

**IN THE INCOME TAX APPELLATE TRIBUNAL “C” BENCH, MUMBAI
BEFORE SRI MAHAVIR SINGH, JM AND SRI MANOJ KUMAR AGGARWAL, AM**

ITA No. 4283/Mum/2016

(A.Y. 2012-13)

Income Tax Officer 3(1)(2), Aayakar Bhavan, Room No.666, 6 th Floor, M.K. Road, Mumbai-400 021	Vs.	Bajaj Capital Ventures P. Ltd. 106 & 107, 10 th Floor, Bajaj Bhawan, Jamnalal Bajaj Marg, 226, Nariman Point, Mumbai-400 021
Appellant	..	Respondent
PAN No. AAACA3565F		

Revenue by : Rajat Mittal, DR

Assessee by : V Mohan, AR

Date of hearing: 25-01-2018 **Date of pronouncement :** 31-01-2018

ORDER

PER MAHAVIR SINGH, JM:

This appeal by the Revenue is arising out of the order of Commissioner of Income Tax (Appeals)-8, Mumbai, [in short CIT(A)] in appeal No. CIT(A)-8/IT-751/14-15 dated 29-03-2015. The Assessment was framed by the Deputy Commissioner of Income Tax, Circle 3(1), Mumbai (in short DCIT) for the assessment year 2012-13 order dated 17-02-2015 under section 143(3) of the Income Tax Act, 1961(hereinafter ‘the Act’).

2. The only issue in this appeal of Revenue is against the order of CIT(A) in treating the interest earned on money lending under the head profits and gains from business or profession instead of assessed by the AO as income from other sources. For this Revenue has raised following ground No. 1: -



"1. Whether on the facts and in the circumstances of the case in law, the Ld. CIT(A) was justified in treating the interest earned on money lending operation of Ps. 81,24,000/- under the head "Profits and Gains from Business and Profession" instead of "income from other sources" treated by the A.O. without appreciating the fact that the assessee is not an NBFC and hence giving loans and advances to other parties cannot be considered as business activity."

3. Briefly stated facts are that during the course of assessment proceedings, the AO relying on the assessment order passed for AYs 2009-10, 2010-11, 2011-12 treated the interest income declared by assessee under the head business as income from other sources. For this AO recorded the fact in Para 7.1 as under: -

"7.1 In the order u/s. 143(3) passed for A.Y.2009-10, 2010-11 and 2011-12, entire interest income was held to be chargeable under the head 'Income from Other Sources. The assessee was asked to justify the assessee's claim on the points on which addition/disallowances have been made in the last years and which are recurring in this year also. The assessee, in its letter dated 22.08.2012, has stated that "in CIT('A) order for A.Y.2009-10 vide order No. CJT(A)/DCIT3(1)/IT-310/2011-12 it was held that it was taxable under the head profit & gains from business & Profession". However, the assessee's submission is not acceptable for the reason that the decision of the CLT(A) for A.Y.2009-10 was



not accepted by the Department and! an appeal was filed before the FIAT contesting the decision of the Ld. CIT(A) in this regard.

4. The CIT(A) relying on the earlier year orders treated the income as income from business or profession vide para 5.3.1 and 5.3.2 as under: -

“5.3.1 This ground pertains to taxing the interest earned of Rs 81.24.000/- under the head "income from other sources" instead of "profits and gains of business or profession". I find that this has been covered in favour of the appellant by Hon'ble ITAT for assessment years 2008-09, 2009-10 and 2010-11 which was followed by my predecessor in appeals for assessment years 2010-11 and 2011-12.

5.3.2 Respectfully following the decision of Hon'ble ITAT, the assessing officer is directed to treat the above-mentioned interest under the head" profits and gains of business or profession". This ground of appeal is allowed.

Aggrieved, now Revenue is in second appeal.

6. At the outset, the learned Counsel for the assessee filed copy of Tribunal orders in assessee's own case in ITA Nso. 4005, 5967/M/2012 for AY 2008-09 & 09-10, 2326/Mum/2014 for AY 2010-11 & 1257/Mum/2015 for AY 2011-12, wherein the Tribunal has confirmed the action of the Assessing Officer. On query from the Bench the learned Senior Departmental Representative fairly conceded the same.

