IN THE INCOME TAX APPELLATE TRIBUNAL
DIVISION BENCH 'A', CHANDIGARH

BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER AND
SHRI B.R.R. KUMAR, ACCOUNTANT MEMBER

ITA No.901/Chd/2016
Assessment Year: 2009-10

The DCIT Circle-5 Ludhiana	Vs.	M/s Hero Cycles Ltd. G.T. Road, Hero Nagar Ludhiana PAN No. AAACH4073P
(Appellant)		(Respondent)

Assessee By : Sh. Subhash Aggarwal, Advocate
Revenue By : Smt. Chandrakanta, Addl. CIT

Date of hearing : 26/02/2018
Date of Pronouncement : 03/05/2018

ORDER

PER SANJAY GARG, J.M.

The present appeal has been filed by the Revenue against the order of the Ld. CIT(A)-2, Ludhiana dt. 04/04/2016.

2. The Revenue has raised the following grounds of appeal :

1. *The Ld. CIT(A) has erred in law and on facts by deleting the addition of Rs. 61,75,631/- made as per section 115U of I.T. Act, 1961.*

2. *The worthy CIT(A)-2, Ludhiana has erred in law and on facts in not appreciating the fact that 10.9433% of Rs. 5,64,32,988/- i.e. income in investment which are non qualifying investment as set out in section*

10(23FB), being a Revocable Trust and contribution from beneficiaries being revocable, as per provisions of section 61/63 of Income Tax Act, 1961 income is taxable in the hands of transfer or being beneficiary of KMRF/KIREF-1.

2. The present appeal is barred by the limitation of 34 days for which the Department had submitted an application 20.3.2017 giving the reasons for delay in filing the appeal. In view of the reasons furnished by the Department and considering the shortness of the period of delay, the same is hereby condoned.

3. Brief facts relating to the issue are that the AO noted that the assessee company had made investment in Kotak India Real Estate Fund which was set up as a unit scheme of Kotal Mahindra Realty Fund. He further noted that the assessee was beneficiary to the extent of 10.9433% in the income from the said fund. He further noticed that the said Kotak Mahindra Realty Fund was in receipt of interest income of Rs. 5,64,32,988/- during the relevant A.Y. 2009-10. He noticed that assessee being beneficiary was liable to be taxed in respect of the interest income accrued / received by the assessee as per its share. He therefore applying the provisions of Section 115U calculated share of the assessee in the said interest income at Rs. 61,75,631/- and added the same to the income of the assessee.

4. Being aggrieved by the said order the assessee preferred in appeal before the Ld. CIT(A).

5. It was pleaded before the Ld. CIT(A) that since the said interest received by 'Kotak Mahindra Realty Funds' was also taxed in the hands of the said 'Kotak Mahindra Realty Funds', hence, the same could not be taxed twice. The Ld. CIT(A) considering the above submissions of the assessee held that though as per the provisions of section 115U read with section 10(23FB) of the Income-tax Act, the assessee was liable to be taxed on the share of income received from 'Kotak Mahindra Reality Funds'. However, since the entire interest income had already been assessed in the hands of the 'Kotak Mahindra Reality Funds', therefore, no addition was called for in the hands of the assessee as the same would result into double taxation on the same income. He, therefore, deleted the additions so made by the Assessing officer in the hands of the assessee. The Ld. CIT(A) further found force in the contention of the assessee that the interest income already reflected by the assessee in the returned income, should be reduced to 'nil'. He, therefore, accepted the contention of the assessee that since the entire interest income was already assessed in the hands of the trust / AOP, hence, the same interest income should be assessed of the hands of assessee. He, accordingly, directed the Assessing officer not to tax the interest income in the hands of the assessee though offered in the return of income.

6. Being aggrieved by the above order of the CIT(A), the Revenue has come up in appeal before us.

7. At the outset, Smt. Chanderkanta, Ld. DR has invited our attention to the assessment order passed in the case of 'Kotak Mahindra Reality Funds' and stated that the addition on account of interest income has been made in the hands of the 'Kotak Mahindra Reality Funds' on protective basis and not on substantive basis with the observation that substantive addition be considered in the hands of the beneficiaries. The Ld. Counsel for the assessee could not rebut the above factual aspect of the matter. He, however, has submitted that the assessee has already offered for taxation the interest income received by the assessee from the 'Kotak Mahindra Reality Funds'. The Ld. DR, at this stage, pointed out to the relevant provisions of section 115U to state that entire interest income i.e the amount actually received or accruing or arising to is liable to be taxed in the hands of the beneficiaries. However, we find that the words 'accruing' or 'arising to' have been substituted / inserted vide amendment made by Finance Act, 2012 w.e.f. 1.4.2013. The assessment order is assessment year 2009-10 and we find that prior to the amendment brought by Finance Act 2012, the word mentioned in the provisions was 'income received'. In view of this, we do not find any merit in the above contention of the Ld. DR. Since the assessee has already offered the interest income in its return of income, hence, no further additions are warranted. In view of our findings, we hold that the interest income actually received by the assessee from the ''Kotak Mahindra Reality Funds' is liable to be taxed and not the entire interest accrued to the

assessee. The action of the CIT(A) in reducing the income on this issue to 'nil' is, however, set aside. The appeal of the Revenue is thus partly allowed.

Order pronounced in the Open Court on 03/05/2018

Sd/-	**Sd/-**
(B.R.R. KUMAR)	**(SANJAY GARG)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Dated : 03.05.2018
AG/Rkk

Copy to:
The Appellant, The Respondent, The CIT, The CIT(A), The DR