

IN THE INCOME TAX APPELLATE TRIBUNAL  
“D” Bench, Mumbai  
Before S/Shri B.R. Baskaran (AM) & Saktijit Dey (JM)  
I.T.A. No. 7022/Mum/2016 (Assessment Year 2009-10)

DCIT CC-7(2) Room No. 655 Aayakar Bhavan M.K. Road Mumbai-400 020. (Appellant)	Vs.	M/s. Ruchi Soya Industries Limited 611 Tulsiani Chambers Mumbai-400 021. PAN : AAACR2892L (Respondent)
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Assessee by	Shri Malav P. Sheth
Department by	Shri Ram Tiwari
Date of Hearing	18.4.2018
Date of Pronouncement	18.4.2018

O R D E R

Per B.R. Baskaran (AM) :-

The appeal filed by the Revenue is directed against the order dated 1.9.2016 passed by the learned CIT(A)-49, Mumbai and it relates to A.Y. 2009-10. The Revenue is aggrieved by the decision of the learned CIT(A) in holding that no addition can be made in the hands of the assessee in the assessment made u/s. 153A of the Act for the year under consideration in the absence of incriminating material supporting the said addition.

2. We have heard the parties and perused the record. The assessee-company is engaged in the business of manufacture and sale of edible oil Vanaspati and allied products. The Revenue carried out search and seizure operation u/s. 132 of the Act in the hands of the assessee on 29.1.2013. Consequently, assessment of the year under consideration was reopened and completed u/s. 153A of the Act. The Assessing Officer added notional interest expenditure on the advances given by the assessee interest free to three parties.

3. In the appellate proceedings, the learned CIT(A) noticed that there was no incriminating material with regard to addition made by the Assessing Officer

and the Hon'ble Bombay High Court has held in the case of Continental Warehousing Corporation (Nhava Sheva) Ltd. 374 ITR 645 that addition can be made in the case of assessment years, which are not abated, only on the basis of incriminating material seized during the course of search. Since the year under consideration was unabated assessment year and since no incriminating material was found supporting the disallowance made by the Assessing Officer, the learned CIT(A) held that notional interest of ₹ 149.48 lakhs made by the Assessing Officer is liable to be deleted. The Revenue is aggrieved by the decision so rendered by the learned CIT(A).

3. We have heard the parties and perused the record. There is no dispute with regard to the fact that the year under consideration falls under the category of unabated assessment and hence as per decision rendered by Hon'ble Bombay High Court in the case of Continental Warehousing Corporation (Nhava Sheva) Ltd. (supra), addition could be made only on the basis of incriminating material found during the course of search. Admittedly, no incriminating was found to support the addition of notional interest of ₹ 149.48 lakhs referred supra. Under these set of facts, the learned CIT(A) has deleted the addition by following the decision rendered by Hon'ble Bombay High Court in the above said case.

4. Since, the learned CIT(A) has followed binding decision rendered by Hon'ble Bombay High Court, we do not find any reason to interfere with the order passed by him.

5. In the result, appeal filed by the Revenue is dismissed.

Order has been pronounced in the Court on 18.4.2018.

Sd/-  
(SHAKTIJIT DEY)  
JUDICIAL MEMBER

Sd/-  
(B.R.BASKARAN)  
ACCOUNTANT MEMBER

Mumbai; Dated : 18/4/2018

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

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BY ORDER,

(Senior Private Secretary)  
ITAT, Mumbai