

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "E", MUMBAI

Before Shri P K Bansal, Vice President &
Shri Pawan Singh, Judicial Member

ITA No. 5562/Mum/2013
Assessment Year: 1998-99

Tolani Pvt Ltd. 10.A, Bakhtawar Nariman Point Mumbai 400021	Vs.	Addl. CIT Spl. Range 31, Mumbai
(Appellant)		(Respondent)

Appellant By : Shri Rajiv Khandelwal
Respondent By : Shri V. Justine

Date of Hearing : 19.12.2017	Date of Pronouncement : 4.01.2018
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ORDER

Per P K Bansal, Vice-President:

This appeal has been filed by the assessee against the order of the CIT(A)-7, Mumbai dated 06.03.2013 for A.Y. 1998-99 by taking as many as nine grounds of appeal. Subsequently the assessee filed summarised grounds which are given as under: -

- "1. The Learned A.O. as well as Learned CIT(A) have erred in not considering that Appellant Company paid interest to SCICI Ltd. (now known as ICICI Bank Ltd.) (financial institution) for loans taken for the purpose of acquisition of ships for the Appellant Company and also for group companies as well as interest paid on amounts received as Short term deposits and when there was a delay in purchase of ships the appellant company utilized the borrowed funds by way of Inter Corporate Loans and Bill*

- Discounting as well as loans to Subsidiary Companies on interest to be received and therefore the amount of interest received should be reduced by the amount of interest paid on the principles of NETTING OFF.*
2. *The Learned A.O. as well as Learned CIT(A) have erred in deciding that gross amount of interest paid on loans borrowed should be deducted from PROFIT OF SHIPPING BUSINESS to arrive at shipping profits for the purpose of allowing deduction u/s.33AC of the Act and erred in deciding that interest received from SUBSIDIARY COMPANIES as well as interest received on INTER CORPORATE LOANS and BILLS DISCOUNTING to be considered as Income from Other Sources, overlooking the principles of NETTING OFF and not considering that interest received is on funds utilized from funds borrowed on which interest is paid and therefore amount of interest paid should be deducted from amount of interest received and erred in overlooking the principles of NETTING OFF settled by Supreme Court.*
 3. LOSS IN BARGE DIVISION .
The Learned A.O. as well as Learned CIT(A) have erred in coming to the conclusion that for the purpose of arriving at the profit derived from the business of operation of ships for computing deduction u/s.33AC, the loss incurred in the operation of BARGES amounting to Rs.28,64,444/- to be deducted, overlooking that loss incurred on BARGES given on LEASE on which Lease Rent is received IS not the PROFIT / LOSS OF SHIPPING and therefore the same is not profit / loss derived from business of operating of the ships and the loss on Barges cannot be deducted from PROFIT ON OPERATING OF SHIPS and further erred in overlooking that BARGES are vessels for loading and unloading of ships near the ports and cannot be considered as ships for the purpose of computation of deduction u/s.33AC and further erred in not considering that Barges were not operated by the Appellant Company but operated by the Company taking barge on lease.
 4. *ALTERNATIVELY, without prejudice, when interest received is considered as Income from Other Sources, then interest paid on loans should be deducted u/s.57(iii) of the Act from interest received on the principles of netting off.*
 5. *Inspite of repeated requests the Learned A.O. has not given so far the effect of the appeal Order of the Learned CIT(A) dated 8.3.2013 for the year under appeal."*

2. The assessee also moved an application for filing additional ground vide letter dated 28th December, 2015. The said additional ground read as under: -

"The contention of Appellant Company is that Appellant received interest on INCOME TAX REFUND U/S.244A total amounting to Rs.20,11,502/- comprising of refunds for the Assessment Year 1994-95, 1995-96 and 1996-97 on account of computation u/s.143(I) and / or u/s. 143(3) which is not taxable in the year under appeal as the same has been withdrawn subsequently on account of scrutiny assessment u/s. 143(3) or assessment u/s. 147 by reopening the assessment as the practice of the Department is that in every subsequent assessment order interest allowed earlier is withdrawn and revised amount of interest is allowed for the full period and therefore the above amount of interest of Rs.20,11,502/- is not taxable in this year under appeal, otherwise it will amount to double taxation of interest allowed u/s. 244A."

3. We heard both the parties on admission of this additional ground and hearing the rival contentions we noted that the additional ground filed by the assessee is a legal ground which can be taken up at any time. It does not require investigation of any facts. We, therefore, admit this additional ground.

