

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "I" MUMBAI**

**BEFORE SHRI SAKTIJIT DEY (JUDICIAL MEMBER) AND  
SHRI N.K. PRADHAN (ACCOUNTANT MEMBER)**

**ITA No. 1406/MUM/2016  
Assessment Year: 2009-10**

ITSSL Loan Trust IDBI,  
Asian Building, Gr.  
Floor, 17, R. Kamani  
Marg, Ballard Estate,  
Mumbai-400001.

**PAN No. AAATI6594F  
Appellant**

Vs.

Income Tax Officer-19(3)(2)  
Mumbai.

**Respondent**

**ITA No. 1998/MUM/2016  
Assessment Year: 2009-10**

ITO-23(1)(2), Room No.  
108, Matru Mandir,  
Tardeo Road, Grant  
Road, Mumbai-400007.

**Appellant**

Vs.

ITSSL Loan Trust IDBI, Asian  
Building, Gr. Floor, 17, R.  
Kamani Marg, Ballard Estate,  
Mumbai-400001.

**PAN No. AAATI6594F  
Respondent**

Revenue by : Mr. Anoop Hiwase, DR  
Assessee by : Mr. Ronak Doshi, AR

Date of Hearing : 08/05/2018  
Date of pronouncement: 23/05/2018

ORDER

PER N.K. PRADHAN, AM

The captioned cross appeals- one by the assessee and the other by the Revenue – are directed against the order of the Commissioner of Income Tax (Appeals)-32, Mumbai [in short 'CIT(A)'] and arise out of the assessment completed u/s 143(3) of the Income Tax Act 1961 (the 'Act'). As common issues are involved, we are proceeding to dispose them off by this consolidated order for the sake of convenience.

**ITA No. 1406/MUM/2016**  
**Assessment Year: 2009-10**

2. The grounds of appeal filed by the assessee read as under:

Ground I : Holding the trust to be not a valid trust

a. On the facts and in the circumstances of the case and in law, the CIT(A) erred in ruling that the Appellant is not a valid trust on the alleged ground that all the essentials for & valid trust were not fulfilled.

Ground II: Holding that the trust was not revocable

a. On the facts and in the circumstance of the case and in law, the CIT(A) erred in rejecting the applicability of sections 61 to 63 of the Act to the contribution made by the beneficiary to the Appellant.

Ground III: Diversion by overriding title

a. On the fads and in the circumstances of the case and in law, the CIT(A) erred in holding that the income of the Appellant is not diverted at source to the beneficiary/ PTC holder on the alleged ground that an overriding

title cannot be created by voluntary act of parties and, hence, not chargeable to tax in the hands of the Appellant.

Ground IV: Treating the status of the appellant as "AOP"

a. On the facts and in the circumstances of the case and in law, the CIT(A) erred in holding the status of the Appellant as that of an "Association of Person" constituted by ITSSL Loan Trust, Canara Robeco Mutual Fund (beneficiary / PTC Holder) and IDBI Trusteeship Services Ltd.

Ground V: Invalidity of return of income

a- On the facts and in the circumstances of the case and in law, the CIT(A) erred in treating of income filed by IL&FS Trust Company, not being trustee of the appellant, as a valid return of the appellant.

Ground VI: levy of interest u/s 234B & 234C of the Act

a. The AO erred in levying interest u/s 234B and 234C of the Act. The Appellant denies its liability towards the same,

b. The Appellant prays that the interest levied u/s 234B and 234C of the Act be deleted.

3. Briefly stated, the facts of the case are that the assessee filed its Return of Income (ROI) for the assessment year (AY) 2009-10 on 23.07.2009 declaring *Nil* income and specifying status of the assessee as 'any other AOP/BOI artificial juridical person'. The Assessing Officer (AO) observed from the details filed, that the assessee had received/earned interest income to the tune of Rs.9,43,63,906/-. Since the interest income earned or accrued to an assessee is not exempt from tax under the Act, the AO asked the assessee to explain as to why the

interest income derived in the hands of the trust/AOP should not be taxed in its hands in view of the CBDT Circular No. 157 dated 26.12.1974.

The assessee claimed before the AO that the ROI itself has been filed wrongly by the IL&FS Trust Company and therefore, no cognizance needs to be taken. However, before raising this claim, the AR of the assessee appeared before the AO and submitted various details called for. It was only on 11.10.2011 that the IDBI Trusteeship Services Ltd. (the Trustee) brought it to the notice of the AO that they are the trustees and requested that the notices be re-directed to them. The AO examined the claim of the assessee that no cognizance of the ROI should be taken and held the same as not acceptable because the same has been offered only after issuance of notice u/s 143(2) of the Act. Also the AO finalized the assessment on the basis of materials available on record.

