

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ "ई" मुंबई
IN THE INCOME TAX APPELLATE TRIBUNAL "E" BENCH, MUMBAI

BEFORE SHRI SHAILENDRA KUMAR YADAV, JM AND SHRI RAJESH KUMAR,
AM

आयकर अपील सं./I.T.A. No.3225 and 7518/Mum/2013
(निर्धारण वर्ष / Assessment Year : 2008-09 & 2009-10)

M/s Triumph International Finance India Ltd, Oxford Centre, 10, Shroff Lane, Colaba Causeway, Mumbai-400005	बनाम/ Vs.	Asstt Commissioner of Income Tax, Central Circle-40, Aayakar Bhavan, Mumbai-400020
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स्थायी लेखा सं./ PAN : AAACE0308A

अपीलार्थी ओर से / Assessee by	Shri Rajeev Khandelwal
प्रत्यर्थी की ओर से/Revenue by	Dr.P.Daniel

सुनवाई की तारीख / Date of Hearing : 29.06.2016
घोषणा की तारीख /Date of Pronouncement : 25.08.2016

आदेश / ORDER

PER RAJESH KUMAR, A. M:

These two appeals by the assessee are directed against the two separate orders first dated 19.3.2013 passed by Id.CIT(A)-37 for the assessment years 2008-09 and second dated 17.11.2013 by the L.d CIT(A)-36 for the assessment year 2009-10. Since, the appeals before us relate to the same assessee, therefore, for the sake of convenience, they are clubbed together, heard together and disposed of in this consolidated order.

2. **First we shall take the appeal in ITA No. 3225/Mum/2013 relating to the assessment year 2008-09**

3. The Id AR at the outset submitted that the ground no 1 against the confirming the disallowance of loss of Rs. 3,328/- on valuation of stocks and 1st part of ground no 2 as regards confirmation of disallowance of financial costs of Rs. 8,59,63,585/- were not pressed and accordingly dismissed as not pressed. The second part of ground no 2 qua confirmation of depreciation disallowance by CIT(A) has been dealt with in para 13 of this order.

4. Ground No.3 is in respect of not allowing deduction on account of interest incurred/payable to the banks from the interest income earned of Rs.2,60,42,297/- and assessed to tax under the head "income from other sources".

5. Brief facts of the case are that the assessee filed e-return on 30.9.2008 declaring total income at Rs. NIL, which was processed u/s 143(1) of the Act. Thereafter, scrutiny proceedings were initiated against the assessee and statutory notices under section 143(2) and 142(1) were issued and served upon the assessee. During the year under consideration the assessee was not doing any business activity but in earlier years was engaged in the business of trading in shares and securities as member of

the NSC and were SEBI registered merchant bankers before the assessee was debarred by the interim order of the SEBI dated 4.4.2001 from undertaking any business as stock broker or as merchant banker till further order. The SEBI passed another order dated 21.6.2001 continuing the bar imposed on the assessee from carrying on such business activities as broker and trader in shares. The order passed by the SEBI was appealed in the Security Appellate Tribunal (SAT) in the month of April, 2004 with no success and the appeal filed by the assessee before the SAT was dismissed by the Tribunal vide order dated 11.5.2007. Finally, the order of the SAT was also affirmed by the Hon'ble Apex Court and leading to discontinuance/suspension of business of the assessee. In the return of income filed by the assessee, it claimed loss of Rs.3328/- on account of decrease in valuation of stocks and also claimed business loss on account of various expenses such as operating and administrative expenses Rs.4,03,818/-, Financial Expenses Rs.8,59,63,585/-, Preliminary and misc. Exp. Written off Rs.10,012/- and depreciation Rs.179634/-. Besides these expenses, the assessee has earned interest income to the tune of RS.5,43,92,821/-. During the course of scrutiny proceedings, the AO observed that since the assessee has discontinued its business following an imbargo by the SEBI which was affirmed by the Hon'ble Supreme Court and therefore the assessee was not carrying on any business activity during

