

**IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH: KOLKATA**  
[Before Shri M. Balaganesh, AM & Shri S. S. Viswanethra Ravi, JM]

**I.T.A No. 286/Kol/2008**  
**Assessment Year: 2003-04**

Assistant Commissioner of Income-tax, Vs. Apex Enterprises (I) Ltd. Circle-4, Kolkata. (Appellant)	(PAN: AADCA7387A) (Respondent)
--	-----------------------------------

Date of hearing:	24.10.2016
Date of pronouncement:	18.11.2016

For the Appellant: Shri Rabin Choudhury, JCIT  
For the Respondent: Shri D. S. Damle, FCA

**ORDER**

**Per Shri M. Balaganesh, AM:**

This appeal by revenue is arising out of order of CIT(A)-IV, Kolkata vide Appeal No. 147/CIT(A)-IV/05-06 dated 06.12.2007. Assessment was framed by DCIT, Circle-4, Kolkata u/s. 143(3)/147 of the Income tax Act, 1961 (hereinafter referred to as the “Act”) for AY 2003-04 vide his order dated 13.01.2006.

2. The first issue to be decided in this appeal is as to whether the Id CITA is justified in accepting to the stand taken by the assessee that Explanation to Section 73 of the Act cannot be made applicable to the assessee in the facts and circumstances of the case.

2.1. The brief facts of this issue is that the Id AO treated the loss on account of purchase and sale of shares as speculation loss under Explanation to Section 73 of the Act. The Id AO assessed the entire loss under the head ‘business’ as speculation loss by applying Explanation to Section 73 of the Act on the ground that the assessee’s main business was share trading . The assessee on the contrary submitted that its principle business is granting of loans and advances and hence the assessee’s case falls under the exception to Explanation to Section 73 of the Act. The Id CITA on analysis of the deployment of funds in different business segments , found that the assessee over a period of 4 years (i.e from Asst Years 2000-01 to 2003-04) mainly deployed its funds in granting of loans and during this period ,

deployment of funds in share trading business had progressively reduced. It was therefore held by the Id CITA that the assessee's principal business was granting of loans and advances and therefore the Explanation to Section 73 of the Act could not be invoked. Accordingly he directed the Id AO assess the loss on account of purchase and sale of shares as business loss as against speculation loss. Aggrieved, the revenue is in appeal before us on the following grounds:-

*"1. That the Ld. CIT(A) has erred in law as well as on facts by directing the assessing officer to assess loss in business of purchase & sale of shares as business loss.*

*2. That the Ld. CIT(A) has erred on facts by observing that the principal business of the assessee was granting of loans and advances and the same is based on misconceptions."*

2.2. The Id DR argued that the break up of income from other sources of Rs. 30,75,974/- admittedly included dividend income of Rs. 15,45,719/- which is exempt from tax and hence had to be excluded while determining the income criterion in order to fall within the exception to Explanation to Section 73 of the Act. Hence on the basis of income criterion, the assessee is not covered by the exception to Explanation to Section 73 of the Act. On funds deployment criteria, he argued that the principal business of assessee is not granting of loans and advances but is only share trading. He also argued that the Reserve Bank of India (RBI) had cancelled the certificate of registration granted to the assessee giving the status of Non-Banking Finance Company (NBFC). In response to this, there is absolutely no discussion made by the Id AO in the assessment order as to how the Explanation to Section 73 of the Act is applicable to the facts of the instant case. He filed the following details of funds deployment in various years commencing from Asst Years 2000-01 to 2003-04 as below:-

<u>Financial Year</u>	<u>Asst Year</u>	<u>Investment in Shares</u> <u>(Rs in Lacs)</u>	<u>Invt in Loans</u> <u>&amp; Advances</u> <u>(Rs in lacs)</u>
1999-00	2000-01	3369.96	8239.19
2000-01	2001-02	1854.44	3358.27
2001-02	2002-03	838.04	2817.49
2002-03	2003-04	304.03	3225.21

He argued that the principal business of assessee is only granting of loans and advances and hence the assessee's case fall under the Exception to Explanation to Section 73 of the Act. He also argued that the certificate of registration was cancelled by RBI after the end of this asst year and hence the same would be very much valid and in force for the year under appeal. He also stated that the issue is covered by the decision of this tribunal in assessee's own case for the Asst Years 2001-02 & 2002-03 in ITA Nos. 1796 & 285/Kol/2008 dated 18.3.2016. He argued that even as per the computation of income made by the Id AO, based on income criteria also, the assessee's case falls under the Exception to Explanation to Section 73 of the Act in as much as income from other sources as computed by the Id AO was much more than income from business.

