

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'F' NEW DLEHI**

**BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
AND
SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER**

**ITA No. 6028/Del/2018
Assessment Year: 2014-15**

Viney Corporation Ltd., B-172, Ground & first Floor, Lok Vihar, Pitampura, New Delhi.	vs.	ACIT, Circle 26(2), New Delhi.
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**ITA No. 6471/Del/2018
Assessment Year: 2014-15**

ACIT, Circle 26(2), New Delhi.	vs.	Viney Corporation Ltd., B-172, Ground & first Floor, Lok Vihar, Pitampura, New Delhi.
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PAN : AAACV0446L
(Appellant)

(Respondent)

Assessee by : Sh. Pradeep Dinodia, FCA
Respondent by: Sh. B.S. Anant, Sr. DR

Date of hearing: 17.11.2021
Date of order : 08.12.2021

ORDER

PER K. NARASIMHA CHARY, J.M.

Aggrieved by the order dated 05.07.2018 passed by the learned Commissioner of Income Tax (Appeals)-9, New Delhi ("Ld. CIT(A)") for the assessment year 2014-15 in the case of Viney Corporation Ltd.,

("the assessee"), both the assessee and the Revenue preferred these appeals.

2. Brief facts of the case are that the assessee is engaged in the manufacturing of auto components and has been a leading supplier to major OEMs and Tier-1 in wheelers, passenger vehicles and commercial vehicles segments in India. For the assessment year 2014-15, the assessee filed return of income on 24.11.2014 declaring an income of Rs.12,05,89,400/-. Assessment u/s. 143(3) of the Income-tax Act (for short "the Act") was complete by order dated 30.12.2016 by making addition on account of disallowance of foreign exchange fluctuation loss of Rs.6,94,34,761/-, disallowance of interest paid on borrowings of Rs.2,56,84,639/-, disallowance u/s. 14A read with Rule 8D to the tune of Rs.9,29,235/- and disallowance of expenses for more than Rs.20,000/- to the tune of Rs.1,02,386/-.

3. When the assessee preferred appeal before the Id. CIT(A), by way of impugned order, Id. CIT(A) upheld the disallowance of foreign exchange fluctuation loss, but deleted the disallowance of interest paid on borrowings and expenses for cash for more than Rs.20,000/-. Learned CIT(A) partly granted relief to the assessee in respect of the disallowance u/s. 14A read with Rule 8D by limiting the disallowance to the amount of dividend received, i.e., Rs. 2,07,615/-. So against upholding of the additions on account of foreign exchange fluctuation loss and u/s. 14A read with Rule 8D, the assessee preferred appeal; whereas against the deleted additions, Revenue is in appeal.

4. Now coming to the appeal of the assessee, ground No. 1 is general in nature and ground Nos. 2 to 6 are in respect of disallowance on account of foreign exchange fluctuation loss and ground No. 7 is in respect of such portion of disallowance u/s. 14A read with Rule 8D as was upheld by the Id. CIT(A).

5. In so far as foreign exchange fluctuation loss on the external commercial borrowings is concerned, the assessee obtained such loan of USD 78,00,000 from Standard Chartered Bank for acquiring 70% share in Vimercati SPA, Italy in F.Y. 2011-12 relevant to assessment year 2012-13. According to the assessee, this loan was obtained for purchase of shares to have the control over Vimercati SPA, Italy to expand their business, to have international recognition and also for upgrading of technology with a view to increase the profit. Learned Assessing Officer, however, was of the opinion that this particular expense falls within the domain of capital and was not allowable inasmuch as the borrowing was for the purchase of share capital of a foreign company. Id. Assessing Officer pleases reliance on the decision of Hon'ble Delhi High Court in the case of CIT vs. Jagatjit Industries Limited, 337 ITR 21 (Del). Learned CIT(A) agreed with the view expressed by the Assessing Officer and upheld this addition.

6. Arguments of the Id. AR are two-fold. Firstly, according to him this expense is allowable u/s. 37 of the Act because the borrowing was for the business purpose to have control over Vimercati SPA in order to expand their business, as has been held by Hon'ble Supreme Court in the case of SA Builders vs. CIT, 288 ITR 1 (SC). Second contention of the Id. AR is that the borrowing was for the financial year 2011-12 relevant

for the assessment year 2012-13 and in the assessment years 2012-13, 2013-14, 2015-16 and 2016-17, the gain or loss on account of foreign exchange fluctuation was accepted by the department. So, to have the regard to the rule of consistency, Id. Assessing Officer should have allowed the same.

7. Learned DR while placing reliance on the orders of the authorities below submitted that the assessee purchased a capital asset and therefore, the expense falls within the domain of capital expenditure and therefore, the same cannot be treated as revenue expenditure. He places reliance on the decision of jurisdictional High court in the case of CIT vs. Jagatjit Industries Ltd. (supra).

8. We have gone through the record in the light of submission made on either side. In so far as the purpose of the assessee to borrow the amount from Standard Chartered Bank is concerned, there is no dispute that it was for acquiring 70% stake in Vimercati SPA, which also deals in auto spare parts. There is no dispute that for the assessment year 2014-15, 2015-16 and 2016-17 the amount of export was Rs.18.64 crores, Rs.27.74 crores and Rs.31.16 crores respectively, which shows without any doubt that by purchase of 70% shares in Vimercati SPA, the assessee stood to benefit in the shape of enhancement of export. It, therefore, establishes the fact that the purchase of shares of Vimercati SPA by the assessee was for commercial expediency and in view of the decision of Hon'ble Supreme Court in the case of SA Builders (supra), such expense shall be deemed to have been incurred for the business purpose and the assessee has got right to decide their affairs.

9. Now coming to the treatment of accounts, the assessee places reliance on para 7 of accounting standard-11, para 2(1)(k) of ICDS-VI and also the provisions of section 43AA inserted by Finance Act, 2018. For the sake of completeness, we reproduce such provisions –

“PARA 7 of Accounting Standard-11 defines Monetary items as under:

‘Monetary items’ are money held and assets and liabilities to be received or paid in fixed or determinable amounts of money.

PARA 2(1)(k) of ICDS VI defines monetary item as under:

“Monetary items” are money held and assets to be received or liabilities to be paid in fixed or determinable amounts of money. Cash, receivables, and payables are examples of monetary items.

Similarly as already highlighted above, the Finance Act, 2018 has inserted section 43AA with retrospective effect from 01.04.2017 which is as under:

"(1) Subject to the provisions of section 43 A. any gain or loss arising on account of any change in foreign exchange rates shall be treated as income or loss, as the case may be, and such gain or loss shall be computed in accordance with the income computation and disclosure standards notified under sub-section (2) of section 145.

(2) For the purposes of sub-section (1), gain or loss arising on account of the effects of change in foreign exchange rates shall be in respect of all foreign currency transactions, including those relating to—

- (i) monetary items and non-monetary items;
- (ii) translation of financial statements of foreign operations;
- (iii) forward exchange contracts;
- (iv) foreign currency translation reserves. ”

10. The assessee submits that the loan is always a monetary item both as per Accounting Standard-11 and as per provisions of ICDS VI issued in pursuance to section 145(2) of the Act. It is also submitted that the utilization of loans does not affect the nature of monetary items of obtaining loan in foreign currency and also repayable in foreign currency. Mere fact that the loan was contracted for the purpose of purchasing the share capital of Vimercati SPA does not alter the nature of this item. According to the Id. AR, there is no nexus between the

foreign currency loan and its repayment and its repayment with the holding of shares of foreign entity.

11. He further submits that the assessee has been maintaining its books of account on mercantile basis as per accounting standard which was duly notified by the National Advisory Committee for Accounting Standards in terms of section 211(3C) of the Companies Act, which was mandatory for the assessee company. According to him, in respect of foreign currency liability, Accounting Standard-11 related to effects of changes in foreign exchange rates issued by ICAI required to compulsory convert outstanding foreign currency liability into India currency by applying the foreign exchange rate prevailing as at the closing date of relevant accounting year. By placing reliance on the decision of Apex court in the case of CIT vs. Tata Iron and Steel Co. Ltd., 231 ITR 285, he submits that the cost of an asset and cost of raising money for purchase of asset are two different and independent transactions and therefore, the events subsequent to acquisition of assets cannot change price paid for it and accordingly, fluctuations in foreign exchange rate while repaying instalments of foreign loan raised to acquire asset cannot alter actual cost of assets. On this premise, he refutes the contention of the Revenue that this expenditure falls in the realm of capital.

12. On a perusal of the judgment in Jagatjit Industries (supra), it is clear that in this case the transaction was raising of share capital, which was kept in overseas account and currency was remitted in accordance with need to India. Such a transaction cannot be equated to obtain the loan repayable with interest for purchase of an asset which would

enhance the benefits in revenue field. A perusal of the record clearly shows that by purchase of shares in Vimercati SPA, the assessee stood to gain in exports which enhanced the benefits in the revenue field.