the year and accordingly came to the conclusion that the loss claimed on account of decrease in valuation of stock amounting to Rs.3328/- and various expenses claimed in the profit and loss account as stated above aggregating to RS.8,65,57,048/- were not allowable and assessed the total income from interest at Rs. 5,43,92,821/- under the head "Other Sources" and taxed the same accordingly by passing order u/s 143(3) dated 28.12.2010 assessing the income at Rs.5,43,92,820/-. The AO while framing the assessment order relied on the various judicial pronouncements as mentioned at paras 4.2 to 4.7 of the assessment order. Aggrieved by the order of the AO, the assessee preferred an appeal before the First Appellate Authority (FAA). During the course of appellate proceedings, the Id. CIT(A) called for the remand report from the AO as the Id.AR of the appellant moved an application dated 7.12.2011 for admission of additional evidences under rule 46A of the Income tax Rules, 1962. The AO submitted remand report dated 4.2.2013. Before the Id. CIT(A), the Id.AR of the assessee took an alternative plea that if the business of the assessee which was suspended following the order of SEBI which was finally upheld by the Hon'ble Apex Court, then the interest income assessed under the head "income from other sources" should be calculated after allowing interest incurred/payable which was incurred by the assessee in relation to earning of such income and have

direct nexus. The plea taken by the Id.AR was that since the assessee was doing business of broking as stock brokers at NSC , it was required to give securities and guarantees to the National Stock Exchange. The said securities/guarantees were given in the form of FDRs under lien purchased out of borrowed funds from banks and also bank guarantees issued by the banks. These guarantees were invoked by the National Stock Exchange upon commission of default by the assessee and the proceeds of FDRs were transferred to the National Stock Exchange by the respective banks on invocation thereof. The assessee tried to co-relate various bank deposits and their sources in order to justify the co-relation nexus with interest received from the NSE on the money lying with it. The assessee submitted that interest incurred to the banks has direct nexus with the income earned by way of interest from National Stock Exchange and therefore, were clearly covered by the provision of section 57(iii) of the Act. The Id. CIT(A) dismissed the appeal of the assessee and additional plea taken by the assessee thereby upholding the order of AO of assessing the income from interest received from National Stock Exchange under the head of other sources instead of income from business and also not allowing the interest incurred to banks on the loans out of which the money was transferred to National Stock Exchange upon invoking of guarantees /exercising lien on FDRs from the said interest income as requested by the

AR u/s 57(iii) of the Act. The Id CIT(A) relied on various decisions as discussed in para 5.7.7 to 5.7.27 that the additional evidence produced by the Id. AR did not bring any nexus between the interest incurred and interest earned. Accordingly dismissed the plea taken by the assessee. The Id. AR vehemently submitted that the assessee was doing business of stock brokering, merchant banking and trading in shares. In order to carry on the trading in shares and securities on behalf of the various parties, the assessee has to deposit and give security to the National Stock Exchange which were given in the form of bank guarantees and FDRs under lien of various banks out of the debit balances of the assessee from various banks. The Id. AR further submitted that due to unfavourable and unforeseen development the business of the assessee company was suspended by the SEBI vide order dated 4.4.2001 which was appealed before the SAT and SAT also dismissed the appeal of the assessee. Finally , the Supreme Court has also upheld the order of the SEBI debarring the assessee from doing share broking and merchant banking business and it was for these reasons the assessee could not do any business at the same time had to incur various expenditures in order to run the establishment of the assessee which were continued to be incurred as before. The Id. AR submitted that the assessee has not discontinued its business but forced by the SEBI to stop the business. Before us, it was submitted by the Id.AR

that rest of grounds mentioned in this appeal were with respect to the allowance of deduction of interest incurred which has direct nexus to the income received from the National Stock Exchange. The assessee received interest of Rs.2,60,42,297/- from National Stock Exchange on the various deposits which were lying with the National Stock Exchange following the invoking of the guarantees and encashing FDRs when lien was exercised by the Stock Exchange details whereof were also before us during the course of hearing. The Id. AR finally submitted that since the money which accumulated with the National Stock Exchange has come from various FDRs which were made out of overdraft account or the various bank guarantees which were invoked by National Stock Exchange by which already overdue accounts were increased to that extent and therefore whatever interest was incurred by the assessee on the overdraft or the bank guarantees should be allowed to be reduced under the provisions of section 57(iii) of the Act from the interest income received from the National Stock Exchange. The Id. AR submitted that the assessee have incurred Rs.2,74,88,000/- on various overdrafts out of which the FDR were made by the assessee and received interest of Rs.2,60,42,297/- from the National Stock Exchange. Finally the Id. AR submitted that the said interest incurred by the assessee was covered by the provisions of section 57(iii) of the Act as the interest incurred to banks has direct nexus and constituted

input cost of funds lying with National Stock Exchange and hence the same may be allowed while assessing the income of interest under the head "income from other sources".

