

IN THE INCOME TAX APPELLATE TRIBUNAL "B", BENCH KOLKATA  
BEFORE SHRI S.S.VISWANETHRA RAVI, JM & DR. A.L.SAINI, AM

आयकर अपील सं./ITA No.862/Kol/2013

(निर्धारण वर्ष /Assessment Year:2004-05)

ITO(E)-II Kolkata 5 <sup>th</sup> , 10B, Middleton Row, Kolkata-700071	Vs.	Debi Kamal Estate Trust, 7, Queens Park, Kolkata-700020
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No.: <b>AAATD 7600 F</b>		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Cross Objection No.68/Kol/2013  
Arising out of ITA No. 862/Kol/2013

(निर्धारण वर्ष /Assessment Year:2004-05)

Debi Kamal Estate Trust, 7, Queens Park, Kolkata-700020	Vs.	ITO(E)-II Kolkata 5 <sup>th</sup> , 10B, Middleton Row, Kolkata-700071
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No.: <b>AAATD 7600 F</b>		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Revenue by : Shri R.P.Nag, JCIT, Sr.DR  
Assessee by : Shri Animesh Mukherjee, FCA &  
Shri Anindranath Chatterjee, FCA

सुनवाई की तारीख / Date of Hearing : 10/01/2017

घोषणा की तारीख/Date of Pronouncement 05/04/2017

**आदेश / O R D E R**

**Per Dr. Arjun Lal Saini, AM:**

The captioned appeal filed by the Revenue and Cross objections filed by the Assessee, pertaining to the Assessment Year 2004-2005, are directed against the order passed by Id. Commissioner of Income Tax (Appeals)-Jalpaiguri, in appeal No.83/CIT(A)-XIV/2009-10, dated 13.02.2013, which in turn arises out of an order passed by the DDIT (E )-1, Kolkata Under Section 144/147 of the Income Tax Act, 1961 (hereinafter referred to as the Act) dated, 09.07.2009

2. Brief facts of the case qua the assessee are that the assessee filed its return of income for assessment year 2004-05 on dated 31.03.2005 declaring total income at Nil. The Return of income of the assessee was processed U/s 143(1) on dated 18.03.2007. Subsequently, it was found by the Assessing Officer that as per TDS certificates attached with the return the assessee received interest from Syndicate Bank amounting to Rs.2,29,48,404. But from the Income & Expenditure Account filed along with the return, it was seen that the assessee disclosed interest income to the tune of Rs.12,68,226/- only. As per Assessing officer, since it was gross suppression of income, therefore, the case was reopened U/s 147 of the I.T. Act by issuing a notice U/s 148 of the I.T.Act. The Assessing Officer observed that TDS certificate shows that the gross interest income for the A.Y. 2004-05 is Rs.2,29,48,404/-. However, the accumulated interest as per the balance sheet figure come to Rs. 2,51,33,855/-. Since the assessee has disclosed interest income in the A.Y.2004-05 amounting to Rs.12,68,226/-, the balance interest of Rs.2,38,65,620/- is treated as suppressed interest income and added to the total income of the assessee as "Income from other sources".

3. Aggrieved from the order of AO, the assessee filed an appeal before the Id. CIT(A), who has deleted the addition made by AO partly observing the followings :-

*5. Conclusion- Before analysing the submissions of assessee vis-a-vis the facts of the case, it is important to look into the background of the case. There was a search and seizure operation by the Income Tax Department on the assessee in 1980. After the search, the accounts of the assessee in various banks were attached. The details about the findings of search*

and the result of the assessments after the search are not the subject matter of the either assessment proceedings before AO or appellate proceedings before undersigned. The accounts remained frozen for about 23 years. Assessee filed a writ before the Hon. High Court Kolkata and the Hon. Court vide its order dated 18-06-2003 revoked the attachment. The assessee could not have access to its accounts as late as 2009 as the Banks could not provide the statements due to technical reasons. The technical reason cited by Banks is the introduction of Core Banking System. The assessee could get complete details of accounts after 2009 i.e. much later than the due date of filing returns for AY 2004-05. For AY 2005-06, the details have been filed during the appellate proceedings before CIT(A) and the CIT(A) has accepted the reconciliation of interests done by the assessee after receipt of bank statements.