7. We have heard the rival contentions and gone through the facts and circumstances of the case. We find that identical issue was decided by the Tribunal while deciding the appeal for the AY.2008-09 and the relevant part of the order and same reads as under:



“..... AO observed that the assessee is not engaged in the business of money lending. Therefore, the AO treated the interest income of Rs.1,25,22,877/- earned during the year as ‘income from other sources.’ Aggrieved with the above disallowances made by the AO, assessee filed an appeal before the first appellate authority.

4. During the proceedings before the first appellate authority, after considering the submissions made by the assessee, CIT (A) partly allowed the appeal of the assessee. We shall take up the issue relating to taxing the interest income u/h income from other sources. In appeal before the CIT(A), assessee demonstrate the book entries, object clause of the MOA and relied on various binding judgments. Therefore, CIT (A) allowed the claim of the assessee by holding as under:

I have considered the above facts and submissions and the arguments made by the Ld AR of the appellant. The Object Clause permitted by the company to carry on the activity of money lending. It can be seen from the resolutions passed at the meeting held on September 3 rd , 2007 that consent of the Board of directors was obtained to borrow monies from time to time up to an amount not exceeding Rs. 200 Crs, for the purpose of the business of the company subject to interest rate not exceeding 12% per annum. A resolution was also passed by the Board of Directors to make loans from time to time provided that the maximum amount of loan for each individual purpose did not exceed Rs. 100 Crs. The analysis of the bank



account for the period October, 2007 to March, 2008 also indicates that monies were borrowed and advanced in a systematic and organized manner. The frequency of 3 money lending transactions under taken and the amounts borrowed and lent during the previous year also indicate that the activity of money lending was a real and substantive activity. The rates of interest at which monies were borrowed in comparison to the rates of interest at which monies were lent indicate that the activity was carried on with a motive of making profit. In these circumstances, the decisions of the Hon'ble Supreme Court in Narain Swadeshi Weaving Mills vs. Commissioner of Excess Profits Tax (26 ITR 765) and in Sole Trustee Loka Shikshana Trust vs. CIT (101 ITR 234) defining the term "business", are clearly satisfied. Consequently, the interest earned on money lending operation of Rs. 1,25,22,877/- arose from a systematic and organized activity carried on with a motive of profit and hence ought to be taxed under the head "profits and gains of business of profession". Ground no.3 is, therefore, allowed.

4.1. Aggrieved with the said decision of CIT (A), Revenue filed the present appeal before the Tribunal by raising the ground no.1.

5. During the proceedings before us, Ld DR relied on the order of the AO.

6. Per contra, Ld Counsel for the assessee relied on the order of the CIT (A).



ITA No. 4283/Mum/2016

7. We have heard both the parties and perused the orders of the Revenue Authorities as well as the material placed before us on this issue. On perusal of the order of the CIT (A) order, we are of the opinion that the CIT (A)'s decision, in treating the interest income of Rs. 1,25,22,877/- earned on money lending operation as Profits & Gains of Business or Profession', is reasonable and it does not call for any interference. In this regard, we have considered 'object clause' authorizing the assessee to conduct the business of money lending and the entries in the books of accounts and the bank accounts. Accordingly, ground no.1 raised by the Revenue is dismissed".

8. Respectfully following the Tribunal order for AY 2008-09 in ITA No. 4005/Mum/2012 order dated 02-08-2013, wherein the facts are exactly identical and both the authorities below have relied on that year and hence, we dismiss the appeal of Revenue.

9. **In the result, the appeal of Revenue is dismissed.**

Order pronounced in the open court on 31-01-2018.

Sd/-
(MANOJ KUMAR AGGARWAL)
ACCOUNTANT MEMBER

Sd/-
(MAHAVIR SINGH)
JUDICIAL MEMBER

Mumbai, Dated: 31-01-2018
Sudip Sarkar /Sr.PS

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. The CIT (A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.
//True Copy//

BY ORDER,

Assistant Registrar
ITAT, MUMBAI