6. On the contrary, the Id. DR heavily relied on the orders of authorities below and submitted that the order passed by the Id.CIT(A) was very detailed and reasoned order which was passed after discussing various decisions of various Courts and has given clearcut findings. There was no nexus between the interest earned from NSE and interest incurred to various banks on loans and prayed that the finding of the Id. CIT(A) be upheld by dismissing the appeal of the assessee.

7. We have carefully considered the submissions of the parties, perused the material placed before us including the orders of authorities below and case laws relied upon by the parties. We find that the business of the assessee was discontinued following the order of SEBI which was upheld by the SAT and Apex Court also and thus the business of the assessee came to forced stand still. The assessee was doing business of security and stock broking and trading in shares. We find that following the discontinuance of business by the order of SEBI, the National Stock Exchange invoked the guarantees furnished by the assessee and also exercised the lien on FDRs and proceeds of FDR were also send to the

National Stock Exchange by the various banks when the assessee was declared defaulter by the NSC resulting into accumulation of deposit to the tune of Rs.24,35,12,813/- with National Stock Exchange on which the NSE allowed interest of Rs.2,60,42,297/- during the financial year 2007-08 relevant to the assessment year under consideration. We find that these deposit of Rs.24 crores accumulated out of various bank guarantee invoked and proceeds of FDRs given as security. The source of the said amounts of accumulated funds with the NSC are from the borrowed funds from banks. Now the question before us is whether the assessee is entitled to deduction of interest incurred to various banks from whom the funds were arranged from the interest received from National Stock Exchange which is assessable under the head "income from other sources". For the sake of convenience and better understanding, the provisions of section 57(iii) are reproduced below :

"57. The income chargeable under the head "Income from other sources" shall be computed after making the following deductions, namely :—

(i)

(ia)

(ii)

(iia)

(iii) any other expenditure (not being in the nature of capital expenditure) laid out or expended wholly and exclusively for the purpose of making or earning such income;

(iv)

The interest is not in doubt or disputed that the interest received from the National Stock Exchange on the total amount of deposit with it is assessable as income from other sources". So far as the question of deduction qua interest to various banks is concerned, we are of the opinion that if there is nexus between the interest received and interest to banks on borrowings, the same is to be allowed as deduction u/s 57(iii) of the Act. A plain reading of provisions of section 57(iii) of the Act reveals that any expenses which is not of capital in nature and is wholly and exclusively incurred or expended for the purpose of making or earning of such income has to be allowed against the income which is earned and assessable under the provisions of section 56 of the Act. We also find that the National Stock Exchange exercised lien on FDRs of Rs.5 crores on 23.07.2002 (proceeds of FDRs Rs. 5,94,03,209/-) which was purchased on 19.07.2000 out of money borrowed from the Global Trust Bank and the assessee incurred interest on the said bank to the tune of Rs. 95.00 lakhs. Three other deposits out of interest bearing funds from Global Trust Bank were also given Rs. 2,00,000/- on 07.02.2000, Rs. 6,00,000/- on 21.09.2000 and Rs. 25,00,000/- on 18.10.2000 on which the assessee incurred interest of Rs. 6,27,000/-. Interest on bank guarantees invoked by the stock Exchange Rs. 3,15,00,000/- from Global Trust Bank, interest of Rs.59,85,000/- was incurred and on Rs. 3,00,00,000/- from Centurian Bank

out of which Rs. 2,11,00,000/- were interest bearing and interest incurred was at Rs. 33,76,000/-. Likewise assessee incurred interest of Rs. 80,00,000/- on the amount of invoked bank guarantee of Rs. 5,00,00,000/- from ICICI Bank. Thus the total amount of interest incurred to various banks on the borrowings comes to Rs. 2,74,88,000/-

