

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
MUMBAI BENCH "F", MUMBAI**

**BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER AND  
SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER**

**ITA No.886/M/2014  
Assessment Year: 2006-07**

M/s. Firestone Trading Pvt. Ltd., C/o. Karnavat & Co., 2A Kitab Mahal, 1 <sup>st</sup> Floor, 192 Dr. D.N. Road, Mumbai – 400 001 <b>PAN: AAACF 3313J</b>	Vs.	The Dy. Commissioner of Income-tax, Central Circle – 39, Ground Floor, Aayakar Bhawan, M.K. Road, Mumbai - 400020
(Appellant)		(Respondent)

**Present for:**

Assessee by : Shri Sunil Hirawat, A.R.  
Revenue by : Shri Sanjeev Kashyap, D.R.

Date of Hearing : 30.12.2015  
Date of Pronouncement : 29.01.2016

**ORDER**

**Per Sanjay Garg, Judicial Member:**

The present appeal has been preferred by the assessee against the order dated 05.11.2013 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2006-07.

2. The assessee has taken the following grounds of appeal:

"1. On facts and in law, the learned Commissioner of Income-tax (Appeals) [hereinafter referred to as 'Ld. CIT(A)'] had failed to appreciate that the re-opening of the assessment by the issue of notice u/s.148 r.w.s. 147 is bad-in-law. Under the facts and circumstances of the matter, the Ld. CIT(A) ought to have annulled the assessment order reopened u/s. 147/148.

2. On facts and in law, the Ld. CIT(A) had failed to appreciate that the learned Assessing Officer (Ld. AO) had already formed an opinion on the allowability of interest as cost of acquisition while computing Capital Gain on sale of shares while passing original assessment order on 24.12.2008. Under the facts and circumstances of the matter, the Ld. CIT(A) ought to have held the proceedings u/s.147 as bad-in-law.

3. On facts and in law, the Ld. CIT(A) had erred in not taking into cognizance of the following decision cited on specific query raised by Ld. CIT(A) on 24.09.2013 and submitted on 15.10.2013 vide letter dated 12.10.2013 during the appellate proceedings.

- (i) Hon. ITAT 'B' Bench, Mumbai in the case of Smt. Neera Jain v. ACIT (ITA No. 1861/Mum/2009).
- (ii) Hon. ITAT Ahmedabad Bench in the case of ACIT vs. Shri Udaibhai H. Vora (ITA No.23/Ahd/20 12).

4. On facts and in law, the Ld. CIT(A) had erred in holding that the interest being the cost of acquisition of shares should be restricted to the extent of shares allotted. Under the facts and circumstances of the matter, she ought to have held that the entire interest irrespective of number of shares allotted should be considered as cost of acquisition.

5. The Appellant craves leave to add, alter, vary, omit, substitute or amend the above grounds of appeal, at any time before or at, the time of hearing of the appeal, so as to enable the Hon. ITAT to decide this appeal according to law.”

3. A perusal of the above grounds of appeal reveals that two effective issues emanate from the above grounds of appeal. The first issue is a technical issue regarding the validity of the reopening of the assessment under section 147 of the Act. The second issue is relating to the validity of the disallowance on merits in respect of interest paid for acquisition of shares whether is to be limited to the extent of shares allotted or the entire expenditure is liable to be treated towards the cost of acquisition irrespective of number of shares allotted.

4. At the outset, both the Ld. Representatives of the parties have agreed that the issue on merits is squarely covered in favour of the assessee by the following decisions of the Tribunal:

1. Hon. ITAT 'B' Bench, Mumbai in the case of Smt. Neera Jain v. ACIT (ITA No. 1861/Mum/2009).
2. Hon. ITAT Ahmedabad Bench in the case of ACIT vs. Shri Udaibhai H. Vora (ITA No.23/Ahd/20 12).
3. Shri Harshad N. Patel vs. ITO in ITA Nos.1252 & 1958/M/2010 order dated 15.07.11.

4. ACIT vs. Rajendra S. Khemka in ITA No.6641/M/2010 order dated 11.05.2012.

5. For the sake of completeness, the relevant findings of the Tribunal from the case of "Rajendra S. Khemka" (supra) are reproduced as under:

"6. Without going into the debate, we find from the perusal of the decision of the ITAT as aforesaid that this issue stands squarely covered and the CIT (A) has rightly followed the order of the ITAT. The relevant finding in the case of Neera Jain (supra), is reproduced herein below :-

