

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

Before Shri Saktijit Dey (JUDICIAL MEMBER)

AND

Shri G Manjunatha (ACCOUNTANT MEMBER)

I.T.A No.6934/Mum/2012
(Assessment year: 2006-07)

Supreme Capital Management Ltd, 612, Raheja Chambers, 231, Nariman Point, Mumbai-400 021 PAN : AAACSA7243J	vs	DCIT, Circle 3(3), Mumbai
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Appellant by	Shri Nitesh Joshi
Revenue by	Shri V Justin

Date of hearing	22-01-2018
Date of pronouncement	28-02-2018

ORDER

Per G Manjunatha, AM :

This appeal filed by the assessee is directed against order of the CIT(A)-7, Mumbai dated 16-08-2012 and it pertains to AY 2006-07. The assessee has filed the following grounds of appeal:-

1. The learned Commissioner of Income tax (Appeals) erred in upholding the action of learned Deputy Commissioner of Income tax (hereinafter referred to as 'the Assessing Officer'), in treating liability for payment of interest amounting to Rs.13,01,663/- as income under section 41(1) on the ground that the said interest liability has been written off by Supreme Industries Limited (SIL) and both the appellant and SIL are related parties having common directors.
2. The learned Commissioner of Income tax (Appeals) erred in upholding the action 1 of the Assessing Officer in treating service charges received from insurance companies amounting to Rs.26,65,834/- under the head "Income from other sources" as against its treatment as "Profits and Gains of business or profession" as per return of income filed by the appellant, by holding that

since the appellant is not an insurance broker, earning of insurance commission is not its business activity,

The learned Commissioner of Income tax (Appeals) erred in upholding the action of Assessing Officer in adding a sum of Rs. 10,31,900/- to short term capital gains as per the provisions of section 50C of the Act, on an erroneous finding that while calculating value as per stamp duty provisions, the appellant has ignored mark up of 10% as there is a lift in the building

4. The appellant submits that the Assessing officer be directed to delete :-

a. the addition in respect of interest liability under section 41(1) amounting to Rs.13,01,663/-;

b. to treat service charges received amounting to Rs.26,65,834/- as income under head "Profits & Gains of business and profession" and not under head "income from other sources";

c. the addition of Rs. 10,31,900/- from short term capital gains; and to modify the assessment in accordance with the provisions of the Act.”

2. The brief facts of the case are that the assessee company has filed its return of income on 14-11-2006 declaring total income at Rs.47,46,198 before set off of brought forward losses under normal provisions of the Act. The case has been selected for scrutiny and notice u/s 143(2) of the Act alongwith detailed questionnaire was issued. In response to notice, authorized representative of the assessee appeared from time to time and furnished the details, as called for. The assessment has been concluded u/s 143(3) on 12-12-2008 determining the total income at Nil after making various additions towards interest not payable u/s 41(1) of the Act as cessation of liability, disallowance of expenditure incurred in relation to exempt income u/s 14A, addition towards difference in sale consideration of property u/s 50C of the Act and service charges disclosed under the head 'Income from business' treated as Income from other sources.

3. Aggrieved by the assessment order, the assessee preferred appeal before CIT(A). Before the CIT(A), assessee has filed elaborate written submissions in respect of additions made by the AO. The CIT(A) vide his order dated 16-08-2012 partly allowed appeal filed by the assessee, wherein he has allowed partial relief towards addition made u/s 14A; however, confirmed addition made by the AO towards interest not payable u/s 41(1), addition made u/s 50C of the Act and difference in treatment for service charges considered under the head 'Income from other sources' as against the assessee's disclosure under the head 'Income from business or profession'. Aggrieved by the order of CIT(A), assessee is in appeal before us.

4. The first issue that came up for our consideration is addition made towards interest not payable as income u/s 41(1) on the ground that the said interest liability has been written off by Supreme Industries Ltd. The AO made addition of Rs.13,01,663 as per the letter addressed by Supreme Industries Ltd wherein it was stated that they have written off interest receivable of Rs.13,01,663 from the assessee in its books of account in previous year ended on 31-03-2013, i.e. relevant to AY 2003-04. According to the AO, liability towards interest is no longer payable as the creditor has written off interest receivable and also both parties are related parties and accordingly, the assessee ought to have considered interest written off as its income u/s 41(1) of the Act. It is the contention

of the assessee that merely making entries in the books of account and the lender writing it off, the liability does not amount to cessation of liability which is taxable u/s 41(1) of the Act. The assessee further submitted that it is willing to pay the said amount provided its cash flow improves. The assessee further contended that cessation of liability is taxable u/s 41(1) in the year in which such liability has been written off by the creditor. In this case, the creditor has written off interest in the financial year relevant to AY 2003-04, whereas the AO has made addition in the impugned assessment year. The assessee also made an alternative plea that it has treated interest written off by the creditor as its income u/s 41(1) in the financial year relevant to AY 2008-09. Therefore, argued that since it has already considered the said amount as its income it is revenue neutral and there is no revenue loss to the department and hence, the AO is incorrect in making addition.

