

THE INCOME TAX APPELLATE TRIBUNAL
"B" Bench, Mumbai
Before Shri Shamim Yahya (AM) & Shri Sandeep Gosain (JM)

I.T.A. No. 3717/Mum/2015 (Assessment Year 2010-11)
I.T.A. No. 3785/Mum/2015 (Assessment Year 2011-12)

ACIT 2(2)(1) Room No. 545 Aayakar Bhavan M.K. Road Mumbai-400 020.	Vs.	M/s. L&T Finance Ltd. L&T House, N.M. Marg Ballarad Estate Mumbai-400 001. PAN : AAACL8668G
(Appellant)		(Respondent)

Assessee by	Shri M.M. Golvala & Shri Raunak Vardhan
Department by	Shri Samuel Darse
Date of Hearing	25.7.2019
Date of Pronouncement	2.8.2019

ORDER

Per Shamim Yahya (AM) :-

These are appeals by the Revenue against the orders of learned CIT(A) for A.Y. 2010-11 & 2011-12. Since the issues are common and connected and appeals were heard together, these are being disposed of by this common order.

2. One common issue raised in these appeals pertains to treatment of gain from sale and purchase of shares and mutual funds. It transpires that this issue is covered in favour of the assessee by the decision of ITAT in assessee's own case for earlier years. In this regard we may gainfully refer to the latest order of the ITAT for A.Y. 2007-08 and others vide order dated 24.1.2018. In the said case this issue was adjudicated by the ITAT as under :-

5.1 We have carefully heard the rival contentions and perused relevant material on record. Ground No.1 is related with treatment of STCG on sale of shares/mutual fund whereas Ground No. 8 is alternative ground qua rebate u/s 88E for STT paid by the assessee. During hearing before us, Ld. AR fairly conceded that the amount of STCG earned by the assessee included certain

intra-day gains/losses which were in the nature of speculation and hence were required to be excluded while arriving at figures of STCG. Therefore, at the outset, we direct Ld. AO to exclude the same from the figures of STCG and treat the same as speculation in nature. The assessee is directed to provide the relevant details thereof to the Ld. AO. The assessee's ground of appeal to that extent stand dismissed.

5.2 Proceeding further, the assessee has placed on record working of various ratios to assert that the investment activity by the assessee constituted insignificant proportion vis-à-vis total business activities carried out by the assessee. The Ld. AR has further contended that the assessee has been treated as investor right from AYs 1998-99 to AY 2004-05 and even in the impugned AY, the revenue has not disturbed the head of Long Term Capital Gains [LTCG] claimed as 'exempt' by the assessee. Our attention is further drawn to the fact that Ld.CIT(A), on similar facts, in AYs 2010-11 & 2011-12 concurred with the stand of the assessee against which revenue is in further appeal before the Tribunal. Reliance has been placed on various judicial pronouncement and CBDT circular to support the stand of the assessee. Upon perusal, It is evident from the ratios worked out by the assessee that profit on sale of investments constituted less than 2% of total revenue generated by the assessee. Further the ratio of average investment (except investment in group concerns) to average total assets was less than 2% and more than 92% of assessee's total assets were deployed in the business of financing. The said facts could not be controverted by the revenue. Further, a perusal of various assessment orders for earlier years as placed on record give strength to assessee's contention that the assessee has been treated as investor in the past with respect to Short Term Capital Gains on Shares and the same has been assessed under the head Capital Gains only. Further, the assessee has added back the provision for diminution in value of investments in the computation of income for impugned AY as evident from Page-19 of the paper-book which reflects the intention of the assessee to hold the said investments as an investor. Although we are conscious of the fact that principle of res-judicata do not apply to Income Tax Proceedings yet in view of rule of consistency, in our opinion, the revenue is debarred from taking flickering stands on similar facts in different assessment years. Our aforesaid view is duly supported by the decision of this Tribunal rendered in Gopal Purohit Vs. JCIT [29 SOT 117] as confirmed by Hon'ble Bombay High Court in CIT Vs. Gopal Purohit [336 ITR 287]. Further the SLP of the department against the same has been dismissed by Hon'ble Apex Court vide order dated 15/11/2010.”

3. The Tribunal quoted from this decision and thereafter the Tribunal concluded as under :-

“Therefore, on the facts and circumstances of the case, we concur with the stand of Ld. AR that the short term capital gains earned by the assessee was assessable under the head Capital Gains only subject to adjustment as envisaged by us in Paragraph 5.1 above.”

4. We find that there is no dispute that the facts are identical. It is also note the case that the earlier order of the Tribunal was reverted by the Hon'ble Jurisdictional High Court. In this view of the matter we uphold the order of learned CIT(A).

5. One separate issue raised for A.Y. 2010-11 in the case is as under :-

“On the facts and circumstances of the case Id. CIT(A) has erred in deleting the disallowance of foreclosure expenses of Rs. 57,42,28,508/- ignoring the fact that the assessee had not filed any details of the nature of expenses and documentary evidence to substantiate its claim during the course of the assessment proceedings.”