5.1- As submitted by the assessee, the CBDT has clarified in Circular no. 100 dated 24th January 1973; the repayment of loan originally taken to fulfill one of the objects of the trust would be treated as application of income. Accordingly, AO is directed to treat the repayment of loan to the extent of Rs.84,44,684/- as expenditure as well as application of income. The activities of the assessee during the year were found to be charitable.

Therefore, the AO is directed to allow exemption u/s 11 (1)(a).

5.2- Assessee has filed Form number 10 alongwith the application for condonation of delay and pleaded to give exemption u/s 11(2). There is no provision for filing the Form Number 10 during the appellate proceedings. The time limits for filing the Form 10 has been laid down by the Hon. Supreme Court in the Nagpur Hotel Owners Association case (247 ITR 201) according to which the Form number 10 can be filed before the completion of assessment by AO. In view of this, the claim of the assessee cannot be accepted and this ground of appeal is dismissed.

5.3 This ground deals with charge of interest u/s 234A & B. No submissions have been given on this point. In any case charging of interests u/s 234A & B are of consequential nature and the of charging these interests by AO cannot be disputed in appeal. This ground is therefore dismissed as infructuous.

5.4 Regarding the wrong disclosure of interest in the return of income, the assessee has submitted that it was beyond his control to have given the correct value of interest as the accounts were attached by the Income Tax Department. For the AY 2005-06 also, the assessee had given the exact figures of interest earned during the period in proceedings before CIT(A). The CIT(A) had directed to consider the figures submitted before him to be taken as actual interest income earned. During the proceedings before the undersigned, the assessee has given the actual figures of interest earned in the period relevant to AY 2004-05 duly supported by copies of the bank statement and TDS certificates. As per the details submitted, the interest earned during the period relevant to AY 2004-05 is Rs. 68,99,280/-

Assessee had disclosed the interest income of Rs. 12,69,268 in the return of income. AO is therefore, directed to take Rs. 68,99,280 as interest income for AY 2004-05 and calculate total income after allowing the exemption u/s.11(1)(a).

6. Appeal is partly allowed."

4. Not being satisfied with the order of Id. CIT(A), the Revenue is in appeal before us and has taken the following grounds of appeal :-

1. *That on the facts and in circumstances of the case, the Ld. CIT (A)/XIV had erred in accepting the plea of the assessee that it was beyond the control of the assessee to submit correct value of interest income. The fact of the matter is that interest income amounting to Rs.2,30,41,124/- was clearly reflected from the TDS certificates furnished by the assessee along with the return of income and analysis of the Balance Sheets of A.Y 2004-05 and 2003-04 of the assessee reflected an interest income of Rs.2,38,65,629/-. The nature of payment and the period it related to were mentioned clearly in all the certificates.*
2. *That on the facts and in the circumstances of the case, the Ld. CIT (A) /XIV had erred in accepting the repayment of loan by the assessee as an application of income. The fact of the matter is that assessee was not able to establish the nature and utilization of the loans either at the time of assessment or at the time of appeal proceedings.*

**5. The first ground raised by the Revenue relates to the issue that interest income amounting to Rs.2,30,41,124/-, wrongly deleted by the Id.CIT(A), which was clearly reflected from the TDS certificates furnished by the assessee along with the return of income.**

5.1 Ld DR for the Revenue has submitted before us that interest income amounting to Rs.2,30,41,124/-, has been wrongly deleted by the Id CIT(A). The Id CIT(A) did not give proper justification to delete the same. The said interest income was clearly reflected from the TDS certificates furnished by the assessee along with the return of income and analysis of the Balance Sheets of A.Y 2004-05 and 2003-04 of the assessee reflected an interest income of Rs.2,38,65,629/-. The Id CIT(A) accepted the interest income at Rs. 68,99,280/- whereas the total accrued interest shown by the assessee in the Balance sheet is at Rs. 2,38,65,629/-. This

way, the Id DR for the Revenue has primarily relied on the stand taken by the Assessing Officer.

5.2 On the other hand, the Id AR for the assessee has vehemently submitted that what is accrued income for the A.Y.2004-05 can be offered by the assessee for taxation purpose and not the accumulated interest of the preceding previous years which is shown in the Balance Sheet of the assessee for the A.Y.2004-05. That is, the Balance Sheets of A.Y 2004-05 and 2003-04 of the assessee reflected an interest income of Rs.2,38,65,629/- which belonged to preceding previous years cannot be taxed in the A.Y.2004-05. For the Assessment year under consideration the interest income of Rs. 68,99,280/- is relevant, which is accrued for the A.Y. 2004-05 and the assessee has offered the same for taxation purposes. Therefore, the interest income of Rs.2,38,65,629/- pertains to preceding previous years and is not liable to tax in the assessment year under consideration.

