal in the case of M/s Nahar Industrial Enterprises Limited (supra) and has appropriately dealt with the same. We find no reasons to interfere with the decision of the CIT(Appeals). Accordingly, on this ground the assessee fails.”

Learned counsel for the appellant-assessee has not been able to show that the findings recorded by the Tribunal are illegal or perverse warranting interference by this Court. The judgments at Annexures A.6 and A.7 in ITA No.504 of 2008 (*CIT vs. Winsome Textile Industries Limited*) decided on 25.8.2009 and ITA No.331 of 2009 (*CIT vs. Hero Cycles Limited*) decided on 4.11.2009 relied upon by the learned counsel for the assessee being based on individual fact situation involved therein, no advantage can be derived therefrom. Accordingly, no substantial question of law arises.

5. Examining question (c), the same is covered by judgment of this Court against the assessee in ITA No.69 of 2008 (*M/s Nahar Spinning Mills Limited vs. The Commissioner of Income Tax, Ludhiana*) decided on 28.7.2014.

6. Adverting to question (d), the assessee had made donation by way of clothes towards Prime Minister Relief Fund for Jammu and Kashmir Earthquake Relief. The deduction under Section 80G of the Act was declined by the Tribunal. Learned counsel for the assessee was unable to show in the light of Explanation 5 to Section 80G which was inserted by Finance Act 1976 effective from 1.4.1976 that the deduction was admissible. Learned counsel for the assessee argued that sum and substance of the transaction is to be seen and the amount was forgone and not the goods. Therefore, it was in the nature of cash and not goods. It would be apt to reproduce Explanation 5 to Section 80G of the Act:-

“Explanation 5 – For the removal of doubts, it is hereby declared

that no deduction shall be allowed under this section in respect of any donation unless such donation is of a sum of money.”

In view of the above, the assessee could not claim deduction under Section 80G of the Act in respect of donations by way of clothes sent to Prime Minister Relief fund for Gujarat Earthquake relief the same being in kind and not in cash, cheque or draft. The Tribunal was right in declining the benefit under Section 80G of the Act. In view of the express provision contained in Explanation 5 to Section 80G of the Act, once it was goods, no deduction was admissible. Similar view has been expressed by this Court in the case of the assessee in ITA No. 69 of 2008 (*M/s Nahar Spinning Mills Limited Vs. The Commissioner of Income Tax, Ludhiana*) decided on 28.07.2014.

7. Learned counsel for the assessee has not been able to show any error in the findings recorded by the Tribunal. Consequently, no substantial question of law arises and the appeal stands dismissed.

(Ajay Kumar Mittal)
Judge

April 17, 2017
‘gs’

(Ramendra Jain)
Judge

Whether speaking/reasoned
Whether to be reportable

Yes
Yes