3.1 The AO noted that the assessee had declared itself as a private trust created through trust deed dated 16.05.2008 by its trustee IDBI Trusteeship Services Ltd. Subsequently, it entered into an agreement through a deed of an assignment on the same date i.e. 16.05.2008 with IL&FS Services Ltd. ('Seller' which is a NBFC) for the purpose of securitisation of loan of Soul Space Projects Ltd. Thus the loan extended by IL&FS Services Ltd. has been transferred in favour of the assessee, resulting in the assessee becoming a lender and it acquired all rights and powers to receive the loan and interest from the borrower. The trust was created by putting initial corpus of Rs.1000/- and as per the trust declaration, the beneficiary of the trust is Canara Robeco Mutual Fund

and it had issued Pass Through Certificates (PTCs), a paper instrument against their contribution of approx. Rs.100 crores. During the course of assessment proceedings, the assessee failed to furnish the details of loan extended by IL&FS Services Ltd. or the exact amount of debt securitised/purchased by the assessee. However, the same was obtained by the AO from IL&FS Services Ltd. by issuing notice u/s 133(6) of the Act. The AO after examining the agreement observed that Soul Space Projects Ltd. had been granted a loan of Rs.100 crores carrying interest @ 11.50% per annum.

The assessee submitted before the AO that it was a private trust and the interest income earned by it, belonged to the beneficiary who contributed money in the trust. It was stated that the income earned by the assessee-trust was taxable in the hands of the beneficiary and the same is governed by the provisions of section 161(1) of the Act, as per which the income arising in the hands of a determinate trust are liable to be taxed in the hands of the beneficiary. The assessee being a representative assessee is therefore not liable to pay any tax in view of the provisions of section 161(1) of the Act.

However, the AO was not convinced with the above explanation and held the assessee as an AOP and not a trust. Therefore, he held that there was no merit in the contention of the assessee that it was falling u/s 161(1) of the Act. Also even if the plea of the assessee is considered, then also the tax liability of the assessee as a representative assessee would fall u/s 161(1A) instead of 161(1). Therefore, the AO held that on both the counts, the income earned is liable to be taxed in the hands of

the assessee itself. Hence the AO computed the income of the assessee at Rs.9,43,63,906/- under the head "Income from Business or Profession".

4. Aggrieved by the order of the AO, the assessee filed an appeal before the Ld. CIT(A). The Ld. CIT(A) observed that the assessee returned the interest income as income from other sources while the AO held the activity of commercial lending of loan to be adventure in the nature of trade and thus held the interest therefrom to be profits and gains. The Ld. CIT(A) thus held that (i) the AO has correctly held in para 16 of his assessment order that the assessee approached Canara Robeco Mutual Fund for subscription which was then invested in purchasing the loan advanced by IL&FS Financial Services Ltd. to a company called Soul Space, (ii) the assessee therefore, substituted himself in place of the original lenders, (iii) the assessee also issued PTCs to Canara Robeco and thereby assumed the role of lender for obtaining interest income by taking over the loan availed by Soul Space, (iv) by mere substitution, the nature of transaction itself does not change, but in fact would strengthen the AO's argument that these complex transactions are in the nature of business activity, (v) it naturally follows that interest earned is income from profits and gains and therefore, it follows that the assessee would be representative assessee u/s 161(1A).

On the basis of above reasons, the Ld. CIT(A) upheld the order of the AO in holding the status of the assessee to be an AOP and consequent applicability of section 161(1A). However, the Ld. CIT(A) observed that the AO had overlooked the provisions of section 67A of the Act. Having said that the assessee is an AOP to be taxed at the

maximum marginal rate and income is to be assessed as income from business by applying the provisions of section 161(1A), it becomes incumbent to also apply the provisions of section 67A of the Act which lays down the methodology of computing the member's share of income in an AOP or BOI.

Thus the Ld. CIT(A) observed that the appellant had paid interest of Rs.9,43,63,906/- which is exactly the same as the interest earned by it. Therefore, he directed the AO to grant deduction of this amount paid to the member u/s 67A of the Act.

5. Before us, the Ld. counsel of the assessee refers to the decision in *Indian Corporate Loan Securitisation Trust v. ITO* (2017) 80 taxmann.com 315 (Mumbai-Trib) and submits that the issue in the present appeal is covered in favour of the assessee by the above decision.

6. On the other hand, the Ld. DR submits that the claim that IL&FS Trust Company has erroneously filed the return of income cannot be accepted because if it has filed the return of income erroneously, then the question arises whether a separate return has been filed for the assessee by its trustees i.e. IDBI Trusteeship Services Ltd. If IDBI Trusteeship Services Ltd had filed return of income for the assessee-trust, then the contentions of the assessee could have been acceptable. However, no details in this regard have been brought out on record. The Ld. CIT(A) has rightly observed that this is a peculiar case as the assessee was not able to suitably explain how the user id and password

for the e-filing portal came to be known to someone else other than the trustee.

The Ld. DR further submits that the AO has amply demonstrated the complexity of the transactions entered into by the assessee and has correctly held that this was a business activity. It is argued that the AO is correct in holding the status of the assessee to be an AOP and the consequent applicability of section 161(1A) of the Act.

7. We have heard the rival submissions and perused the relevant materials on record. In the case of *Indian Corporate Loan Securitisation Trust* (supra), relied on by the Ld. counsel of the assessee, the assessee-trust was formed *vide* Trust Deed settled by IL&FS Trust Co. Ltd. (ITCL). The beneficiaries to the trust were seven Mutual Funds. The beneficial interest of those Mutual Funds in the trust was proportionate to their contribution in the assessee-trust.

