

आयकर अपीलिय अधिकरण, मुंबई "ई" खंडपीठ
Income-tax Appellate Tribunal "E" Bench Mumbai
सर्वश्री राजेन्द्र, लेखा सदस्य एवं अमरजीत सिंह, न्यायिक सदस्य
Before S/Sh. Rajendra, Accountant Member & Amarjit Singh, Judicial Member
आयकर अपील सं./I.T.A./1074/Mum/2013, निर्धारण वर्ष /Assessment Year: 2008-09

M/s.Sunanda Industrial machinery Limited, Mafatlal House, H.T.Parekh Marg, Backbay Reclamation,Mumbai-400 010. PAN: AAEC6379K	Vs.	D.C.IT-1 (3), Aayakar Bhavan, M.K.Road, Mumbai- 400 020.
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(अपीलार्थी /Appellant)

(प्रत्यर्थी / Respondent)

Revenue by: Shri V.Justin - DR

Assessee by: Shri Ketan Ved

सुनवाई की तारीख / **Date of Hearing:** **05/10/2017**

घोषणा की तारीख / **Date of Pronouncement:** **01/01/2018**

आयकर अधिनियम ,1961 की धारा 254(1) के अन्तर्गत आदेश

Order u/s.254(1)of the Income-tax Act,1961(Act)

लेखा सदस्य, राजेन्द्र के अनुसार/ PER RAJENDRA, AM-

Challenging order dated 25.12.2012 of CIT(A)-7,Mumbai the assessee has filed the present appeal. Assessee-company, engaged in the business of trading of industrial machinery, filed its return on 29.02.2008, declaring loss of Rs.15.36 lakhs. The Assessing Officer (AO) completed the assessment 03.10.2010, u/s 143(3) of the Act, determining its income at Rs.43.29 lakhs.

2. Effective ground of appeal is about disallowance of interest expenditure of Rs.58.66 lakhs. During the assessment proceedings, the AO found that the assessee had taken unsecured loan of Rs.21.38 crores from M/s. Navin Flourin International Ltd (NFIL), that it paid interest of Rs.58,66,689/- for the year under consideration. He directed it to file details in that regard. On verification of the details, he observed that the assessee had shown, receivable from Mafatlal Industries Ltd. (MIL) an amount of Rs.21.38 crores on account of difference between management fees and value of TDR, that it had, at behest of its holding company namely MIL, taken an assignment of debt from State Bank of India, along with underlying securities, all other rights/titles and entitlement pertaining to MIL for a total cost of Rs.6548.49 lakhs. He directed the assessee to furnish a copy of the ledger account of MIL-receivable account. After verifying the same, he held that the assessee had paid to SBI for repayment of loan to MIL, that it had paid for difference between management fees and value of TDR by NFIL for MIL-account and for the balance amount of

TDR /MIL-account as well as for debentures issued to SBI-MIL account.Considering these facts, he held that the assessee had not taken any loan from NFIL,that the entries passed in the books were only journal entries.that adjustment entries were in respect of receivables from MIL,that MIL had passed on its liability to the assessee,that the interest paid by it could not be said to have been incurred wholly and exclusively for the purpose of assessee's business.Finally,he made a disallowance of Rs.58.66 lakhs and added it to the total income of the assessee.

3.Aggrieved by the order of the AO the assessee preferred an appeal before the First Appellate Authority(FAA)and made elaborate submissions, he held that claim made by the assessee was completely untenable,that the AO had rightly held that liability of interest had not been incurred wholly and exclusive for the purpose of the business of the assessee, that the reference to the case of Nagri Mills Co. Ltd (36 ITR 81) was of no help to the assessee, that the question before him was not only collection of tax, that it was a statutory obligation of the assessee to filed its return of income in true and correct manner, that making claim of expenses which did not belong to it clearly amounted to making bogus claim,that the claim made by the assessee was not allowable u/s.36 or 37 of the Act.Finally,he upheld the order of the AO.

4.Before us the Authorised Representative(AR)referred to the page no 68 of the paper book where the total income of the AY.2009-10 had been calculated.The assessee had added Rs.58.66 lakhs to its income shown for that AY.and in the statement the assessee has mentioned "*provision no longer required return back (interest 2007-08)*".The AR also referred to the order passed by the AO u/s.154 of the Act,dated 13/03/2013.He further argued that during the year under consideration the assessee has debited the disputed amount towards interest payable to NFIL,that in the subsequent AY.was debited to MIL account in terms of provision of modified scheme of MIL sanctioned by BIFR,that Rs.67 crores were recovered from MIL, that there was no difference in the rate of tax,that the controversy about the year of assessability was unnecessary. He made reference to case of Nagri Mills Co. Ltd (supra) along with the other case laws of the Tribunal,that there was no loss to Revenue in respect of above transactions.The Departmental Representative(DR)supported the order of the FAA and stated the expenditure was not allowable during the year under consideration,that the expenditure belonged to the sister concern.

5. We have heard the rival submissions and perused the material before us. We find that the FAA had not passed a speaking and reasoned order. The assessee had relied upon certain case laws decided by the Tribunal, wherein identical issue was deliberated upon. He had not considered the facts of those cases before adjudicating the appeal. The purpose of creating provision and offering the same in subsequent year was not looked in to by him while deciding the appeal. The agreements dealing with the transaction were made available to him. He is silent about those documents. In our opinion, matter needs further verification and investigation at the level of the FAA. Therefore, in the interest of justice, we restore back the matter to the file of the FAA for fresh adjudication. He is directed to afford a reasonable opportunity of hearing to the assessee. Effective ground of appeal is decided in favour of the assessee, in part.

As a result, appeal filed by the assessee stands partly allowed.

फलतः निर्धारिती द्वारा दाखिल की गई अपील अंशतः मंजूर की जाती है.

Order pronounced in the open court on 1st, January, 2017.

आदेश की घोषणा खुले न्यायालय में दिनांक 1 जनवरी, 2017 को की गई।

Sd/-

Sd/-

(अमरजीत सिंह / Amarjit Singh)

(राजेन्द्र / RAJENDRA)

न्यायिक सदस्य / JUDICIAL MEMBER

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक/Dated : 01.01.2017.

S. Gangadhara Rao, 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 " E " Bench, ITAT, Mumbai /विभागीय प्रतिनिधि, खंडपीठ, आ. अधि. मुंबई

6. Guard File/गार्ड फाईल

आदेशानुसार/ **BY ORDER,**

उप/सहायक पंजीकार **Dy./Asst. Registrar**

आयकर अपीलीय अधिकरण, मुंबई /ITAT, Mumbai.