



IN THE INCOME TAX APPELLATE TRIBUNAL
"H" BENCH, MUMBAI
BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND
SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER

ITA no.3225/Mum./2016
(Assessment Year : 2006-07)

Shrenu Impex Pvt. Ltd.
Siddhi Besement & Ground Floor
Plot no.14 & 15, Khar West
Mumbai 400 052 PAN – AAACS6180N

..... Appellant

v/s

Income Tax Officer
Ward-9(3)(1), Mumbai

..... Respondent

Assessee by : Shri K.P. Kapadia
Revenue by : Shri T.A. Khan

Date of Hearing – 25.10.2017

Date of Order – 09.11.2017

ORDER

PER SAKTIJIT DEY, J.M.

Aforesaid appeal by the assessee challenging the order dated 25th February 2016, passed by the learned Commissioner (Appeals)-21, Mumbai, for the assessment year 2006-07.

2. In ground no.1, the assessee has challenged the re-opening of assessment under section 147 of the Act.

3. Brief facts are, for the impugned assessment year, assessee filed its return of income on 23rd November 2006, declaring total income of ₹ 8,42,328. The return of income filed by the assessee was taken up for scrutiny and the assessment in case of the assessee was originally completed under section 143(3) of the Act on 12th December 2008. Subsequently, the Assessing Officer having found that the interest paid to Jyoti Majithia has no nexus with the interest income earned by the assessee from the partnership firm was of the view that by claiming deduction of interest expenditure against interest income, there is escapement of income, the Assessing Officer re-opened the assessment under section 148 of the Act and issued notice under section 147 on 19th March 2013. Though, the assessee after participating in the re-assessment proceedings objected to the validity of re-opening, however, the Assessing Officer rejecting the objection of the assessee proceeded to complete the assessment vide impugned order passed under section 143(3) r/w section 147 of the Act by making a number of additions including additions on account of interest expenditure amounting to ₹ 2,45,982. The assessee challenged the assessment order in an appeal preferred before the learned Commissioner (Appeals), inter-alia, on the validity of re-opening under section 147 of the Act.

4. The learned Commissioner (Appeals) while upholding the re-opening of assessment under section 147 of the Act, granted partial relief to the assessee in respect of certain additions made by the Assessing Officer.

5. Learned Authorised Representative submitted, the learned Commissioner (Appeals) without properly considering the submissions of the assessee has upheld the validity of re-opening of assessment made under section 147 of the Act. Learned Authorised Representative submitted, under identical facts and circumstances, the issue relating to re-opening of assessment arising in assessee's own case for assessment year 2009-10, has been restored back to the file of the learned Commissioner (Appeals) by the Tribunal. Therefore, he submitted, similar direction may be issued in the impugned assessment year also.

6. Learned Departmental Representative has no objection if the issues are restored back to the file of the Assessing Officer for fresh adjudication.

7. We have heard rival contentions and perused the material available on record. It is evident on record on the reasoning that the deduction claimed on account of interest expenditure has no nexus with the interest income earned by the assessee, the Assessing Officer

has re-opened the assessments for assessment year 2006-07 and 2009-10. While deciding assessee's appeal for assessment year 2009-10, vide ITA no.3226/Mum./2016, dated 23rd August 2017. The Tribunal has restored the matter back to the learned Commissioner (Appeals) with the following directions:-

"I have heard the rival contentions and gone through the facts and circumstances of the case. I find that the CIT(A) has not adjudicated the issue of reopening on the issue of reasons recorded and hence, I set aside the order of CIT(A) in entirety and remand the matter back to the file of the CIT(A) for fresh adjudication on the issue of reopening. In case reopening is affirmed, the CIT(A) will also adjudicate the issue on merits afresh also."

8. Notably, the order of the learned Commissioner (Appeals) on the issue of re-opening in the impugned assessment year is identical to the order passed by him in assessee's own case for assessment year 2009-10. That being the case, in consonance with the order passed by the Tribunal in assessee's own case for assessment year 2009-10, as referred to above, we restore the matter back to the file of the learned Commissioner (Appeals) with similar direction.

9. In the result, assessee's appeal is allowed.

Order pronounced in the open Court on 09.11.2017

Sd/-
RAMIT KOCHAR
ACCOUNTANT MEMBER

Sd/-
SAKTIJIT DEY
JUDICIAL MEMBER

MUMBAI, DATED: 09.11.2017

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The CIT(A);*
- (4) *The CIT, Mumbai City concerned;*
- (5) *The DR, ITAT, Mumbai;*
- (6) *Guard file.*

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

(Dy./Asstt. Registrar)
ITAT, Mumbai