4. The assessee again vide letter dated 1st August, 2017 move an application for admission of the following additional grounds: -

"1. The Addl. Commissioner of Income-tax, Special Range - 31, Mumbai (hereinafter referred to as the Assessing Officer) erred in treating following incomes aggregating Rs 3,64,92,593 as income from other sources as against business income considered by the appellants –

<i>Sr. No.</i>	<i>Particulars</i>	<i>Amount (in Rs.)</i>
<i>(i)</i>	<i>Interest from subsidiary companies</i>	<i>Rs 3,32,89,425</i>
<i>(ii)</i>	<i>Interest from securities</i>	<i>Rs 1,24,761</i>
<i>(iii)</i>	<i>Interest and discounting charges on trade bills</i>	<i>Rs 28,34,996</i>

(iv)	Miscellaneous earnings	Rs 2,29,911
(v)	Rent	Rs 13,500
		Rs 3,64,92,593

The appellants contend that on the facts and in the circumstances of the case and in law, the action of the Assessing Officer in holding aforesaid incomes as income from other sources is not tenable in law and ought to have been considered as business income.

2. *The Assessing Officer has erred in apportioning the interest expense Rs 1,20,73,623/- to the earning of exempt incomes, namely, dividend and interest on tax-free securities aggregating Rs 4,69,92,994/-.*

The appellants contend that on the facts and in the circumstances of the case and in law, the action of the Assessing Officer is incorrect inasmuch as the own funds (Rs.39,74,69,549/-) are more than the investment in shares on which dividend is received and investment in tax-free securities aggregating Rs.16,01,31,377."

We have heard the rival submissions for admission of the grounds and we noted that these grounds are legal and the facts relating to these grounds are available on record before the authorities below. We, therefore, in view of the Hon'ble Supreme Court in the case of NTPC 229 ITR 383 admit these additional grounds.

5. The brief facts of the case are that the assessee filed its income tax return on 30.11.1998 claiming deduction u/s. 33AC. During the course of assessment proceedings, the assessee submitted computation of income and profit and loss account in which the income of ₹ 46,87,343/- has been bifurcated as under:

- Shipping Division
- Barge Division
- Other Business, mainly interest income
- Income from investments made out of own sources of funds.

The Assessing Officer completed the assessment vide his order, dated 23.03.2011, at ₹ 5,51,50,290/-. Aggrieved the assessee filed appeal before the first appellate authority. The CIT(A) partly allowed the appeal of the assessee.

6. As agreed by both the parties, we decided to dispose of the additional grounds first, which was taken by the assessee vide letter dated 28.12.2015. After hearing the rival submissions and going through the orders of the tax authorities below, we noted that the Assessing Officer while making the assessment added the sum of ₹ 20,11,502/- as interest earned by the assessee on income tax refund relating to A.Ys 1994-95, 1995-96 and 1996-97. The learned AR contended that the said refund was subsequently withdrawn on account of the assessment completed u/s. 143(3) on reassessment framed u/s. 143(3) r.w.s. 147. The learned DR, on the other hand, relied on the order of the Assessing Officer.

7. We noted that out of the interest on refund, a sum of ₹ 12,55,571/- that was received by the assessee on processing the return u/s. 143(1) was subsequently withdrawn as is apparent from pages 158 to 161 of the paper-book. We therefore, reduce the addition to ₹ 7,55,931/-. Thus, this ground is partly allowed.

8. Now coming to the additional grounds taken up by the assessee vide letter dated 01.08.2017. Vide its first ground of appeal, the assessee has

challenged the interest income received by it as "Income from other sources" as detailed below:

A) Interest from Subsidiary Companies:

(i) Tolani Bulk Carriers Ltd.	Rs. 1,08,39,116/-	
(ii) Tolani Shipping Co. Ltd.	<u>Rs. 65.97,575/-</u>	Rs. 1,74,36,691/-

B) Other Interest Income

(a) Inter Corporate Deposits	Rs. 1,38,38,314/-	
(b) Staff Loan	Rs. 2,918/-	
(c) Income-tax refunds	<u>Rs. 20,11,502/-</u>	<u>Rs. 1,58,52,734/-</u>
Rs.3,32,89,4257-		
C) Discounting charges on Trade Bills	Rs. 28,34,996/-	
D) Interest on Securities	Rs. 1,24,761/-	
E) Miscellaneous earnings	Rs. 2,29,911/-	
F) Rent received	<u>Rs. 13,500/-</u>	