6. Brief facts of the case as under :-

During the course of assessment proceedings, it was observed by the Assessing Officer that the assessee has debited Miscellaneous expenses of Rs.84.17 crores to its profit and loss account. The assessee was asked vide notice u/s 142(1) dated 05.03.2013 to submit complete details of the same giving nature wise & party wise details including name, address, amount TDS deducted and copies of sample bills in respect of each type of expenses. The Assessing Officer noted that as per details submitted by the assessee, it has incurred 'Foreclosure Charges' of Rs. 57, 42, 28,508/- in the relevant financial year was as under:-

S.No.	Particular	Amount
1.	Foreclosure Charges - HP	17,25,420/-
2.	Foreclosure Charges - Term Loan	7,69,09,106/-
3.	Foreclosure Charges - Term Loan Repossessed Assets	49,55,93,982/-
	Total	57,42,28,508/-

7. The Assessing Officer considered the submission of the assessee but did not find it acceptable. He noted that the assessee has submitted the details in a vague manner. That in spite of categorically asked, the assessee has not submitted nature wise breakup and party wise details giving name, address, amount, TDS deducted along with sample bills in respect of above expenses. That since the assessee has not substantiated its claim of expenditure by

submitting the required details, the assessee has failed to discharge its onus for the expenses claimed in profit and loss account.

8. In view of above, Assessing Officer held that the assessee has failed to prove its claim of expenses towards foreclosure charges of Rs.57,42,28,5087-. Therefore, this amount of Rs.57,42,28,508/- was disallowed u/s 37 of I.T. Act and added back to income of the assessee. Without prejudice to the above, the Assessing Officer held that the assessee failed to prove that applicable TDS has been deducted and paid for, therefore, even if the above expenditure are allowable u/s 37 (1), still the same needs to be disallowed u/s 40(a)(ia).

10. Upon assessee's appeals learned CIT(A) summarily decided the issue in favour of the assessee by holding as under :-

The issue is considered. In the context, during the appeal proceedings, it has been submitted that on foreclosures of term loan/hire purchase agreement, the assessee had to account for reversal of overdue charges, waiver of interest and other charges levied on their customers as the income had already been credited [in earlier years] to the P & L account. It is explained that in the cases where the assets, for which term loan was given to its customers, were re-possessed on account of default, and it could not recover its balance amount of the principal and interest even on disposal of those assets, the assessee suffered losses and that also is accounted for as foreclosure expenses; and that as such it had not made any payment for any expenses and therefore the IDS provisions were not applicable as regards to such losses which had been accounted for in the books as 'foreclosure expenses'. After having considered the facts of the case, the assessee's contention is accepted. The losses booked as 'foreclosure expenses' are allowable. The disallowance could also not be made u/s 40(a)(ia). Accordingly, the entire addition of Rs 57,42,28,5087-stands deleted.

11. Against above order revenue is in appeal before us. We have heard both the counsel and perused the records. Learned departmental representative submitted that assessee has not given any details whatsoever before the assessing officer. Assessing officer was left with no option but to disallow the same. Learned Departmental Representative submitted that learned CIT-A in a summary manner without referring to any detail has allowed the assessee's appeal. Hence the same is not at all sustainable.

12. Per Contra learned Counsel of the assessee submitted this issue was never raised in earlier years. He submitted that in subsequent years also assessing officer has not disallowed the impugned expenditure. He submitted that assessee has submitted 150 page detail before the learned CIT-A. However he accepted that these were not filed as additional evidence. He also admitted that there was no remand by the learned CIT-A. Learned counsel submitted that after properly appreciating the issue and details learned CIT-A has passed a reasonable order.

13. We have carefully considered the submission. We note that it is settled law that res judicata does not apply to tax matter. Hence learned counsel's reference to earlier and subsequent proceedings are not at all relevant here. We note that the aforesaid sum of Rs. 57,42,28,508/- inter alia represents the balance in the loan accounts which have been closed pursuant to realisation of assets secured from the borrower after incurring the various expenditure. We note that no detail was submitted before the assessing officer. Assessing officer had no occasion to examine the details including the various entries subsequent to which this amount has been arrived at. Learned CIT-A has in summary manner allowed the assessee's appeal. He has never referred to any detail submitted by the assessee. It is also accepted by the learned counsel of the assessee that the details as claimed by him to be submitted before the learned CIT-A were not filed as additional evidence nor the same were remanded to the assessing officer.

14. In these facts in our considered opinion the interest of justice demands that this issue be remitted to the file of assessing officer. The assessee is directed to submit all the necessary details before the assessing officer. Assessing officer is directed to consider the issue de novo and thereafter pass an order on the issue.

15. In the result ITA no. 3717/Mum/2015 is partly allowed for statistical purposes and ITA no. 3785/Mum/2015 stands dismissed.

Order has been pronounced in the Court on 2.8.2019.

Sd/-
(SANDEEP GOSAIN)
JUDICIAL MEMBER

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai; Dated : 2/8/2019

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,

(Assistant Registrar)
ITAT, Mumbai

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