5. We have heard both the parties and perused the material available on record. The facts with regard to write off of interest accrued by the creditor in its books of account for the assessment year 2003-04 has not been disputed by both the parties. It is the case of the AO that once the tax liability is no longer payable, the assessee ought to have treated it as its income u/s 41(1); however, failed to consider the said liability u/s 41(1) of the Act. It is the contention of the assessee that merely because the lender has written off the liability unilaterally in its books of account, it

does not mean that liability is no longer payable and the creditor can always sue the assessee for payment. The assessee further contended that if at all addition is required u/s 41(1), it can be added only in the year in which such liability has been written off which is evident from the wordings of section 41(1) wherein it is categorically stated that the liability written off is considered as income in that year in which such liability has been written off. The assessee also made an alternative plea that it has already treated the liability as its income for the financial year relevant to AY 2008-09. Therefore, further addition by the AO in the impugned assessment year amounts to double taxation.

6. Having heard both the sides, we find merits in the arguments of the assessee for the reason that if at all any addition is required for cessation of liability u/s 41(1) it can be made only in the year in which such liability has been written off by the creditor or the assessee has derived some benefit. We further notice that the assessee claims to have treated the said liability as its income u/s 41(1) for the financial year relevant to AY 2008-09. If the assessee has already considered the said liability as its income u/s 41(1) for the assessment year, further addition by the AO in the impugned assessment year amounts to double taxation of the same amount. Therefore, we are of the considered view that the issue needs to be re-examined by the AO in the light of the claim of the assessee that the said liability has already been considered as income for the

assessment year 2008-09. Hence, we set aside the issue to the file of the AO and direct him to consider the issue afresh in the light of our observations above. If it is found that the assessee has already considered the said liability as its income u/s 41(1) for the previous year relevant to AY 2008-09, then the AO is directed to delete addition made in the impugned assessment year.

7. The second issue that came up for our consideration is upholding the action of the AO in treating service charges received from insurance companies amounting to Rs.26,65,834 under the head 'Income from other sources' as against its treatment as profits and gains of business or profession. The Ld.AR for the assessee at the time of hearing submitted that as there is no revenue effect on this issue, he does not want to press the ground at present keeping option open to challenge the issue at appropriate time. Therefore, the ground taken by the assessee has been dismissed as not pressed.

8. The next issue that came up for our consideration is addition made by the AO towards short term capital gains as per the provisions of section 50C of the Act. The facts with regard to the impugned dispute are that during the year under consideration the assessee sold its office premises to the co-owner of the property for a consideration of Rs.97,79,000 and offered the resultant gain under the head 'short term capital gain'. The assessee was asked to furnish the value as per the

stamp duty valuation. In response to notice, the assessee has filed a calculation adopting stamp duty value of the property. However, in such calculation, the assessee has ignored the mark up of 10% on the stamp duty value on per stamp duty reckoner, as the building has lift and accordingly re-computed sale consideration by adding 10% mark up value of stamp duty value and determined value of the property at Rs.1,07,56,700 and differential amount of Rs.10,31,900 has been added to the income u/s 50C of the Act. It is the contention of the assessee that the AO was erred in marking up the valuation of building by 10% of the value on the ground that the said building is having lift. But, the fact remains that office premises was situated on the 4th floor and as per stamp duty reckoner, mark up value of building has to be made from 5th floor onwards. The relevant extracts from stamp duty reckoner has been furnished which was reproduced by the Ld.CIT(A) in his order at page 8.2 on page 15.

9. We have heard both the parties and perused the material available on record. The AO made addition towards differential consideration u/s 50C of the Act, on the ground that the assessee failed to add mark up value to the building even though such building has lift facility and accordingly re-worked stamp duty value by adding 10% mark up value on sale consideration. It is the contention of the assessee that though the building has lift facility, but its office premise is situated on the 4th

floor and as per the stamp duty reckoner, mark up value of building has to be made from 5th floor onwards.

10. Having heard both the sides and considered material available on record, we find merits in the arguments of the assessee for the reason that as per the reproduction made by the Ld.CIT(A) in his order on page 5, if there is a lift in an office or residential premise, the rate mentioned in ready reckoner will be increased only from 5th floor onwards. The assessee claims that its office premises is situated on the 4th floor. These facts needs to be verified by the AO. Therefore, we are of the considered view that the issue needs to be re-examined by the AO in the light of the claim of the assessee that the said property is located on 4th floor of the building. Hence, we set aside the issue to the file of the AO and direct him to consider the issue in the light of the claim of the assessee and also on the basis of stamp duty ready reckoner manual. If it is found that the building is situated on the 4th floor, then the AO is directed to delete addition made towards differential sale consideration u/s 50C of the Act.

11. In the result, appeal filed by the assessee is partly allowed, for statistical purpose.

Order pronounced in the open court on 28th February, 2018.

Sd/-

sd/-

(Saktijit Dey)	(G Manjunatha)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Mumbai, Dt : 28th February, 2018

Pk/-

Copy to :

1. Appellant
2. Respondent
3. CIT(A)
4. CIT
5. DR

/True copy/

By order

Sr.PS, ITAT, Mumbai