8. Considering the above facts and arguments of the rival parties we find clear cut nexus between the interest earned from NSE on deposits with National Stock Exchange out of bank guarantees invoked and proceeds of FDRs and interest incurred on the sources of funds which are from the various banks out of the interest bearing funds given to NSE in the form of the bank guarantees invoked in year 2002 and FDRs with lien in favour of NSE on which the lien was exercised in 2002. We find merit in the arguments of the Id.AR that the interest incurred to these banks namely Global Trust Bank and Centurion Bank, ICICI Bank should be allowed while assessing the interest income of the assessee from the deposits with NSE and we are not convinced with the findings of Id.CIT(A) that there is no nexus between the funds/deposits lying with the NSE under lien and NSE have various deposits or FDR under lien or deposits out of sources as discussed supra and the interest expense accrued in favour of various banks on the money borrowed for the purpose of FDRs for security and also for bank guarantees to NSC. Accordingly, we

set aside the order of Id.CIT(A) and direct the AO to allow deduction of interest of Rs.2,74,88,000/- out of the interest received from the National Stock Exchange. This ground is allowed in favour of the assessee .

9. The issue raised in ground no.4 is against the non allowance of credit of tax Rs.38,79,584/-. This ground was taken before the Id.CIT(A) who dismissed the ground by holding that the assessee was free to move an application u/s 154 of the Act before the AO and accordingly, claim the credit of TDS and thus dismissed the appeal of the assessee. The Id. AR submitted before us that the AO has not allowed the credit of TDS deducted on behalf of the assessee amounting to Rs.38,79,584/-. At the time of hearing, the Id.AR submitted that the Id. CIT(A) also erred in directing the assessee to move an application u/s 154 of the Act instead of issuing direction to the AO to allow credit of TDS which was a legitimate claim to which the assessee was legally entitled.

10. On the contrary, the Id. DR relied heavily on the order of Id. CIT(A).

11. We have carefully considered the submissions of the parties, perused the material placed before us including the orders of authorities below. We find that the assessee has not been allowed credit of Rs.38,79,584/- being TDS at source on behalf of the assessee by NSE/Banks and the Id. CIT(A) has just dismissed the ground by directing the assessee to file rectification

application u/s 154 of the Act which is not correct in our view and hence we are of the view that it would meet ends of justice if the AO is directed to allow the credit of TDS of Rs.38,79,584/- after verifying the claim of the assessee after allowing reasonable opportunity of being heard to the assessee. This ground is allowed for statistical purposes.

12. The issue raised in respect of depreciation amounting to Rs.1,79,634/- raised in ground No.2 not allowing the depreciation to the assessee. The Id. CIT(A) also rejected the ground of the assessee on the ground that business has ceased and therefore no deprecation was allowable in the current year or in the subsequent years. Aggrieved by the order of Id. CIT(A) the assessee in appeal before us.

13. After hearing the rival contentions and on perusal of the record, we find that the assessee has discontinued the business following the order of SEBI and therefore there was no activity during the year and the claim of the depreciation of Rs.1,79,634/- cannot be allowed as the assessee did not carry out any business activity. However, the assessee is free to claim deprecation in the year in which the business is re-commenced on the basis of Written Down Value in the year in which the business was discontinued.

14. In the result, the appeal of the assessee is partly allowed.

15. Now, we shall take the appeal in ITA No. 7518/Mum/2013 relating to the assessment year 2009-10

16. We have already decided an identical issue in ITA No. 3225/Mum/2013 (AY-2008-09) and therefore, our decision in ITA No.3225/Mum/2013 would mutatis mutandis would apply to these appeals as well. The AO is directed accordingly.

17. The appeals filed by the assessee stands partly allowed.

Order pronounced in the open court on 25.08.2016.

Sd	sd
(SHAIENDRA KUMAR YADAV)	(RAJESH KUMAR)
न्यायिक सदस्य / JUDICIAL MEMBER	लेखा सदस्य / ACCOUNTANT MEMBER
मुंबई MUMBAI; दिनांक DATED :25.8.2016	
Sr.PS:SRL:	

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT – concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard File

आदेशानुसार/ BY ORDER,

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आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai