

IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH, MUMBAI

BEFORE SHRI SHAMIM YAHYA, AM AND SHRI AMARJIT SINGH, JM

आयकर अपील सं/ I.T.A. No.951/Mum/2017

(निर्धारण वर्ष / Assessment Year: 2010-11)

M/s. Matoshree Realtors B/202, Matoshree Tower, Padmabai Thakkar Marg, Mahim, Mumbai-400016.	बनाम/ Vs.	ITO-21(2)(2) Piramal Chambers, 1 st Floor, Lal Baugh, Parel, Mumbai- 400012.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAMFM5625M		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
Assessee by:	Shri Dr. K. Shivram/ Ms. Neelam C. Jadhav	
Revenue by:		

सुनवाई की तारीख / Date of Hearing: 07/05/2019

घोषणा की तारीख /Date of Pronouncement: 22/05/2019

आदेश / O R D E R

PER AMARJIT SINGH, JM:

The assessee has filed the present appeal against the order dated 14.12.2016 passed by the Commissioner of Income Tax (Appeals) -33, Mumbai [hereinafter referred to as the “CIT(A)”] relevant to the A.Y.2010-11.

2. The assessee has raised the following grounds: -

- “1. On the facts and in the circumstances of the case and in law the Ld. CIT(A) erred in sustaining the addition of Rs.110,38,680/- made by the AO on account of undisclosed interest income.

2. The appellant craves a leave to add, to alter and/or to amend any of the grounds of the appeal on or before the date of hearing of appeal.”

3. The brief facts of the case are that the assessee filed its return of income on 02.08.2010 declaring total income to the tune of Rs.90,806/-. The return was processed u/s 143(1) of the I.T. Act, 1961. Thereafter, the case of the assessee was reopened after issuance of notice u/s 147/148 of the Act. Notices u/s 143(2) & 142(1) of the Act were issued and served upon the assessee. The assessee received the interest in sum of Rs.1,10,38,680/- on investment of FDR of Rs.10 crores with CKP Co-op Bank Ltd. Against this interest income, the assessee has claimed the expenditure of Rs.1,08,21,294/- being interest paid on loan taken for the business. The interest income earned on FDR is the ‘Income from Other Sources’, therefore, the same was not allowed set-off against the interest expenditure of Rs.1,08,21,294/-. Therefore, the notice was given and it was found that the claim of the assessee was also not allowed in the A.Y 2009-10 & 2010-11, therefore, the interest income in sum of Rs.1,10,38,680/- on the investment in FDR of Rs.10 crores with CKP Co-op Bank Ltd. was disallowed and added to the income of the assessee. Feeling aggrieved, the assessee filed an appeal before the CIT(A) who confirmed the order of the AO, therefore, the assessee has filed the present appeal before us.

ISSUE Nos. 1

4. At the very outset, the Ld. Representative of the assessee has argued that the interest income in sum of Rs.1,10,38,680/- on the investment in FDR of Rs.10 crores with CKP Co-op Bank Ltd. was disallowed on the basis of this fact that the said income was also disallowed in the A.Y. 2009-

10 & 2011-12. The assessee filed an appeal before the Hon'ble ITAT and the Hon'ble ITAT has restored the issue before the AO by virtue of order **dated 08.12.2017 in ITA. No.2303/M/2015 & 3504/M/2015** for the A.Y.2009-10, therefore, in the said circumstances, the present issue is also liable to be remanded before the AO in accordance with the said direction. However, on the other hand, the Ld. Representative of the Department has refuted the said contention. Copy of order dated 08.12.2017 in **ITA. No.2303/M/2015** is on the file and the relevant finding has been given in para no. 25-27 which is hereby reproduced as under:-

“25. Coming to the additional ground raised by the assessee. The assessee has filed a petition for admission of additional ground of appeal by raising a ground seeking set off of interest received from loans and advances of Rs.31,94,644 against interest earned from fixed deposit.

26. The Ld. Sr. Counsel submitted that additional ground raised by the assessee relates to alternative claim of interest expenditure disallowance, the facts of which are already on record before the lower authorities. The assessee has not brought out any new facts or evidence to make an alternative claim of interest at all. Therefore, additional ground raised by the assessee may be admitted and suitable relief may be given.

27. After hearing both the sides, we find that additional ground raised by the assessee making an alternative claim for setting off of interest received from loans against interest paid to the bank for loan taken against security deposit emanates from the facts already on record. Therefore, we deem it appropriate to admit additional ground raised by the assessee and decide to adjudicate on merits.”

5. Copy of order **dated 23.05.2018 in ITA. No.1532/M/2016 for the A.Y. 2011-12** is also on the file in which the relevant finding has been given in para no.4 which is hereby reproduced as under.:-

“4. We have heard the argument advanced by the Ld. Representative of the parties and perused the record. All the issues related to the

confirmation of addition of Rs.1,78,06,159/-. The appellant placed the term deposit with CKP-Cooperative bank. At the end of financial year 2009-10, the term balance was of Rs.10 crores and equivalent balance was in the loan account. The assessee requested the bank to adjust the balance in term deposit against the loan amount which was obtained on security of the said deposit. The contention of the assessee is that the bank neither charged interest on loan nor paid any interest on term deposit, therefore, the amount of the interests nowhere accrued in favour of the assessee. It is also contended by the Ld. Representative of the assessee that the interest income to the tune of Rs.1,78,06,159/- was added on notional basis whereas the contention of the Ld. Representative of the Department is that the Bank certificate speaks about the interest income to the tune of Rs.1,78,06,159/-, therefore, the same was rightly added to the income of the assessee. The factual position is not in dispute. The assessee deposited the security with the CKP- Co-operative Bank and against the said security deposits, the appellant availed the loan from the same bank. The amount to the tune of Rs.10 crores was lying in the F.Y. 2009-10 in Term Deposits with the CKP Bank Co-operative Bank Ltd. on 02.04.2010 and on the request of the assessee, the loan amount was adjusted against the said term deposits and nothing was received at that time. The Ld. Representative of the assessee has argued that his case is fully covered in view of the law settled in the case of Godhra Electricity Co. Ltd. Vs. CIT (1997) 225 ITR 746 (SC) and CIT Vs. Excel Industries Ltd. (2013) 358 ITR 295 (SC). The copy of letter of the bank concerned dated 05.03.2014 is on record which lies at page no. 14 of the paper book in which on 01.04.2010, the term deposit has been shown to the tune of Rs.11,78,06,159/-including accrued interest to the tune of Rs.1,78,06,159/- on 31.03.2011. The loan on dated 01.04.2010 was to the tune of Rs.11,78,06,159/- which also exists on 31.03.2011. The term deposit was adjusted against the loan account without paying interest to the assessee. The assessee also showed the adjustment in the closing balance which lies at page no. 31 of the paper book. This is the factual position and the controversy is required to be adjudicated in view of the law relied by the Ld. Representative of the assessee mentioned above i.e Godhra Electricity Co. Ltd. Vs. CIT (1997) 225 ITR 746 (SC) and CIT Vs. Excel Industries Ltd. (2013) 358 ITR 295 (SC). Therefore, in the said circumstances, we are of the view that the document issued by the bank and the closing balance of the assessee is further liable to be considered in the light of the law relied by the assessee (supra) in the interest of justice. Therefore, we set aside the finding of the CIT(A) on these issues and restore the matter before the AO to decide the issues in the light of the law relied by the Ld. Representative of the assessee in accordance with law by giving an opportunity of being heard to the assessee.”

6. In view of the said decision, we set aside the finding of the CIT(A) on this issue and restored the issue before the AO to decide the matter afresh in view of the guidelines in both the appeals of the assessee mentioned above. Needless to say that an opportunity of being heard is required to be given to the assessee in accordance with law. Accordingly, this issue is decided in favour of the assessee against the revenue.

7. In the result, the appeal filed by the assessee is hereby ordered to be allowed for statistical purposes.

Order pronounced in the open court on 22/05/2019.

Sd/-

(SHAMIM YAHYA)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 22/05/2019

Vijay

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

Sd/-

(AMARJIT SINGH)

न्यायिक सदस्य/JUDICIAL MEMBER

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

(Sr. Private Secretary)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai