

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'D' NEW DELHI**

**BEFORE SHRI N. K. BILLAIYA, ACCOUNTANT MEMBER
AND
MS SUCHITRA KAMBLE, JUDICIAL MEMBER**

I.T.A. No. 3812/DEL/2017 (A.Y 2012-13)

(THROUGH VIDEO CONFERENCING)

Japan International Co-operation Agency (JICA) 2 nd Floor, Dr. Gopal Das Bhawan, 28, Barakhamba Road, Connaught Place, New Delhi-110001 PAN: AAAAJ1961C (APPELLANT)	Vs	ACIT (Intl. Taxation), Circle-2(1)(2) Room NO. 310, 3 rd Floor, Block-2, Pratyaksh Kar Bhawan, Civic Centre, New Delhi-110002 (RESPONDENT)
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Appellant by	Sh. Nageshwar Rao, Adv
Respondent by	Sh. Satpal Gulati, CIT(DR)

Date of Hearing	29.10.2020
Date of Pronouncement	17.11.2020

ORDER

PER SUCHITRA KAMBLE, JM

This appeal is filed by the assessee against the order dated 6/4/2017 passed by CIT(A)- 43, for Assessment Year 2012-13.

2. The grounds of appeal are as under:-

Based on the facts and circumstances of the case, the Appellant respectfully submits:

1. *"That on facts and circumstances of the case and in law, the Ld CIT(A) has erred in upholding the assessment order passed by Ld AO under section 143(3) for the subject year wherein the income was assessed at Rs. 71,21,390 as against NIL returned income declared by the appellant and is*

liable to be quashed.

2. *That on facts and circumstances of the case and in law, the Ld CIT(A) has erred in holding that the benefit of section 161 of the Act is not available to the appellant being a beneficiary in SARA Fund, a Venture Capital Fund (VCF) .*
3. *That on facts and circumstances of the case and in law, the Ld CIT(A) has erred in holding that the appellant is not eligible for benefit as per section 115U of the Act as investments made by SARA fund are not in specified Venture Capital Undertakings ('VCU') as per section 10(23FB) of the Act.*
 - 3.1 *That on the facts and circumstances of the case and in law, Ld CIT(A) has erred in disallowing the exemption claimed by the appellant under section 10(34) of the Act on dividend income from VCU earned by SARA Fund.*
 - 3.2 *That on the facts and circumstances of the case and in law, Ld CIT(A) has erred in disallowing the exemption claimed by the appellant under section 10(38) of the Act on long term capital gain from share sale of VCU earned by SARA Fund.*
4. *That the Ld CIT(A) has erred, in law and on facts and circumstances of the case, by not granting an opportunity of being heard to establish facts about VCU.*
5. *The Ld CIT(A) has erred, on facts of the case and in law, in upholding the levy of interest u/s 234B of the Act.*
6. *The Ld CIT(A) has erred, on the facts and the circumstances of the case and in law, in upholding the initiating the penalty proceedings under section 271(l)(c) of the Act against the appellant for furnishing inaccurate particulars and concealment of income.*

The above grounds are independent and without prejudice to each other.”

3. Japan International Cooperation Agency (hereinafter referred to 'JICA') was established as an Incorporated Administrative Agency under the Act of the Incorporated Administrative Agency - Japan International Cooperation Agency (Act No. 136, 2002). JICA aims to contribute to the promotion of international cooperation as well as the sound development of Japanese and global economy

by supporting the socioeconomic development, recovery or economic stability of developing regions. JICA extends official development assistance (ODA) to Ministry of Finance, Dept of Economic Affairs, Government of India for social & infrastructure projects (like the WB & ADB). New JICA was inaugurated on October 01, 2008 with a merger between the existing Japan International Cooperation Agency and the overseas economic cooperation section of the Japan Bank for International Cooperation ('JBIC'). JICA only has a Representative Office in India at 2nd Floor, Gopal Das Bhawan, 28, Barakhamba Road, Connaught Place, New Delhi - 110 001 whose role is of a co-coordinator of investment in South Asian Regional Apex (SARA) which was earlier coordinated by overseas economic cooperation section of JBIC. The representative office of JICA has not invested directly in the SARA Fund and only acts as a front office of JICA in India. Further, all loans are evaluated, granted and disbursed by JICA to Government of India (GOI)/PSUs directly from Japan. As on March 31, 2012, JICA held 27,500 units of SARA Fund @ Rs 5,000 per unit. SARA Fund is a SEBI registered Venture Capital Fund ('VCF') as per the SEBI venture capital fund regulations, 1996, whose objective is to provide equity assistance to Venture Capital Undertakings ('VCU') in India. The Fund was set up as a trust with a main objective of providing equity assistance to venture capital undertakings ('VCU') in India. SARA Fund has made investments in both non-VCUs and VCUs in India by way of debt capital or share capital. SARA Fund earns returns on its investments by way of dividends, interest or capital gains on sale of investment. The assessee filed its return of income for the subject assessment year on 31 July 2012 declaring income of Nil. The return was picked up for scrutiny assessment vide notice dated 18 September 2013 issued under section 143(2) of the Act. During the course of assessment proceedings, the Assistant Commissioner of Income Tax, Circle 2(1)(2), International Taxation, New Delhi sought various details, explanations and clarifications which were duly furnished by the assessee from time to time. The Assessing Officer disregarded the submissions made by the appellant and passed an assessment order under section 143(3) r.w.s.

144C(3) of the Act on 15 April 2015 (received on 17 March 2015) making the following additions/ disallowances:

(i) Disallowance of exemption claimed under section 10(34) of the Act on Dividend income amounting to Rs. 1,31,404/-.

(ii) Disallowance of exemption claimed under section 10(38) of the Act on long term capital gain amounting to Rs 69,89,987/-.

Based on the above adjustments made by the Assessing Officer, the total taxable income of the appellant has been recomputed at Rs. 71,21,390 as against the returned income of Nil. An additional demand of Rs.19,91,255 has been raised on the assessee including interest under section 234B and notice under section 271(l)(c) was issued for initiating the penalty proceedings. |

4. Being aggrieved by the assessment order, the assessee filed appeal before the CIT(A). The CIT(A) dismissed the appeal of the assessee.

5. The Ld. AR submitted that for Assessment Year 2006-07, 2007-08, 2008-09 & 2010-11, the issues contested in the present appeal are decided in favour of the assessee by the Tribunal in ITA Nos. 3284/Del/2012 and 5705/Del/2010 order dated 29.01.2016 for A.Y. 2006-07 & 2007-08 as well as ITA No. 5332/Del/2011 and 1249/Del/2014 order dated 16.07.2020 for A.Y. 2008-09 & 2010-11.

6. The Ld. DR relied upon the assessment order and the order of the CIT(A).

7. We have heard both the parties and perused the material available on record. From the perusal of the records, it can be seen that the issues contested by the assessee in the present assessment year 2013-14 are identical to that of A.Y. 2006-07 to 2008-09 & 2010-11. The Tribunal vide order dated 29.01.2016 in A.Ys. 2006-07 and 2007-08 held as under:

“14.6 However, we are of the considered view that the A.O. as well as Ld.

CIT(A) have taken a wrong view by holding that the assessee cannot grow tax-free income u/ss 10(34) and 10(35) of the Acts unless additional tax has been paid as per the provisions of Sections 115-0 and 115-R of the Act and as such the exemption claimed u/ss 10(34) and 10(35) is to be allowed only if the dividend income distributed as per the provisions of Sections 115-0 and 115-R whereas, the conditions laid down u/s 115-0 to avail the exemption u/s 10(34), is to be complied with at the level of venture capital undertaking and not at the stage when the investor, the assessee in this case, received the dividend income from VCF. So, the assessee is entitled for exemption u/s 10(34) of the Act and its share of dividend income is out of dividend income received by SARA fund. When the company with which SARA Fund has been invested, had already paid additional income tax on the earned dividend as required u/s 115-0 of the Act, SARA fund was not required to pay additional income tax second time on the same income. Consequently, grounds No. 1(1) and 1(11) of I.T.A. No. 3284/Del/2012 and Ground No. 1 of I.T.A. No. 5705/Del/2010 are determined in favour of the assessee.”

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“15.4 The issue in controversy is again required to be determined in consonance with the provisions contained u/s 115U discussed in the preceding paragraphs which mandates that venture capital company and venture capital fund is given the status of pass through vehicle for the purpose of treatment of income received on account of investment made in the venture capital undertaking. A person who makes investment in the venture capital company or venture capital fund, the assessee in this case, earned the income out of such investment which income shall be treated firstly as investment directly in the venture capital undertaking and venture capital fund or venture capital company is only a pass through vehicle. So, in these circumstances, the assessee-company is entitled to book expenditure incurred by SARA fund as if the same has been incurred by the assessee directly in the venture capital fund. So, we are of the view that the expenses of Rs. 1,13,11,955/- disallowed by Ld. CIT(A) by taking the shares of the assessee

in interest income from VCF under the head other sources on 185 11 gross basis and not the net basis, which requires to be determined by treating the same nature of income like long term capital gain, short term capital gain, dividend and other income such as interest etc. So, Grounds No. 2 of both the appeals are determined in favour of the assessee.”

Thus, Ground Nos. 1 to 3, 3.1 and 3.2 are identical in the present assessment year i.e. 2012-13 as well to that of earlier year 2006-07, 2007-08 and 2010-11. We find that the assessee has furnished complete details of computation which are exhibited at pages 153 to 154 of the paper book/appeal memo. The said computation was not disputed by the Revenue at any stage. Therefore, the Assessing Officer as well as the CIT(A) were not justified in making the said addition of dividend income and long term capital gain. Ground Nos. 1 to 3, 3.1 and 3.2 are allowed. As regards to Ground No. 4, the same is not required for adjudication. As regards to Ground Nos. 5, the same is consequential, hence the same is allowed in view of the findings on Ground Nos. 1 to 3, 3.1 and 3.2. As regards to Ground No. 6, the same is allowed.

8. In result, appeal of the assessee is allowed.

Order pronounced in the Open Court on this 17th Day of November, 2020

Sd/-

(N. K. BILLAIYA)
ACCOUNTANT MEMBER

Sd/-

(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Dated: 17/11/2020

R. Naheed *

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	03.11.2020
Date on which the typed draft is placed before the dictating Member	05.11.2020
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	