**TOTAL INCOME CONSIDERED AS INCOME
FROM OTHER SOURCES** Rs.3,64,92,593/-

We have heard the rival submission and carefully considered the same along with the orders of the authorities below. We noted that in the computation statement the assessee has considered a sum of ₹ 3,62,62,682/- excluding the sum of ₹ 2,29,911/- considering it as business income other than income from shipping business. The assessee is engaged in the business of owning and operation of ships for transportation of dry bulk cargo in international waters. The assessee is having two subsidiary companies viz. Tolani Bulk Carriers Ltd. and Tolani Shipping Ltd., which are exclusively engaged in the similar business of operation of ships. In the Board Meeting of the company

held on 11.04.1994, the company considered the matter of obtaining loan of ₹ 10 crores from SCICI Ltd. by passing following resolution :

""The Chairman stated that the Company had approached SCICI Ltd. for a floating rate Rupee Loan of Rs. 10 crores towards financing the Company's and group's expanding activities. SCICI Ltd. favourably considered the Company's request and has sanctioned the requested loan on the terms and conditions of which are contained in their letter of intent of May 18, 1994 under reference 908."

Accordingly, the assessee received loan of ₹ 10 crores from SCICI Ltd. In the letter of intent SCICI Ltd mentioned the purpose of granting the loan as under:

""Please refer to the correspondence resting with your letter no. TL/SEC/COM/24F and TL/COMR/24F dated March 31, and April 6, 1994 and the subsequent discussions your representatives had with us regarding your application for financial assistance for meeting part of the cost of ship acquisitions as well as chartering in of vessels and meeting attendant working capital requirements besides strengthening the capital structure of the company. SCICI Ltd. (SCICI) is agreeable, in principle, to provide for the aforesaid scheme, a corporate loan of Rs.10 crores."

9. The assessee could not utilize the loan immediately for the purchase of the ship and it was getting delayed. The assessee, therefore, out of the loan borrowed, temporarily invested in giving advance against Bill discounting and inter-corporate deposits to earn interest and save the burden of interest payable on the loan taken from SCICI Ltd. The assessee had accordingly given loan of ₹ 5 crores to M/s. Tolani Bulk Carrier Ltd., a subsidiary company of the assessee, for purchase of ship, M.V PrabhuMihikaa from M/s. Cereza World Line Inc. For a sum of ₹

82,35,32,699/- . The financing of the ship acquisition included loan taken from the assessee as under:

(i) Loan taken by Tolani Bulk Carriers Ltd. From SCICI Ltd. on 6.1.1996	Rs.61,02,11,000/-
(ii) Loan from Appellant Company on 24.1.1996	Rs. 5,00,00,000/-
(iii) Loan from M/s. Tolani Shipping Co. Ltd. (subsidiary of Appellant Company) on 24.1.1996	Rs. 10,00,00,000/-
(iv) Balance from internal sources of Tolani Bulk Carriers Ltd.	<u>Rs. 6,33,21,6997-</u>
TOTAL	<u>Rs.82,35,32,6997-</u>

The assessee has given a total loan of ₹ 17,50,00,000/- to Tolani Bulk Carriers Ltd. as under:

i) Out of Loan from SCICI Ltd. (24.1.1996)	Rs. 5,00,00,000/-
(ii) Out of funds withdrawn from Corporate Deposits and Bill Discounting (23.9.96 to 31.3.97)	Rs. 9,50,00,000/-
(iii) Out of funds withdrawn from Corporate Deposits and Bill Discounting (1.4.97 to 31.3.98)	<u>Rs.3,00,00,000/-</u>
TOTAL	<u>Rs. 17,50,00,000/-</u>

The assessee received interest to the extent of ₹ 1,74,36,691/- from the subsidiary company as well as interest on inter-corporate deposit to the extent of ₹ 1,38,38,314/-. The assessee in the computation of income has shown the sum of ₹ 3,64,92,593/- as "Income from business", taken by the AO as "Income from other sources". We have noted that out of this amount

only a sum o ₹ 1,74,36,691/- ₹ 1,38,38,314/- and ₹ 28,34,996/- (on account of discounting charges on trade bills) can be treated as "business income" because it is a case where the assessee has temporarily utilised the surplus funds which it has borrowed for acquiring of ships and also for carrying out the discounting inter corporate deposits. This, in fact, in our opinion, is interest earned on unutilised amount borrowed for business purpose. Our view is duly covered by the decision of the Jurisdictional High Court in the case of CIT vs. Varun Shipping Co. Ltd. 334 ITR 263. It is not denied by the learned DR, even though he has vehemently relied on the order of the authorities below that main business of the assessee is shipping business and the assessee has also taken loan from SCICI Ltd. for the purchase of ship and charting in vessels. The assessee since could not immediately acquire the ship, has advanced the money from its own sources as well as from the money borrowed to its subsidiary company, which were also engaged in the similar business. Since these companies to whom the assessee has given temporary loan for acquiring ship is also the subsidiary company of the assessee therefore even on the basis of commercial expediency, the assessee is bound to assist those companies. We, therefore, set aside the order of the CIT(A) on this issue and direct the AO to treat the sum of ₹ 3,41,10,001/- out of the sum of ₹ 3,64,92,593/- as income from business. The rest of the income i.e. interest on staff loan, interest on securities, miscellaneous earning, rent received as well as income

tax refund to the extent sustained by us, cannot be regarded as income from business. We, therefore, do not find any illegality or infirmity in the order of the CIT(A) to the extent that these income as assessed under the head "Income from other sources."

