

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 Nos.71 & 1347/PUN/2018

निर्धारण वर्ष / Assessment Years : 2008-09 & 2009-10

Mukund Dattatray Bhide,  
Bhide Auto Stores,  
Near S.T. Stand,  
Sangli

.... अपीलार्थी/Appellant

PAN: ABFPB8614D

Vs.

The Dy. Commissioner of Income Tax,  
Circle 1, Sangli

.... प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Appellant by

: Shri M.K. Kulkarni

प्रत्यर्थी की ओर से / Respondent by

: Shri Rajesh Gawali

सुनवाई की तारीख / Date of Hearing : 17.12.2018	घोषणा की तारीख / Date of Pronouncement: 31.12.2018
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आदेश / ORDER

PER SUSHMA CHOWLA, JM:

Both the appeals filed by assessee are against separate orders of CIT(A)-1, Kolhapur, dated 08.11.2017 and 07.06.2018 relating to assessment years 2008-09 and 2009-10 against respective orders passed under section 143(3) of the Income-tax Act, 1961 (in short 'the Act').

2. Both the appeals relating to same assessee on similar issue were heard together and are being disposed of by this consolidated order for the sake of convenience. However, in order to adjudicate the issue, reference is being made to the facts and issue in ITA No.71/PUN/2018, relating to assessment year 2008-09.

3. The assessee in ITA No.71/PUN/2018, relating to assessment year 2008-09 has raised the following ground of appeal:-

- 1) *On the facts and circumstances of the case and in law the Ld. CIT(A) was not justified in dismissing the appeal of the assessee confirming the addition made by the A.O. of Rs.8,13,465/- on account of hypothetical / notional interest for share application money remaining without allotment of shares. The addition of notional/hypothetical interest is not permissible in law as it cannot be taken as accrual of 'real income'. The addition be deleted.*

4. The only issue raised in the present appeal is in respect of addition made on account of notional interest on share application money remaining allotment of shares.

5. Briefly, in the facts of the case, the assessee was engaged in the business of re-sale of tyres mainly of Apollo Tyres and Falcon Tyres. The assessee had made deposits of ₹ 22,36,000/- under the head 'Company Shares'. The Assessing Officer asked the assessee to furnish the details of interest received on the aforesaid deposits. The assessee explained that the investment was made earlier and the Assessing Officer noted that no interest was charged on accrual basis. The assessee in reply, explained that he used to receive various discounts from the companies for prompt payments, quarterly discounts, slab discount, sales discount, etc. As per oral instructions of M/s. Apollo Tyres, the assessee had made the aforesaid investments on

various dates as tabulated at pages 3 and 4 of assessment order. The plea of assessee before the Assessing Officer was that investments were out of own funds and not from borrowed funds. He also pointed out that deposits were necessary for carrying on his business. He also contended that no income was received on the aforesaid investments made in shares. The Assessing Officer vide para 11 notes the contention of assessee in this regard and also notes that the assessee had shown readiness for working out the interest @ 5% to 7% per annum i.e. rate of bank fixed deposits. The Assessing Officer observed that investments were made from 01.04.2003 to 31.03.2007 amounting to ₹ 36,36,000/-. Sum of ₹ 4 lakhs and ₹ 10 lakhs were returned back on 31.08.2007 and 24.09.2007 leaving balance of ₹ 22,36,000/- as on 31.03.2008. The Assessing Officer in this regard observed that no prudent businessman would make such huge investments without earning any benefits and he brushed aside the plea of assessee that the benefits such as incentives and discounts were granted, as normal discounts and did not accept the plea of assessee. The Assessing Officer in this regard thus, worked out interest @ 7% on the aforesaid deposits date-wise and made an addition of ₹ 8,13,465/-.

6. The CIT(A) upheld the order of Assessing Officer and brushed aside the plea of assessee that no notional income could be taxed in his hands.

7. The assessee is in appeal against the order of CIT(A).

8. The learned Authorized Representative for the assessee pointed out that the aforesaid deposits were made right from 2003 and no interest was charged in the hands of assessee in earlier years. He further pointed out that the

deposits were made out of own funds and there is no merit in making any disallowance on account of interest attributable to such deposits. The learned Authorized Representative for the assessee referred to the Balance Sheet in this regard to show the availability of own funds.

9. The learned Departmental Representative for the Revenue placed reliance on the orders of authorities below.

10. On perusal of record and after hearing both the learned Authorized Representatives and after perusing the Balance Sheet of sole proprietary concern of the assessee, I find that there is credit balance of ₹ 47,22,400/- in the Capital Account of assessee, as against which the deposits which were made totaled to ₹ 22,36,000/- at the end of the year. The deposits with different companies associated with Apollo Tyres right from 01.04.2003 to 31.03.2007 totaled to ₹ 36,36,000/-, sum of ₹ 4 lakhs was returned back on 31.08.2007 and ₹ 10 lakhs on 24.09.2007 leaving balance of ₹ 22,36,000/- as on 31.03.2008. Where the assessee has own funds and had utilized the same for the purpose of giving advances to different concerns who were related to Apollo Tyres, where the assessee was dealer in tyres of Apollo Tyres Ltd., no adverse inference can be drawn against the assessee. The availability of interest free funds in the hands of assessee by way of Capital Account is not disputed and in such circumstances, where the available funds were much more than interest free advances in the hands of assessee, no disallowance on account of interest expenses is to be made in the hands of assessee. Accordingly, I hold so.

11. The facts and issue in ITA No.1347/PUN/2018 are identical to the facts and issue in ITA No.71/PUN/2018 and the decision in ITA No.71/PUN/2018 shall applicable *mutatis mutandis* to ITA No.1347/PUN/2018.

12. In the result, both the appeals of assessee are allowed.

Order pronounced on this 31<sup>st</sup> day of December, 2018.

**Sd/-**  
**(SUSHMA CHOWLA)**  
न्यायिक सदस्य / **JUDICIAL MEMBER**

पुणे / Pune; दिनांक Dated : 31<sup>st</sup> December, 2018.

GCVSR

**आदेश की प्रतिलिपि अग्रहित/Copy of the Order is forwarded to :**

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. आयकर आयुक्त(अपील) / The CIT(A)-1, Kolhapur;
4. The Pr.CIT-1, Kolhapur;
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे, एक-सदस्य  
मामला / DR 'SMC', ITAT, Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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