5.3 Having heard the rival submissions, perused the material available on record, we are of the view that there is merit in the submissions of the assessee, as the propositions canvassed by the Id AR for the assessee are supported by the facts narrated by him. As Id AR for the assessee has pointed out that the interest income of Rs.2,38,65,629/- pertains to preceding previous years and is not liable to tax in the assessment year under consideration. The accrued interest pertains to A.Y 2004-05, is at Rs. 68,99,280/- and the same has been offered by the assessee for

taxation purposes, therefore, the order passed by the Id CIT(A) is a reasoned order and does not require interference. Therefore, we confirm the order passed by the Id CIT(A).

5.4 In the result, the appeal filed by the Revenue on ground No.1, is dismissed.

**6. The Ground No. 2 raised by the Revenue relates to repayment of loan by the assessee as an application of income for charitable purpose.**

6.1 The Id DR for the Revenue has stated that on the facts and in the circumstances of the case, the Ld. CIT (A) had erred in accepting the repayment of loan by the assessee as an application of income. The fact of the matter is that assessee was not able to establish the nature and utilization of the loans either at the time of assessment or at the time of appeal proceedings. The Ld. CIT(A) has accepted the submissions of the assessee blindly and order passed by him is not proper and justifiable. The assessee did not prove how and when the loan in question was availed. More importantly the manner in which the amounts borrowed were used for charitable purpose. The assessee also did not produce any bill, voucher, and expense details to show that expenses were incurred by him to carry out the charitable activities. The Id CIT (A) has blindly provided the relief to the assessee based on the circular No. 100 dated 24-01-1973 issued by CBDT without verifying the evidences. This circular says that “the repayment of loan originally taken to fulfil one of the objects of the trust would be treated as application of income”, but all the loans taken by the trust and repaid by the trust were not for charitable purpose,

hence these loans were not utilized for the objects of the trust. The assessee did not produce any evidence in respect of charitable activities done by it and application of loan. This circular will be applicable only when the assessee proves with documentary evidences that the amount was utilised for charitable purposes and repayment of loan taken originally to fulfil objects of the trust. In order to avail the benefit of the said circular the assessee should prove with documentary evidence that Loans taken by the trust and utilization thereof were for the objects of the trust but the assessee had not proved these with documentary evidences before the Id CIT(A). Moreover, the Id CIT (A) failed to ask the assessee to produce these documentary evidences therefore the order passed by the Id CIT(A) is not justifiable. The assessee has failed to establish with documentary evidence that whether he has fulfilled objects of the trust, that is, what objects of the trust have been fulfilled by the assessee have not been established by any documentary evidence therefore the said circular does not apply to the assessee. In fact the family members and relatives were utilising the trust funds unlawfully. As already stated that the Assessee has clearly admitted before the Income Tax Authorities, on its inability to produce evidence to prove borrowing and that the loans borrowed were spent for charitable activities and nature of those charitable activities. The mere assertion of the Assessee in this regard without evidence cannot be the basis to uphold the claim of the Assessee in this regard.

In addition to this the Id DR for the Revenue has relied on the following judgment of ITAT in assessee's own case viz: Devi Kamal trust Estate Kolkata, ITA No. 137/kol/ 2009, Kolkata, dated 16.12.2015, wherein the Tribunal has held as under:

*"19. We have given a very careful consideration to the rival submissions. In so far as Gr.No.1 raised by the revenue is concerned, it is a fact that the Assessee did not file return of income before AY 2002-03. It is not the case of the Assessee that the accumulated deficit was determined in assessments completed after AY 2002-03 when from the Assessee started filing return of income. The accumulated deficit is claimed on the basis of Balance Sheet as on 31.3.1996 in which loans and advances received in cash or kind is shown at Rs.9,29,50,000/-. As to what is the opening balance as on 1.4.1995 is also not found in this Balance Sheet. The accumulated deficit as per this balance sheet is shown at Rs.8,63,10,133/-. The accumulated deficit is thereafter carried forward from AY 96-97 to AY 2004-05 and stands reduced to Rs.8,54,16,519 as on 31.3.2005 which is sought to be set off against the income of AY 2005-06. It is also pertinent to note that the aforesaid claim was not made in the return of income filed by the Assessee nor in the proceedings before the AO. The claim was made for the first time before CIT(A). The CIT(A)'s findings on this aspect have already been given in the earlier part of this order. The evidence referred to in the findings of CIT(A) are relevant only with regard to the claim of the Assessee that Rs.4,54,11,300/- was repayment of loans which had been taken by the Assessee in the earlier AYs and used for charitable purpose and repaid during the PY. There is no material on record to substantiate the claim of the Assessee that a sum of Rs.8,54,26,519/- was accumulated deficit. Admittedly such accumulated deficit has not been determined in any assessment proceedings and therefore the claim of the Assessee in this regard was wrongly allowed by the CIT(A). Gr.No.1 raised by the revenue is accordingly allowed.*