10. Coming to the additional ground no.2, relates to the disallowance of ₹ 12073623 in respect of interest and other expenses attributable to the tax free income. After hearing the rival submissions and going through the orders of the authorities below, we noted that during the impugned assessment year, the assessee earned dividend and interest from tax free bonds amounting to ₹ 4,69,92,994/- which has been claimed by the assessee to be income exempt from tax. The AO did not dispute the income to that extent to be a tax free income but allocated a sum of ₹ 1,20,73,623/- out of the expenses claimed by the assessee under the head "Income from business" towards earning of this exempt income in the following manner:-

"1. <i>Investment in shares and securities (As per Balance Sheet)</i>	<i>Rs. 160,131,377/-</i>
2. <i>Total investment of the assessee including investment in current assets (Assets side of Balance sheet)</i>	<i>Rs.537,535,849/-</i>
3. <i>Total interest charged to profit and loss account.</i>	<i>Rs.247,54,448/-</i>
4. <i>Interest attributable to tax free receipts (½ x 3)</i>	<i>Rs. 73,74,324/-</i>
5. <i>Other expenses attributable to tax free receipt - Take on estimate basis @ 10% of dividend receipt</i>	<i>Rs. 4,699,299/-</i>
6. <i>Total interest and expenses attributable to tax free receipt (4 + 5)</i>	<i>Rs. 12,073,623/-"</i>

It is not a case where the AO has applied the provisions of section 14A but just allocated the various expenses between the exempt income as well as taxable income. It is not denied that the assessee is having own funds to the extent of ₹ 39,74,69,549/- while investment on tax free securities was to the extent of ₹ 16,01,31,377/- as is apparent from page 87 of the paper-book (balance sheet). We noted that the disallowance has simply being made by the AO on estimate basis. In view of the decision of Hon'ble Jurisdictional High Court in the case of HDFC Bank Ltd. 366 ITR 505, we are of the view that no such disallowance can be made as the natural inference will be that the assessee made investment in tax free securities out of its own funds. We, therefore, delete the said disallowance. Thus, additional ground no.2 stands allowed.

11. Now coming to the summarized ground taken by the assessee. Ground no.1 & 2 relates to the claim of deduction towards the expenses as well as treating the interest received from subsidiary company and inter corporate loans, bill discounting to be part of profit of shipping business. Since while disposing of additional ground no.1, we have directed the AO to treat the interest received from subsidiary as well as interest and discounting charges on trade bills as "Income from business" of the assessee as part of shipping business, the natural inference will be that the interest paid as well as other expenses which has been disallowed to the extent of

₹ 2,23,17,217/- will automatically be allowed as deduction out of the income computed from business. Thus, to that extent ground 1 and 2 are allowed.

12. Ground no.3 in the summarized ground relates to the loans of barge division. The learned AR was fair enough to concede that this issue is duly covered against the assessee by the decision of this Tribunal in the case of DCIT vs. Orion Agencies Ltd. 128 TTJ 524. We accordingly, dismiss this ground.

13. Ground no.4 is an alternate ground and relates to the claim of deduction in respect of interest paid on loan u/s. 57(iii) in case interest received is treated as "income from other sources". This ground becomes infructuous as we have already directed the AO while disposing of additional ground no.1 that income from interest be taken as "Income from business". Thus, this ground stands dismissed as such.

14. Ground no. 5 requires the AO to given the effect of the appeal Order of the Learned CIT(A) dated 8.3.2013. We direct the Assessing Officer to give the appeal effect to the order of the CIT(A). Thus, this ground stands statistically allowed.

15. In the result, the appeal is partly allowed.

Order pronounced in the open court on 4th January, 2018

Sd/-
(Pawan Singh)
Judicial Member

Mumbai, Dated: 4th January, 2018

Sd/-
(P.K. Bansal)
Vice President

Copy to:

1. *The Appellant*
2. *The Respondent*
3. *The CIT(A) , Mumbai*
4. *The CIT , Mumbai*
5. *The DR, "E" Bench, ITAT, Mumbai*

By Order

//True Copy//

*Assistant Registrar
ITAT, Mumbai Benches, Mumbai*

SA