

IN THE INCOME TAX APPELLATE TRIBUNAL "D" BENCH KOLKATA

BEFORE SHRI N.V. VASUDEVAN, JM & DR. A.L.SAINI, AM

आयकर अपीलसं./ITA No.648/Kol/2016

(निर्धारणवर्ष / Assessment Year: 2007-08)

Global Mercantile (P) Ltd. 1, British India Street, 2 nd Floor, Kolkata – 700 069.	Vs.	DCIT, Circle-3(1), Kolkata. P-7, Chowringhee Square, 4 th Floor, Circle-3(1), Kolkata – 69.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. :AACCG 2522 Q		
(APPELLANT)	..	(RESPONDENT)

Appellant by : Shri Girish Sharma, FCA

Respondent by : Shri Arindam Bhattacharjee, ACIT

सुनवाईकीतारीख/ **Date of Hearing** : **23/11/2017**

घोषणाकीतारीख/**Date of Pronouncement** : **13/12/2017**

आदेश / ORDER

Per Dr. Arjun Lal Saini, AM:

The captioned appeal filed by the assessee, pertaining to assessment year 2007-08, is directed against the order passed by the Id. Commissioner of Income Tax (Appeals)-I, Kolkata, in Appeal No.312/CIT(A)-1/C-3/2009-10 dated 15.02.2016, which in turn arises out of an order passed by the Assessing Officer Under Section 143(3) of the Income Tax Act,1956 (Hereinafter referred to as the 'Act')

2.The assessee has raised the following grounds of appeal:

"1. That on the facts and circumstances of the case Id. Commissioner (Appeals) erred in not allowing deduction of exempt income of Rs.7,49,959/- towards dividend while framing the assessment order.

2. That the Appellant craves leave to add, alter, amend, delete, substitute any of the grounds and/or take additional ground/s before or at any time of hearing of this appeal."

3. The brief facts qua the issue are that during the assessment proceedings, the assessee submitted, before, the AO, through its letter dated 08.12.2008 that the non-taxable income of dividend of Rs.7,49,959/- from Franklin Templeton Mutual Fund received in American Express Bank, as daily return has been reflected in the Audited Accounts in Schedule-7 'as other income as Interest on Bank', has been erroneously offered for taxation. The same was erroneously offered by the assessee, as a taxable income for the A.Y 2007-08. The assessee informed that the income of Rs.7,49,959/- is Dividend income from Mutual Fund which is exempt u/s 10(34) of the Act and requested the AO to exclude the same from the computation of the total income. However, the AO did not consider the submission of the assessee at all.

4. Aggrieved by the order of the Assessing Officer, the assessee filed an appeal before the CIT(A) who has rejected the assessee's claim, stating that there was no finding on the said issue in assessment order made by the AO. Therefore, CIT(A) held that the said issue did not arise from the assessment order and, therefore, he dismissed the ground of the assessee.

5. Not being satisfied with the order of the CIT(A), the assessee is in appeal before us. At the outset, itself the Id. Counsel for the assessee pointed out before us that during the assessment proceedings, the assessee submitted before the AO through letter dated 08.12.2008 stating that the dividend income which is exempted from tax, has been taken into account as a taxable income and the same should be excluded from the computation of total income (P.B. 45). The Assessing officer has neither excluded it from the taxable income nor he brought the said issue on the assessment order framed by him. The CIT(A) also did not adjudicate the said issue stating that, it was not arisen out of the assessment order. Before us, the counsel stated that this issue was very much on the record of the AO but he did not consider it. The Id. Counsel for the assessee drew our attention on the letter submitted by him to the AO on 08.12.2008 wherein it has been clearly stated that dividend income of Rs.7,49,959/- has been included wrongly in the taxable

income and the same should be excluded (pb45). Therefore, Id Counsel prayed the Bench to direct the AO to exclude the exempt income from the computation sheet of the assessee. The Id. DR for the Revenue has fairly agreed with the submissions of the Id. Counsel for the assessee.

6.Having heard the rival submissions and perused the materials available on record,we note that the assessee wrote a letter to the AO during the assessment proceedings stating not to include exempt income of dividend at Rs.7,49,959/- to the total income but the AO has not considered the same. The Id. CIT(A) dismissed the appeal of the assessee stating that the said issue did not arise from the assessment order. We are of the view that right income should be taxable in the hands of the right assessee and since it is dividend income which is exempted u/s 10(34) of the Act, therefore, the assessee need not to offer the said income for tax purpose.

However, we are of the view that Assessing Officer should examine this issue, whether amount of Rs. 7,49,959/- is a dividend income which is to be exempted U/s 10(34) of the Act. In this regard, we deem it fit and appropriate in the interest of justice and fair play, to give direction to the Assessing Officer to examine the said dividend income and allow the claim of the assessee as per the provisions of the Act. Accordingly, we allow this appeal for statistical purposes.

7.In the result, the appeal filed by the assessee, is allowed for statistical purposes.

Order pronounced in the open court on this 13/12/2017.

Sd/-
(N. V. VASUDEVAN)
न्यायिकसदस्य/JUDICIALMEMBER
कोलकाता /Kolkata;
दिनांक Dated 13/12/2017
RS,SPS.

Sd/-
(DR. A.L.SAINI)
लेखा सदस्य/ACCOUNTANT MEMBER

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant – Global Mercantile (P) Ltd.
2. प्रत्यर्थी/ The Respondent-DCIT, Circle-3(1), Kolkata.
3. आयकरआयुक्त(अपील) / The CIT(A), :Kolkata.
4. आयकरआयुक्त/ CIT
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, **कोलकाता**/ DR,
ITAT, Kolkata
6. गार्डफाईल / Guard file.
सत्यापितप्रति

//True Copy//

By Order

Senior Private Secretary,
Head of Office/D.D.O,
I.T.A.T, Kolkata Benches,
Kolkata.