*20. As regards grounds No.2 to 5 raised by the revenue, the issue is with regard to the claim of the Assessee that during the previous year it had repaid loans of Rs.4,54,11,300/- taken by it in the past AYs for the purpose of carrying out the charitable objects of the trust and had in fact applied loans for charitable purposes in the past AYs. The Assessee claimed that the repayment of loans during the previous year of loans so taken in the past AYs would amount to application of income for charitable purpose and exemption u/s.11 of the Act ought to be allowed to the Assessee to the extent of repayment of loans. There is no dispute that repayment of loan taken for charitable purposes had to be treated as application of*

income for charitable purposes. The evidence on record indicates that there are loan confirmations by the following persons for the following amounts:

1. Jadavlal Trust Estate	Rs.96,00,000
2. Devi Lachmi Debottar Estate	Rs. 14,00,000
3. Smt.Anita Banerjee (decd)	Rs.4,80,00,000
4. Sri Keshab Narayan Banerjee	Rs.1,66,00,336
5. Sri.Subhashis Bandopadhyay	Rs.5,04,000
6. Sri.Debashis Banerjee	Rs.5,04,000
7. Smt.Maitree Mukherjee	Rs.5,04,000
Advances	
Dubrajpur Rice Mills Pvt.Ltd.	Rs.86,24,940
Jadavlal Trust Estate	Rs.12,00,000
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	Rs.8,69,47,276
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A matching of loan and charitable activities done by the trust during the last 23 years w.e.f. from the date of search in 1980 and to the day of release in 2003 by filing every year balance sheets was also filed. It was submitted that the charitable activities done long back and it was not possible to preserve the documentary records for these charitable activities for a long period as the records are weeded out every 10 years for paucity of space to preserve the same. At page-26 to 29 is the ledger account of Advance/Loans Received from 1.4.2004 to 31.3.2005. Perusal of the same shows that the opening credit balance was Rs.8,69,47,276 and the Assessee has repaid loans to the extent of Rs.4,54,11,300 to the following persons during the previous year:

1. K.N.Banerjee	Rs.1,29,69,500
2. D.Banerjee	Rs.1,12,87,000
3. S.Banerjee	Rs.1,06,04,800
4. M.Mukherjee	Rs.1,05,50,000
	Rs.4,54,11,300

The balances in all these confirmations are opening balance. These do not prove how and when the loan in question was availed. More importantly the manner in which the amounts borrowed were used for charitable purpose. The loans were stated to be availed between the year 1980 to June, 2003 when the Assessee did not have funds to carry out charitable activities. In the year in which the loans were availed, there was no scrutiny assessment. In fact the Assessee has started filing returns of income only after AY 2002-03. Therefore the factum of borrowing and the utilization of the funds borrowed were never subjected to scrutiny in the past. There is no evidence filed by the Assessee in this regard. The CIT(A) has referred to the following evidence in upholding the claim of the Assessee

*viz., (a) details of expenses along with evidence; (b) Loan confirmation; (c) balance sheet for last eight years; (d) Bank statements; (e) list of repayment of loan, (f) write-up on purpose for acquiring loans. As already stated the Assessee has clearly admitted before the CIT(A) on its inability to produce evidence to prove borrowing and that the loans borrowed were spent for charitable activities and nature of those charitable activities. The mere assertion of the Assessee in this regard without evidence cannot be the basis to uphold the claim of the Assessee in this regard. We therefore do not agree with the conclusions of the CIT(A) in this regard. We therefore reverse the order of the CIT(A) and restore the order of the AO in this regard.*

6.2. On the other hand, the Ld. AR for the assessee has submitted before us that the assessee trust took the loan to run the charitable activities. As submitted by the assessee before the Id CIT(A) that the CBDT has clarified in Circular no. 100 dated 24th January 1973; that the repayment of loan originally taken to fulfill one of the objects of the trust would be treated as application of income. Therefore, the repayment of loan to the extent of Rs.84,44,684/- is an expenditure as well as application of income.