2.3. We have heard the rival submissions and perused the materials available on record including the paper book filed by the assessee. We find that the assessee was holding certificate of registration from RBI conferring NBFC status which would obviously be given only when the assessee is engaged in the business of lending. It is not the case of the revenue that the said certificate was not in force till the end of the year under appeal. We find from the funds deployment criterion, the principal business of assessee is only granting of loans and advances and interest income derived thereon is taxable as income from business. Even on income criterion, we find that the income determined by the Id AO under other sources is much more than the income from business. Hence on both the counts, the assessee's case squarely falls under the exceptions to Explanation to Section 73 of the Act. We also find that this issue is squarely covered by the decision of this tribunal in assessee's own case for the Asst Years 2001-02 & 2002-03 supra wherein these findings have been categorically recorded. Hence respectfully following the same, we do not find any justifiable reason to interfere with the order of the Id CITA in this regard. Accordingly, the Grounds 1 & 2 raised by the revenue are dismissed.

3. The next ground raised by the revenue is as to whether the Id CITA is justified in deleting the addition made on account of interest receivable from Shaw Wallace & Co Ltd in the facts and circumstances of the case.

3.1. The brief facts of this issue is that the assessee claimed the TDS of Rs. 11,44,726/- in its return of income being interest from Shaw Wallace & Co Ltd for the total interest from them amounting to Rs. 54,06,301/-. The assessee objected to assessment of interest of Rs. 54,06,301/- as interest income from Shaw Wallace & Co Ltd under the head 'other sources'. The assessee granted Inter Corporate Deposit (ICD) to M/s Shaw Wallace & Co Ltd. After expiry of the ICD period, the assessee filed a civil suit for recovery of its dues vide C.S. No. 290 of 1997 before the Hon'ble Calcutta High Court. During the Financial Year 2002-03 relevant to Asst Year 2003-04, the said loan debtor issued a TDS certificate certifying tax deduction of Rs. 11,44,726/- from gross interest of Rs. 54,06,301/- pertaining to Asst Years 1999-2000 to 2002-2003. In the reassessments framed u/s 147 of the Act for these 4 years, the Id AO separately assessed the said sum of Rs. 54,06,301/- and again in the year under appeal (i.e AY 2003-04) added the same as a protective measure. The assessee submitted that the interest of RS. 54,06,301/- was not taxable either in Asst Years 1999-2000 to 2002-03 nor in Asst Year 2003-04 in view of the fact that in 1997, the assessee had filed a civil suit against Shaw Wallace & Co Ltd for recovery of land and as per the Section 34 of Civil Procedure Code , interest could not accrue during the pendency of the suit because award of interest was at the discretion of the Court. During the Financial Year 2002-03, M/s Shaw Wallace & Co Ltd had suo moto deducted and paid tax of Rs. 11,44,726/- on amount of Rs. 54,06,301/- and issued TDS certificate to the assessee. Section 198 of the Act provides that the tax deducted at source shall be deemed to be income received and therefore taxation could not be postponed once the tax was deducted at source. It was submitted that Rs. 11,44,726/- was the income deemed to be interest received u/s 198 of the Act. The Id CITA appreciated the contentions of the assessee and held that it is true that during the pendency of a civil suit, as per section 34 of the Civil Procedure Code, no interest shall accrue to the assessee and accordingly the same cannot be taxed on accrual basis. However, as per section 198 of the Income Tax Act, the interest to the extent of Rs. 11,44,726/- shall be deemed to have received as TDS to the same extent had been deducted and remitted to the account of the Central Government. Hence the same should be taxed in Asst Year 2003-04 and accordingly granted relief for the balance Rs 42,61,575/- to the assessee. Aggrieved, the revenue is in appeal before us on the following grounds :-

*"3. That the Ld. CIT(A) has erred in law as well as on facts by deleting the addition of rs.42,61,575/- on account of interest receivable from M/s. Shaw Wallace & Co. Ltd. when the*

*tax was deducted at source from such interest income by the deductee in the previous year 2002-03 and the assessee claimed the credit of entire TDS in its return of income for the assessment year 2003-04.*

