

आयकर अपीलिय अधिकरण, मुंबई “ बी” खंडपीठ
Income-tax Appellate Tribunal -“B”Bench Mumbai
सर्वश्री बी. आर. बास्करन,लेखा सदस्य एवं, राम लाल नेगी, न्यायिक सदस्य
Before S/Shri B.R. Baskaran, Accountant Member and RamLal Negi, Judicial Member

आयकर अपील सं./I.T.A./6873/Mum/2014,निर्धारण वर्ष /Assessment Year: 2010-11

The Bombay Oil Private Limited 411, Shah and Nahar Indl. Estate Dr. E. Moses Road,Worli Naka Mumbai-400 018. PAN:AAACT 1392 D	Vs.	DCIT-9(2) Aayakar Bhavan, M.K. Marg Mumbai-400 020.
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(अपीलार्थी /Appellant)

(प्रत्यर्थी / Respondent)

Revenue by: Shri T.A. Khan-Sr. DR

Assessee by: Shri Nitesh Joshi

सुनवाई की तारीख / Date of Hearing: 29/11/2017

घोषणा की तारीख / Date of Pronouncement: 29/11/2017

आयकर अधिनियम,1961 की धारा 254(1)के अन्तर्गत आदेश
Order u/s.254(1)of the Income-tax Act,1961(Act)

लेखा सदस्य, बी. आर. बास्करन के अनुसार/ Per B.R. Baskaran, AM-

The appeal of the assessee is directed against the order dated 20-08-2014 passed by Ld CIT(A)-20, Mumbai and it relates to the assessment year 2010-11. The assessee is aggrieved by the decision of Ld CIT(A) in upholding the assessment of interest receipts under the head Income from other sources as against the claim of the assessee to assess the same under the head Income from business. The assessee is also aggrieved by the decision of Ld CIT(A) in confirming disallowance of various expenses claimed by the assessee.

2. We heard the parties and perused the record. The assessee is engaged in the business of investment into financial instruments, mutual funds etc. The assessee received interest income and miscellaneous income as detailed below during the year under consideration:-

Interest on income tax refund	-	18,87,297
Interest on deposits with Bank	-	7,47,260

Interest on deposits/ICD with corporate	-	33,97,892
Interest received from a concern	-	10,421

		60,42,870
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The assessee offered the above said interest income under the head Business. The assessing officer noticed that the assessee's application for getting status of "Non-Banking Financial Company" (NBFC) was rejected by RBI. Further the assessee's objective was to make investments in financing/mutual funds. Accordingly he held that the deposits made with banks/corporate cannot be treated as business activity of the assessee. Accordingly he assessed the above said income under the head income from other sources. The assessee had claimed various expenses in its profit and loss account. The AO rejected them, since there was no business income assessable in the hands of the assessee, as the AO had assessed the interest income under the head Income from other sources. The Ld CIT(A) also confirmed the same and hence the assessee has filed this appeal.

3. The Ld A.R submitted that the assessee is engaged in the business of investing in financial instruments and the deposits were made in the course of carrying on the business. He submitted that the assessing officer has accepted the identical business activities carried on by the assessee in the past, i.e., in the 143(3) assessments completed for assessment years 2005-06 to 2009-10. Accordingly he submitted that there is no necessity for the AO to take a different view in this year alone and the same has violated the principles of consistency. In this regard, the Ld A.R placed reliance on the decision rendered by Hon'ble Supreme Court in the case of Radhoswamy Satsang (198 ITR 321), the decision rendered by Hon'ble Bombay High Court in the case of Gopal Purohit (336 ITR 287) and also other decisions.

4. The Ld A.R submitted that the rejection of the application for securing NBFC status would not render the assessee business less and the income

derived by the assessee would not lose business character. In this regard, he placed reliance on the decision rendered by the co-ordinate bench in the case of Preimus Investment and Finance Ltd (ITA No.4879/Mum/2012 dated 13-05-2015), wherein the Tribunal has expressed the view that the denial of registration by RBI as NBFC does not decide the issue of carrying on business. Accordingly the Ld A.R pleaded that the order passed by the tax authorities should be reversed.

5. On the contrary, the Ld D.R placed strong reliance on the order passed by Ld CIT(A).

6. Having heard rival submissions, we are of the view that there is merit in the contentions of the assessee. We notice that the assessee has been earning income of identical nature in the past and the assessing officer has assessed the same under the head Income from business. Even though the principle of resjudicata is not applicable to the income tax proceedings, yet we notice that the tax authorities have not given any reason as to why the decision taken on identical issue in the earlier years should not be followed. Hence we are of the view that the Ld A.R was justified in contending that the principle of consistency should be followed in the year under consideration. The deposits made with the banks and corporate, in our view, can be considered as part of business activities of the assessee as it is engaged in the business of investing in financial instruments.

6.1. It is a fact that the RBI has rejected its application for NBFC status. In this regard, we may notice that the co-ordinate bench has already taken a view in the case of Preimus Investment and Finance Ltd (supra) that the said fact does not determine the nature of income. Accordingly the said reason given by the tax authorities also fails.

7. At the time of hearing, the Id A.R fairly admitted that the interest on income tax refund is assessable under the head Income from other sources. Accordingly we uphold the view taken by the Ld CIT(A) in respect of interest from income tax refund.

8. In respect of remaining interest income, we set aside the order passed by Ld CIT(A) and direct the AO to assess the same under the head Income from business.

9. We notice that the AO has rejected the claim of expenses, since he assessed the interest income under the head Income from business. There was also no occasion for him to examine the various expenses claimed by the assessee. In the preceding paragraphs, we have held that the interest income from deposits made with banks and other parties is assessable as business income. In this view of the matter, the various expenses claimed by the assessee require examination at the end of the AO. Accordingly we set aside the order passed by Ld CIT(A) in respect of expenses and restore the same to the file of the AO for examining the same.

10. In the result, the appeal filed by the assessee is partly allowed.

Order pronounced in the open court on 29th November, 2017.
आदेश की घोषणा खुले न्यायालय में दिनांक 29 नवंबर, 2017 को की गई।

Sd/-

(राम लाल नेगी / Ram Lal Negi)

न्यायिक सदस्य / JUDICIAL MEMBER

मुंबई Mumbai; दिनांक/Dated :29.11.2017.

Jv.Sr.PS.

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

1.Appellant /अपीलार्थी

2. Respondent /प्रत्यर्थी

3.The concerned CIT(A)/संबद्ध अपीलीय आयकर आयुक्त, 4.The concerned CIT /संबद्ध आयकर आयुक्त

5.DR “B ” Bench, ITAT, Mumbai /विभागीय प्रतिनिधि, खंडपीठ,आ.अ.न्याया.मुंबई
6.Guard File/गार्ड फाईल

सत्यापित प्रति //True Copy//

आदेशानुसार/ **BY ORDER,**

उप/सहायक पंजीकार **Dy./Asst. Registrar**
आयकर अपीलीय अधिकरण, मुंबई /**ITAT, Mumbai.**