"5. We have given our anxious considerations to the rival submission of the parties. In the present case, there is no dispute about the fact that the entire loan was borrowed for the purpose of acquiring the shares of the Punjab National Bank and NTPC Ltd. As per the facts on record, there is no dispute at all that immediately after allotment of the shares money refunded by both the company were paid back to the financiers. The controversy is whether the entire interest on the borrowed money paid by the assessee can be allowed u/s. 48 treating the same as the cost of acquisition. The argument of the Ld Counsel is that funds were borrowed with sole intention for acquiring the shares and that is nowhere disputed by the A. O. and as allotment of the shares was not in the hands of the assessee and hence, the interest paid to the financiers on the entire borrowed money has to be allowed and same cannot be restricted to the extent of shares allotted. In our opinion, the assessee has to succeed on this ground. As rightly submitted by the Ld Counsel, the entire money has been borrowed by the assessee, with the sole purpose for acquiring the shares of the Punjab National Bank and NTPC Ltd. Though the applied shares were not allotted in full, that will not deprive the assessee from claiming the entire interest paid as the part of the cost of the acquisition of the shares allotted as the money borrowed has direct nexus with the acquisition of the shares. We, therefore, direct the A. O to treat the interest paid by the assessee to both the financiers as a part of cost of acquisition of the shares and allow the same as a deduction. Accordingly, Ground No. 1 is allowed."

6.1 Similar observations and findings have been given by the ITAT in the case of Shri Harshit N. Patel (supra), which are reproduced herein below :-

"4. We have heard the parties and perused the records. The Ld. Counsel submits that now, the issue stands covered in favour of the assessee by the decision of the other co-ordinate Bench of the ITAT Mumbai in the case of :-

(i) Smt. NeeraJainvs. ACITITA 1861/M/2009 ord. dt.22.2.10

(ii) Wood Stock Broking P. Ltd. vs. ACIT 6657/M/07 ord. dt.5.1.01 We have also heard the IA. D.R. In both the cases, there is no dispute about the fact that money borrowed by the assessee was used for IPO applications. Though the assessee has applied for more shares but only part of the shares were allotted to the assessee, but, the assessee has to pay the interest to the financiers. In the case of Smt. Neera Jam (supra) on identical set of facts; the assessee has borrowed the money for IPO

application but all the shares were not allotted as applied and the part of the shares were allotted and balance amount was refunded to the assessee in respect of non-allotment of the shares. The assessee has to pay the interest on the entire finance, which was borrowed for making the payment with the share application money. When the matter reached before the Tribunal, the Tribunal has held as under:

"5. We have given our anxious considerations to the rival submission of the parties. In the present case, there is no dispute about the fact that the entire loan was borrowed for the purpose of acquiring the shares of the Punjab National Bank and NTPC Ltd. As per the facts on record, there is no dispute at all that immediately after allotment of the shares money refunded by both the company were paid back to the financiers. The controversy is whether the entire interest on the borrowed money paid by the assessee can be allowed u/s. 48 treating the same as the cost of acquisition. The argument of the Ld Counsel is that funds were borrowed with sole intention for acquiring the shares and that is nowhere disputed by the A. O. and as allotment of the shares was not in the hands of the assessee and hence, the interest paid to the financiers on the entire borrowed money has to be allowed and same cannot be restricted to the extent of shares allotted. In our opinion, the assessee has to succeed on this ground. As rightly submitted by the Ld Counsel, the entire money has been borrowed by the assessee, with the sole purpose for acquiring the shares of the Punjab National Bank and NTPC Ltd. Though the applied shares were not allotted in full, that will not deprive the assessee from claiming the entire interest paid as the part of the cost of the acquisition of the shares allotted as the money borrowed has direct nexus with the acquisition of the shares. We, therefore, direct the A. O to treat the interest paid by the assessee to both the financiers as a part of cost of acquisition of the shares and allow the same as a deduction. Accordingly, Ground No. 1 is allowed."

5. In the case of Wood Stock Broking P. Ltd. (supra) the identical issue has been considered by the Tribunal and following the principles laid down by the Hon'ble High Court of Madras in the case of CIT vs. Trishul Investments Ltd. 305 ITR 434 held that the interest paid on the money borrowed for acquiring the shares on which the assessee paid the interest which partakes the character of the cost of the shares. We, therefore, hold that the interest paid by the assessee on the money borrowed for IPO application is part of cost of acquisition and the same is to be allowed. We, therefore, direct the A.O. to allow the interest paid by the assessee as the cost of acquisition in computing the short-term-capital-gain. If the assessee has been paid any interest by the company on amount of Share Application money then same should be reduced from the interest paid and net amount only is to be considered.

7. Thus, respectfully following the aforesaid decisions of the coordinate Bench of ITAT, the grounds of appeal raised by the department stands dismissed."

6. In view of the above, without going into the controversy relating to the validity of reopening, we decide the appeal on merits in favour of the assessee following the above cited decisions of the Tribunal.

7. In the result, the appeal of the assessee is hereby treated as allowed.

**Order pronounced in the open court on 29.01.2016.**

**Sd/-**  
**(Ramit Kochar)**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(Sanjay Garg)**  
**JUDICIAL MEMBER**

Mumbai, Dated: 29.01.2016.

\* Kishore, Sr. P.S.

Copy to: The Appellant  
The Respondent  
The CIT, Concerned, Mumbai  
The CIT (A) Concerned, Mumbai  
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.