*4. That the Ld. CIT(A) has erred in law as well as on facts by misinterpreting the provisions of the I. T. Act, 1961 that credit of TDS can be allowed in the year in which the corresponding income is offered for taxation.”*

3.2. The Id DR vehemently argued that TDS is related to income as per section 199 of the Act and hence the income has been rightly taxed by the Id AO in Asst Year 2003-04 and since the same income had already been taxed in earlier Asst Years 1999-2000 to 2002-03, the same income has been taxed by the Id AO on a protective basis. Hence he prayed for non-interference of the order of the Id AO. In response to this, the Id AR argued that the assessee stopped accruing interest income in its returns once the civil suit was filed for recovery of the dues before the Hon'ble Calcutta High Court vide C.S.No. 290 of 1997 in line with the Provisions of Section 34 of the Civil Procedure Code. He argued that the Civil suit was finally settled on 22.3.2005 which is enclosed in pages 9 to 12 of the paper book and the settlement amounts were decided by the Hon'ble Court including payment of some interest. While making settlement of the said sum, M/s Shaw Wallace & Co Ltd reduced the TDS portion of Rs. 11,44,726/- and made the balance settlement in Asst Year 2005-06. He also argued that as per section 198 of the Act, deduction of tax at source to the credit of the assessee is equivalent to receipt of the same and hence the Id CITA had rightly directed the Id AO to tax the sum of Rs. 11,44,726/- as interest income in the Asst Year 2003-04 and grant TDS credit for the equivalent amount. Hence no interference is to be called for in the said order of the Id CITA.

3.3. We have heard the rival submissions and perused the materials available on record including the paper book filed by the assessee. The facts stated hereinabove remain undisputed and hence the same are not reiterated for the sake of brevity. We find that the Hon'ble Calcutta High Court in the case of CIT vs Bengal Jute Mill Co Ltd reported in 165 ITR 631 (Cal) had held that even if the interest was booked by the assessee on the principal amount which was the subject matter of suit, it would not conclusively determine the issue. It was also held that even if the assessee was maintaining its accounts on mercantile system, no interest income accrued to the assessee and therefore not assessable during the pendency of the suit. We find that the above decision of Hon'ble Calcutta High Court and the

provisions of section 34 of the Civil Procedure Code do not restrict the payer to pay the interest on the principal amount to its creditor. In case, the debtor pays the interest to the creditor even during the pendency of the suit, the creditor is not barred to accept the interest due on the principal amount from the debtor. We observe that in the instant year under appeal, the debtor had brought to the notice of the assessee creditor that tax has been deducted at source and remitted to the account of Central Government to the tune of Rs. 11,44,726/- and handed over the TDS certificate in that regard. Hence the said sum of Rs. 11,44,726/- has to be treated as interest amount received in terms of section 198 of the IT Act and as per section 34 of the Civil Procedure Code and accordingly the same had to be taxed as interest income. We find that the Id CITA had rightly directed the Id AO to assess the interest income as deemed receipt to the extent of tax deducted at source to be taxed in Asst Year 2003-04 and correspondingly directing to give credit for TDS to the entire extent of Rs. 11,44,726/-. In the facts and circumstances, we do not find any justifiable reason to interfere with the order of the Id CIT(A) in this regard. Accordingly, the Grounds 3 & 4 raised by the revenue are dismissed.

4. The last ground raised by the revenue in this appeal is as to whether the Id CIT(A) is justified in directing the Id AO to treat the dividend received in the sum of Rs. 15,45,719/- to be included under business income as against other sources in the facts and circumstances of the case. In view of our decisions given in para 2 and 3 above, we hold that the same does not require any adjudication.

5. The Ground No. 6 raised by the revenue is general in nature and does not require any adjudication.

6. In the result, the appeal of the revenue is dismissed.

Order is pronounced in the open court on 18.11.2016

Sd/-  
(S.S. Viswanethra Ravi)  
Judicial Member

Sd/-  
(M. Balaganesh)  
Accountant Member

Dated : 18th November, 2016

Jd.(Sr.P.S.)

Copy of the order forwarded to:

1. Appellant – ACIT, Circle-4, Kolkata.
2. Respondent – Apex Enterprises (I) Ltd., 16, Netaji Subhas Road, 4<sup>th</sup> floor, Kolkata-700 001.
3. The CIT(A), Kolkata
4. CIT , Kolkata
5. DR, Kolkata Benches, Kolkata

/True Copy,

By order,

Asstt. Registrar.