HPCL, a Government Company, proposed to raise loan for Rs.300 crores. Based on an e-bid enquiry, Yes Bank made the loan offer which was accepted. An agreement for the loan was purportedly entered into between HPCL and Yes Bank. Subsequently, Yes Bank entered into a Deed of Assignment, assigning the receivable under the aforesaid loan to the assessee for a consideration of Rs.300.55 crores. In parallel, the assessee-trust decided to issue PTCs, which were securities that could be issued only to Mutual Funds, Banks and Non-Banking Financial Companies (NBFCs) as per RBI 'Guidelines on Securitisation of Standard Assets'. Those PTCs were subscribed by seven Mutual Funds, who were incidentally the beneficiaries of the trust, holding beneficial interest in

the assessee. In terms of said subscription, the Mutual Funds transferred funds to the assessee towards purchase of those PTCs. Having received funds from the Mutual Funds, the assessee utilized the funds to pay the consideration to Yes Bank, towards the receivable taken over by it through the assignment deed. During the assessment year consideration, the assessee received interest from Yes Bank and the entire proceeds were distributed to the beneficiaries of the assessee-trust i.e. Mutual Funds through the PTCs, in proportion to their interest. The assessee filed its return of income declaring taxable income at *Nil*, as according to the assessee, the amounts received by the assessee from Yes Bank and in turn paid by it to the beneficiaries in proportion to their investment in PTCs as pay outs in a pre-determined manner were not chargeable to tax in the hands of the assessee. The assessee claimed that it received the interest for and on behalf of the benefit of the beneficiaries and since the income of the beneficiaries was exempt from tax u/s 10(23D), the interest received by it for their benefit was not chargeable to tax in its hands in terms of provisions of section 160(1)(iv) r.w.s. 161(1) of the Act. The AO held that the trustee and seven beneficiaries, all financial institutions, had come together and had subscribed certain amount of money for earning profit, thereby constituting an AOP. The AO further held that the assessee was an AOP of the seven Mutual Funds and the provisions of section 160(1)(iv)/161(1) applicable to a trustee as a representative assessee did not apply to the assessee in the case in hand. The AO further held that the activity of the assessee was business in nature and therefore, section 161(1A) of the Act was attracted. Therefore, the AO held that the

interest income so earned was out of the business and was chargeable to tax in assessee's hand as 'Income from business or profession'. In appeal the CIT(A) upheld the decision of the AO that the provisions of section 160(1)(iv) and section 161 as regards representative assessee did not apply to the assessee in the case in hand. He also upheld the action of the AO in treating the interest received as 'Income from business'.

In further appeal the Tribunal held that (i) since assessee was a revocable trust and contribution by beneficiaries was a revocable transfer, income would be taxed in the hands of the beneficiaries i.e. Mutual Funds which purchased PTCs from the assessee-trust, (ii) even otherwise, since money was always intended to be passed on to PTC holders, i.e. Mutual Funds, principle of diversion of income at source by overriding title was attracted, (iii) in view of the aforesaid, interest income was not liable to tax in the hands of the assessee.

7.1 The facts in the instant case are delineated at para 3 and 3.1 hereinbefore. We find that the above decision of the Co-ordinate Bench in *Indian Corporate Loan Securitisation Trust* (supra) is squarely applicable to the instant case as the facts are identical.

In view of the above, the appeal filed by the assessee is allowed.

**ITA No. 1998/MUM/2016**  
**Assessment Year: 2009-10**

8. The grounds of appeals filed by the revenue read as under:

"On the facts and circumstances of the case and in law, the Ld. CIT(A)-32 Mumbai erred in allowing addition of Rs.9,43,63,906/- without

appreciating that the sum of Rs.9,43,63,906/- represented distribution and application of accrued interest income on loan purchased by the assessee trust and not an expenditure incurred in earning the said accrued interest income.”

8.1 We have followed the decision in *Indian Corporate Loan Securitisation Trust* (supra), and held that since the assessee was a revocable trust and contribution by beneficiaries was a revocable transfer, income would be taxed in the hands of beneficiaries, i.e. Mutual Funds which purchased PTCs from the assessee-trust and since money was always intended to be passed on to PTC holders i.e. Mutual Funds, the principle of diversion of income at source by overriding title was attracted and in view of the aforesaid facts, interest income was not liable to tax in the hands of the assessee.

In view of the above reasons, there is no merit in the appeal filed by the revenue and the same is dismissed.

9. To sum up, the appeal filed by the assessee is allowed whereas the appeal filed by the revenue is dismissed.

**Order pronounced in the open Court 23/05/2018.**

Sd/-  
(SAKTIJIT DEY)  
JUDICIAL MEMBER

Sd/-  
(N.K. PRADHAN)  
ACCOUNTANT MEMBER

Mumbai;  
Dated: 23/05/2018

*Rahul Sharma, Sr. P.S.*

**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//

BY ORDER,

(Dy./Asstt. Registrar)  
**ITAT, Mumbai**