

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

**BEFORE D.T. GARASIA, JUDICIAL MEMBER AND
SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER**

**ITA No.4099/M/2015
Assessment Year: 2011-12**

Income-tax Officer-23(1)(4), Room No.109, 1 st Floor, Matru Mandir, Tardeo Road, Mumbai - 400007	Vs.	M/s. DHFL Venture Capital Fund, 4 th Floor, Dheeraj Arma, Anant Kanekar Marg, Bandra (E), Mumbai – 400 051 PAN: AAATD8633L
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Apurv Gandhi, A.R.
Revenue by : Shri Purushottam Kumar, D.R.

Date of Hearing : 18.05.2017
Date of Pronouncement : 30.06.2017

ORDER

Per D.T. GARASIA, Judicial Member:

The present appeal has been preferred by the Revenue against the order dated 27.04.2015 of the Principal Commissioner of Income Tax (OSD) (Appeals) [hereinafter referred to as the Pr. CIT(A)] relevant to assessment year 2011-12.

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

“(1) On the facts and in the circumstances of the case and in law, the Hon. CIT(A) erred in deleting the addition of Rs. 6,59,362601- being the income in the hands of assessee which has been claimed as exempt by virtue of Sec. 61 to 63 of the I. T. Act, 1961.

(2) On the facts and in the circumstances of the case and in law, the Hon. CIT(A) grossly erred in holding that the share of income received by the contributors and offered to tax by the contributors by simply accepting the claim of the assessee without causing any independent enquiry either from

the concerned contributor and/or the Assessing Officers of the contributors and thus erred in holding that the Department cannot proceed to tax the same income in the hands of the assessee.

(3) On the facts and in the circumstances of the case and in law, the Hon. CIT(A) grossly erred in not directing to assess the income of the contributory fund managed by the assessee in the hands of the Association of Person (AOP) of the Contributors to the fund managed by the assessee since all the contributors had common objective, common goal and common management with the sole purpose of earning income from the funds managed on their behalf by the assessee.

(4) The appellant prays that the order of the CIT(A) on the above ground be set aside and that of the AO be restored.

(5) The appellant craves leave to amend or alter any ground or add a new ground which maybe necessary.

3. The short facts of the case are as under:

The assessee is a Trust which has been registered as Venture Capital Fund with SEBI under SEBI (Venture Capital Fund) Regulations, 1996 on October 3rd, 2005. The assessee earned interest income of Rs.9,15,10,863/-, dividend income of Rs.68,53,280/- and other income of Rs.29,20,933/- and after debiting expenses, surplus of Rs.7,27,89,540/- has been distributed to the beneficiaries. Return of income was filed by the assessee on 30.09.2011 showing total income of Rs NIL. The Assessing Officer (hereinafter referred to as the AO) passed order under Section 143(3) of the Act dated 05.03.20 14 and assessed total income at Rs.6,59,36,260/- The A.O. taxed the surplus of Rs.6,59,36,260/- (barring dividend income) in the hands of the assessee.

4. Matter carried to the Ld. CIT(A) and the Ld. CIT(A) has allowed the appeal of the assessee.

5. During the course of hearing, the Ld. A.R., at the outset, has submitted that this issue has already been decided by the Mumbai Bench of the Tribunal in favour of the assessee in the own case of the assessee for assessment years

2008-09, 2009-10 & 2010-11 in ITA Nos.3264/M/2012, 3179/M/2014 & 734/M/2015 decided on 28.04.2017. Therefore, this appeal may be allowed.

6. The Ld. D.R. has relied upon the order of the Revenue authority.

7. We have heard the rival contentions of both the parties. Looking into the facts and circumstances of the case, we find that the identical issue has already been decided by the Mumbai Bench of the Tribunal in favour of the assessee in the own case of the assessee for assessment years 2008-09, 2009-10 & 2010-11 in ITA Nos.3264/M/2012, 3179/M/2014 & 734/M/2015 decided on 28.04.2017. Hence, respectfully following the same, we decide the matter in favour of the assessee and against the Revenue.

8. In the result, appeal of the Revenue is dismissed.

Order pronounced in the open court on 30.06.2017.

Sd/-
(Shamim Yahya)
ACCOUNTANT MEMBER

Sd/-
(D.T. Garasia)
JUDICIAL MEMBER

Mumbai, Dated: 30.06.2017.

* 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.