13. In the case of CIT vs. Tata Iron and Steel Co. Ltd. (supra), Hon'ble Supreme Court observed that –

"Coming to the question raised, we find it difficult to follow how the manner of repayment of loan can affect the cost of the assets acquired by the assessee. What is the actual cost must depend on the amount paid by the assessee to acquire the asset. The amount may have been borrowed by the assessee, but even if the assessee did not repay the loan it will not alter the cost of the asset. If the borrower defaults in repayment of a part of the loan, the cost of the asset will not change. What has to be borne in mind is that the cost of an asset and the cost of raising money for purchase of the asset are two different and independent transactions. Even if an asset is purchased with non-repayable subsidy received from the Government, the cost of the asset will be the price paid by the assessee for acquiring the asset. In the instant case, the allegation is that at the time of repayment of loan, there was a fluctuation in the rate of foreign exchange as a result of which, the assessee had to repay a much lesser amount than he would have otherwise paid. In our judgment, this is not a factor which can alter the cost incurred by the assessee for purchase of the asset. The assessee may have raised the funds to purchase the asset by borrowing but what the assessee has paid for it, is the price of the asset. That price cannot change by any event subsequent to the acquisition of the asset. In our judgment, the manner or mode of repayment of the loan has nothing to do with the cost of an asset acquired by the assessee for (he purpose of his business. We hold that the questions were rightly answered by the High Court. The appeals are dismissed. There will be no order as to costs. "

It is, therefore, clear that so long as the method of repayment does not impact the cost of the asset, which would enhance the benefit in revenue field, we find it difficult to hold that such an expense is not allowable u/s. 37 of the Act.

14. It is worthwhile to note that the allowability of interest borrowed for the purpose of business of the assessee is determined by the provisions of section 36(1)(iii) of the Act and the proviso to section 36(1)(iii), inserted by Finance Act, 2003 w.e.f. 01.04.2004 clearly spells out that the capital borrowed for the acquisition of an asset is required to be capitalized till the acquisition of asset. Therefore, even if a capital asset is acquired, the interest or for that matter reinstatement of foreign exchange fluctuation loss could have been capitalized only till the acquisition of capital asset, i.e., acquisition of shares in this case. In the instant case, admittedly the shares were acquired in the financial year ended 31.03.2012 and therefore, the capitalization of the foreign exchange fluctuation loss could, at the most, be relevant for the financial year 2011-12 relevant to assessment year 2012-13 and there is no occasion to treat any part of the interest or for that matter exchange rate fluctuation gain or loss to treat the same as in the capital field during the year under consideration.

15. Further, it is an undisputed fact that for the assessment year 2012-13, 2013-14 and 2016-17, the assessee declared loss on account of foreign exchange fluctuation which was accepted by the Assessing Officer; whereas for the assessment year 2015-16, there was a gain to the tune of Rs.4.65 crores, which the assessee offered to tax. Having accepted the same for two assessment years earlier and two years subsequent to the current assessment year, it is not open for the Revenue to take an altogether different stand for the current year and the Revenue is expected to follow the rule of consistency. For these reasons, we hold that the loss incurred by the assessee on account of

foreign exchange fluctuation is allowable as revenue expenditure and we direct the Assessing Officer to delete the same.

16. Now coming to ground No. 7 of assessee's appeal, it could be seen from the record that during the year under consideration, the assessee earned an exempt income of Rs.2,07,615/- against which they suo moto offered a sum of Rs.1,65,703/- to be disallowed u/s. 14A of the Act. Learned Assessing Officer, however, while calculating the disallowance u/r. 8D attributed the interest cost of Rs.9,39,235/- under rule 8D(2)(ii). In so far as the disallowance u/r. 8D(2)(iii) is concerned, both the assessee and the Assessing Officer reached the same amount of Rs.1,65,703/-. Assessee is, therefore, aggrieved against the Assessing Officer adding a sum of Rs.9,29,235/- while making disallowance u/r. 8D(2)(ii). According to the assessee they have their own funds far exceeding the investments and therefore, there cannot be any occasion to disallow the interest component u/d. 8D(2)(ii).

17. Learned CIT(A), as a matter of fact, returned a finding that no fresh investment was made during the year in shares which resulted in exempt income; that investment in share holding was continued from earlier years; and that no interest bearing fund borrowed was utilized for the purchase of shares. Ld. CIT(A), however, tripped into error by saying that since the disallowance u/s. 14A of the Act cannot be more than the dividend income claimed exempt and on that premise, he confirmed the disallowance of Rs. 2,07,715/- instead of deleting the entire amount of Rs.9,29,235/-.

18. On a perusal of record, we find that no borrowed fund on which interest was paid was utilized for purchase of shares, inasmuch as, the own funds of the assessee including the share holding funds, reserves and surplus were to the tune of Rs. 92.62 crores far exceeding the investments during the year, as observed by the Id. CIT(A). It is, therefore, clear that the assessee did not incur any interest expense for investing the amounts in shares so as to earn the exempt income. It is a clear case where the interest component u/r. 8D(2)(ii) has to be deleted straight by restoring only the disallowance u/r. 8D(2)(iii), which is Rs.1,65,703/- both according to the assessee and the Assessing Officer. In this scenario, the question of restricting the disallowance to the amount of dividend earned does not arise. In such case, instead of restriction, it amounts to expansion which is not permissible under law. We, therefore, hold that the entire addition of Rs.9,29,235/- is liable to be deleted. By observing so, we allow ground No.7 of assessee's appeal and dismiss ground No. 3 of Revenue's appeal.

