

IN THE INCOME TAX APPELLATE TRIBUNAL  
"H" Bench, Mumbai  
Before S/Shri B.R.Baskaran (AM) & Amarjit Singh (JM)

I.T.A. No. 4457/Mum/2016 (Assessment Year 2011-12)

ITO 9(2)(3) Room No. 601A Aayakar Bhavan M.K. Road Mumbai-400 020.	Vs.	Shri Suresh Henry Thomas 305, 2A, Raheja Classique New Link Road Oshiwara, Andheri West Mumbai-400 061. PAN : AAAPT4832B
(Appellant)		(Respondent)

Assessee by	Shri Anil Thakrar
Department by	Shri Saurabh Deshpande
Date of Hearing	2.5.2018
Date of Pronouncement	2.5.2018

ORDER

Per B.R. Baskaran (AM) :-

The appeal filed by the Revenue is directed against the order dated 31.3.2016 passed by the learned CIT(A)-16, Mumbai and it relates to A.Y. 2011-12.

2. The Revenue is aggrieved by the decision of the learned CIT(A) in deleting the addition of ₹ 65.51 lakhs relating to write off of unpaid loans and advances.

3. We heard the parties and perused the record. The Assessing Officer noticed from the tax audit report that the assessee has written off unsecured loan of ₹ 65.51 lakhs and credited the same to his capital account without routing it through the profit and loss account. Since the assessee did not furnish any evidence to prove the nature of receipt of ₹ 65.51 lakhs, the Assessing Officer treated the same as revenue receipt by rejecting claim of the assessee that the same is capital in nature. The learned CIT(A), however, accepted the contention of the assessee that the amount of ₹ 65.51 lakhs so written off was not claimed as expenditure in any of the earlier years. The Revenue is aggrieved by the decision of the learned CIT(A).

4. Learned DR submitted that the learned CIT(A) has deleted the addition without examining the nature of utilization of loan of ₹ 65.51 lakhs taken by the assessee in earlier years. Learned DR, by placing reliance on the decision rendered by Hon'ble Bombay High Court in the case of Solid Containers Ltd. (308 ITR 407) and decision rendered by Hon'ble Supreme Court in the case of T.V. Sundaram Iyengar & Sons Ltd. (222 ITR 344), submitted that loan so taken by the assessee would acquire character of trading receipt, if it has been utilized for working capital purposes.

5. The Ld A.R, on the contrary, submitted that the unsecured loans were not used for working capital purposes. However, when it was pointed out to learned AR that the manner of utilization of unsecured loan taken by the assessee in the earlier years was not examined by the learned CIT(A), learned AR prayed that the matter may be restored to the file of the Assessing Officer for examining the nature of utilization of unsecured loan. Learned DR also agreed to the plea put forth by learned AR.

6. Accordingly, we set aside the order passed by the learned CIT(A) on this issue and restore the same to the file of the Assessing Officer with the direction to examine the nature and manner and utilization of unsecured loan of ₹ 65.51 lakhs and decide the same afresh in accordance with law, after affording adequate opportunity of being heard to the assessee.

7. In the result, appeal filed by the Revenue is treated as allowed for statistical purposes.

Order has been pronounced in the Court on 2.5.2018.

Sd/-  
(AMARJIT SINGH)  
JUDICIAL MEMBER

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

Mumbai; Dated : 2/5/2018

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