

आयकर अपीलीय अधिकरण पुणे न्यायपीठ “एक-सदस्य” मामला पुणे में

IN THE INCOME TAX APPELLATE TRIBUNAL

PUNE BENCH “SMC”, PUNE

सुश्री सुषमा चावला, न्यायिक सदस्य के समक्ष

BEFORE MS. SUSHMA CHOWLA, JM

आयकर अपील सं./ ITA No. 752/PUN/2017

निर्धारण वर्ष / Assessment Year : 2009-10

M/s. Viklele Associates,

Old Address:

Plot No. 17, Satprakash Bungalow,

Advait Nagar, Paud Road,

Kothrud, Pune-411 038

New Address:

401, Kamalaksha Apartments,

Behind Riddi Siddhi Apartment,

Maratha Mandir Road, Bavdhan,

Pune-411 052

PAN : AAEFV3754G

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer,

Ward 3(4),

Pune.

.....प्रत्यर्थी / Respondent

Appellant by : Shri M. K. Kulkarni

Respondent by : Dr. Vivek Aggarwal

सुनवाई की तारीख / Date of Hearing : 10.05.2018	घोषणा की तारीख / Date of Pronouncement : 15.05.2018
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आदेश / ORDER

PER SUSHMA CHOWLA, JM

The appeal filed by the assessee is against the order of Commissioner of Income Tax (Appeals)-3, Pune dated 17.10.2016 relating to assessment year 2009-

10 against order passed under section 143(3) of the Income Tax Act, 1961 (in short 'the Act').

2. The assessee has raised following grounds of appeal:-

"1. On the facts and circumstances of the case and in law the Ld. CIT(A) was not justified in disposing of the appeal ex-parte as the notices for hearing of the appeal were not received due to change of address of the appellant. There was no intention to avoid the hearing of the appeal. The ex-parte order be set aside for doing the same afresh in order to give justice to the assessee.

2. On the facts and circumstances of the case and in law the Ld. CIT(A) was not justified to bring under the purview of the taxation the exempt income on Rs.2,46,405/- under section 10A of the Act being interest of fixed deposits thereby confirming the action of the A.O. The exemption be allowed the appellant.

3. On the facts and circumstances of the case and in law the appeal of the assessee is delayed as the same was not filed within the limitation of 60 days provided under the Act. The delay is mainly due to the fact that the appellant remained unaware of the appeal order due to change of address. The delay is not intentional. The application for condonation of delay will be filed supported by sworn-affidavit separately. It is therefore, prayed to condone the delay and admit the appeal for adjudication.

4. The appellant craves to leave, add/amend or alter any of the above grounds of appeal."

3. The appeal of the assessee was filed after delay of 105 days. The assessee has filed an application for condonation of delay pointing out that it had shifted its place of business and the communication was being made at the old address. The appeal was filed after a delay which was not intentional or due to negligence. A perusal of the appeal memo reflects that the assessee has filed the present appeal after delay of 105 days. As the notice of hearing was sent to old address of assessee, the same were returned back by postal authority. The entire correspondence used to take place for delivery at the old address and then it would get diverted at new address. The assessee remained unaware of the appeal due to change of address. The new address of the assessee mentioned in the affidavit is 401, Kamalaksha Apartments, Behind Riddi Siddhi Apartment, Maratha Mandir

Road, Bavdhan, Pune-411 052. In view of the reasons mentioned in the affidavit, there is merit in the plea of assessee and delay in filing appeal late before the Tribunal is condoned.

4. The Ld. AR at the outset pointed out that the issue raised in the present appeal i.e. taxability of interest income earned on fixed deposits under section 10A of the Act stands covered by full Bench decision of Karnataka High Court in the case of CIT Vs. Hewlett Packard Global Soft Ltd., (2017) 100 CCH 0063 KarHC.

5. Briefly in the facts of the case, the assessee was a partnership firm. In the year under consideration, assessee filed return of income declaring total income of Rs.2,46,410/-. The assessee was engaged in exporting computer software and was eligible for deduction under section 10A of the Act. In the original return of income assessee had offered to tax interest of Rs.2,46,450/- on fixed deposits under the head 'income from other sources'. Later on, by way of revised return of income, it withdrew the said item and claimed entire income of Rs.28,71,956/- as liable for deduction under section 10A of the Act. The Assessing Officer was of the view that the assessee was not entitled to claim deduction under section 10A of the Act on the interest earned on fixed deposits. The assessee was show caused by the Assessing Officer to explain as to why the amount should not be taxed being credited to FDR on account of interest. In reply, the assessee furnished certificate from Punjab National Bank wherein it was certified that the over draft facility was sanctioned to the assessee against security of fixed deposits with the bank. In the second letter, the bank stated that the assessee has kept short term deposit with them during the period April 2008- March 2009 and it had charged lien against the overdraft loan given to assessee. The Assessing Officer noted that there was no need at all for any overdraft or cash credit in the bank as there was surplus balances in the said account except amount diverted to the fixed deposit account. Hence, the Assessing Officer held that interest earned on the fixed deposits was liable to be included under

the head 'income from other sources' and assessee was not eligible to get deduction under section 10A of the Act.

6. The order of Assessing Officer was upheld by the CIT(A) as the assessee failed to give any explanation in this regard. Now, the assessee is in appeal against the order of CIT(A).

7. The first ground of appeal raised by assessee is against ex-parte order passed by CIT(A) without giving proper opportunity of hearing to the assessee. The second ground of appeal raised by assessee is against non allowance of deduction under section 10A of the Act on the interest income earned on fixed deposits. The assessee before us has stressed that the issue on merit stands covered in favour of assessee by the ratio laid down by the Full Court of Hon'ble Karnataka High Court in the case of CIT Vs. Hewlett Packard Global Soft Ltd (supra.). The Hon'ble High Court held that *Incidental activity of parking of Surplus Funds with Banks or advancing of staff loans by such special category of assesses covered under section 10-A or 10-B was integral part of their export business activity.* The Hon'ble High Court further held that *Business decision taken in view of commercial expediency and interest income earned incidentally could not be de-linked from its profits and gains derived by Undertaking engaged in export of Articles as envisaged u/s 10-A or 10-B and could not be taxed separately u/s 56.* The Hon'ble High Court also held that *therefore all Profits and Gains of the Undertaking including the incidental income by way of interest on Bank Deposits or Staff loans would be entitled to 100% exemption or deduction u/s 10-A and 10-B of the Act. Such interest income arises in the ordinary course of export business of the Undertaking even though not as a direct result of export but from the Bank Deposits etc., and was therefore eligible for 100% deduction.*

8. The issue raised before us is squarely covered by the decision of Hon'ble Karnataka High Court and following the same parity of reasons, we hold that the assessee is entitled for benefit of deduction under section 10A of the Act on the interest earned in fixed deposits. The Assessing Officer is directed accordingly. The ground raised by assessee, thus, stands allowed. The other grounds of appeal raised become academic and are dismissed.

9. In the result, appeal of the assessee is partly allowed.

Order pronounced on this 15th day of May, 2018.

Sd/-

(SUSHMA CHOWLA)

न्यायिक सदस्य/JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 15th May, 2018.

SB

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT (A)-3, Pune.
4. The Pr. CIT-2, Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "एक-सदस्य" बेंच, पुणे / DR, ITAT, "SMC" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

// True Copy //

आदेशानुसार / BY ORDER,

निजी सचिव /Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.