19. Ground No. 1 & 2 of Revenue's appeal relate to the disallowance of interest of Rs.2,56,84,639/- on account of interest paid on borrowings. According to the Assessing Officer the assessee borrowed loans from its directors, share holders by paying interest at 9%. Assessee also raised convertible redeemable debentures of Rs.24 crores by paying interest. However, the assessee gave loans to its subsidiary, namely, Vimercati SPA and was receiving interest only at 2.32%. Id. Assessing Officer calculated the difference between 9% and 2.32% and made addition to the tune of Rs.2,56,84,639/-. Learned CIT(A) on

verification of facts from record, returned a factual finding to the effect that ,-

- The amount of loan to Vimercati SPA is Rs.6.02 crore of rupees as at 31.03.2013 and Rs.4.42 crore of rupees as at 31.03.2014 while net worth of the appellate company is 68.32 crore of rupees as at 31.03.2013 and Rs.92.62 crore of rupees as at 31.03.2016.
- The appellant company is having its sufficient fund to advance to its subsidiary company Vimercati SPA at the rate of 2.32 percent. The AO has not taken into account that there is nexus between loan paid to Vimercati SPA with loan raised from director, share holder and body corporate. It is noticed from the details furnished by the AR relating to Movement of loan to Vmercati SPA Italy that the loan was first advanced during the F.Y 2012-13 wherein outstanding loan balance was Rs.6.02 crores and the outstanding loan balance as on 31.03.2017 is Rs. 4.42 crores. It means there has been reduction in the loan amount so given to M/s Vimercati SPA Italy. A facts as per submission of the appellant is that investment and other loan transaction with Vimercati SPA, Italy was in furtherance of its business activity in as much as the overseas entity happened to be in the line of its business and acquisition of controlling power by investment in that concern has helped the appellant company to further its business interest in overseas market."

20. Inasmuch as the assessee was having interest free fund in the shape of share capital, reserves and surplus of Rs.39.57 crores, 68.31 crores and 92.61 crores as on 31.03.2012, 31.03.2013 and 31.03.2014 respectively, he drew a presumption that the loans advanced to its subsidiary was out of its own funds and therefore, the question of assessee utilizing the borrowed funds at interest to give benefit to its subsidiary by giving loans at lower rate, does not arise. Learned CIT(A) relied on the order of SA Builders (supra) and also on the decision of Hon'ble Mumbai High court in the case of CIT vs. Reliance Utilities & Power Ltd., 313 ITR 340 (Mum) and observed that as far as the assessee does not make use of the borrowed funds for lending amounts to its

subsidiary, but on the other hand, used its own funds for such purpose, no interest could be disallowed and directed the deletion of the same.

21. In so far as the figures noted by the Id. CIT(A) is concerned, absolutely, there is no dispute and the Revenue did not prove before us that the own funds of the assessee for the relevant year are falling short of the funds lent to its subsidiary. Further in the preceding paragraphs, we held that the subsidiary is also in the same business and the business interests of the assessee are deep in the conduct of business of subsidiary. Therefore, disallowance of interest expense amounting to Rs.2,56,84,639/- does not appear to be sound and as a matter of fact the findings of the Id. CIT(A) are firmly entrenched into the facts. Inasmuch as the assessee advanced loans to its subsidiary, out of its surplus funds, that too after business expediency, we find that the conclusions reached by the Id. CIT(A) are legal and does not warrant any interference.

22. In so far as ground No. 4 of Revenue's appeal in respect of deletion of addition of Rs.1,02,386/- u/s. 40A(3) is concerned, Id. CIT(A) found as a matter of fact that the assessee had booked the expense on a single day pertaining to various payments made to different persons on different dates in cash and any such payment made to a person in a day does not exceed Rs.20,000/-. Since the payment or aggregate of payments made to any person in cash in a day does not exceed Rs.20,000/-, Id. CIT(A) held that no disallowance u/s. 40A(3) was called for. There is no material contrary to this finding of the Id. CIT(A) and there is no reason for us to take a different view from the view taken by

the Id. CIT(A). We, therefore, confirm the same. Consequently, this ground of Revenue's appeal is dismissed.

23. In the result, the appeal of the assessee is allowed and appeal of the Revenue is dismissed.

Order pronounced in the open court on this the 8th day of December, 2021.

Sd/-

(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated: 08/12/2021

'aks'

Sd/-

(K. NARSIMHA CHARY)
JUDICIAL MEMBER