6.3. Having heard the rival submissions, perused the material available on record, we are of the view that there is merit in the submissions of Id. DR for the Revenue, as the propositions canvassed by the Id. DR for the Revenue are supported by Judgment cited by him in assessee's own case, in ITA NO. 137/kol/ 2009, Kolkata, dated 16.12.2015, Debi Kamal Estate Trust (supra). As Id DR for the Revenue has pointed out that as per Tribunal judgment cited (supra), the original loans taken by the assessee were not for charitable purpose, how repayment of these said loans can become charitable purpose. Moreover, the assessee did not submit before CIT(A), any documentary evidences for application of income. Just to cite

the circular of the CBDT is not sufficient, the assessee needs to explain with documentary evidences that money has been utilized for charitable purpose and objects of the trust have fulfilled. Besides, this is an additional ground raised by the assessee before the Id CIT(A) which was never dealt with by the Assessing Officer, in his order, under section 147/148 ( for which the assessee was in appeal before the Id CIT(A) ).

In addition to this, assessee was not able to establish the nature and utilization of the loans either at the time of assessment or at the time of appeal proceedings, therefore Id CIT(A) was not justified in directing the AO to allow exemption to the assessee under consideration U/s 11 (1) (a) of the Act. The CBDT Circular No.100 dated 24.01.1973 clearly states that '***the repayment of loan originally taken to fulfill one of the objects of the trust would be treated as application of income.***' But what we have observed in assessee`s case under consideration is that original loan itself was not utilized for the objects of the trust therefore how the repayment of the said loan can become for the objects of the trust and for the purpose of charitable activities. Therefore, respectfully following the Judgment cited by Id DR for the Revenue, in assessee`s own case, in ITA NO. 137/kol/2009, Kolkata, dated 16.12.2015, Debi Kamal Estate Trust (supra), we allow the ground No. 2 raised by the Revenue. We therefore reverse the order of the CIT(A) and restore the order of the AO in this regard.

6.4. In the result, appeal filed by the Revenue on ground No. 2, is allowed.

7. The Cross Objections raised by the assessee in CO. No.68/Kol/2013 read as under:

*“ 1. For that in view of the facts and in the circumstances, the Id CIT(A) was justified in directing to take the interest income of Rs.68,99,280/- in accordance with the related period bank statements and TDS certificates.*

*2. For that in view of the facts and in the circumstances, the Id CIT(A) was justified in accepting the repayments of loans as genuine.*

*3. For that in view of the facts and in the circumstances, the Id CIT(A) was justified in directing to allow the repayment of loan as expenditure and allow the exemption U/s 11(1) (a).”*

Regarding Cross objection No. 1 raised by the assessee, as we have already dismissed the ground No. 1 raised by the assessee in para No.6.4 of this order therefore, we allow the cross objection filed by the assessee.

Regarding Cross objection Nos. 2 and 3 raised by the assessee, as we have already allowed the ground No. 2 raised by the Revenue in para No.7.4 of this order therefore, we dismiss the cross objections Nos. 2 and 3 filed by the assessee.

7.1 In the result, the cross objections filed by the assessee, are partly allowed.

7.2 In the result, the appeal filed by the Revenue, is partly allowed

Order pronounced in the open court on this 05/04/2017.

**Sd/-**

**(S.S.VISWANETHRA RAVI)**

न्यायिक सदस्य / JUDICIAL MEMBER

**Sd/-**

**(DR. A.L.SAINI)**

लेखा सदस्य / ACCOUNTANT MEMBER

कोलकाता /Kolkata; दिनांक Dated 05/04/2017

प्रकाश मिश्रा/Prakash Mishra,नि.स/ PS

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

1. अपीलार्थी / The Appellant-Debi Kamal Estate Trust
2. प्रत्यर्थी / The Respondent.- DCIT, Circle-7(1), Kolkata
3. आयकर आयुक्त(अपील) / The CIT(A), Kolkata.
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार

(Asstt. Registrar)

आयकर अपीलीय अधिकरण, कोलकाता / ITAT, कोलकाता