

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "E", MUMBAI**

BEFORE SHRI RAJESH KUMAR (AM) AND SHRI RAM LAL NEGI (JM)

**ITA No. 7090/MUM/2016
Assessment Year: 2010-2011
ITA No. 7091/MUM/2016
Assessment Year: 2011-2012
&
ITA No. 7092/MUM/2016
Assessment Year: 2012-2013**

The Dy. Commissioner of Income Tax, Central Cir. 7(1), R. No. 653 6 th Flr., Aayakar Bhavan, M.K. Road, Mumbai - 20	Vs.	M/s Triumph International Finance India Ltd., Oxford Centre 10, Shroff Lane, Colaba Causeway Colaba, Mumbai - 400005 PAN: AAACE0308A
(Appellant)		(Respondent)

Revenue by : Shri P. Daniel/V. Jenardhanan (DRs)
Assessee by : Shri Neelkanth Khandelwal (DR)

Date of Hearing: 27/01/2020
Date of Pronouncement: 31/01/2020

ORDER

PER BENCH

These appeals have been filed by the revenue against the common order dated 30.09.2016 passed by the Commissioner of Income Tax (Appeals)-49 (for short 'the CIT(A), Mumbai, for the assessment years 2010-11, 2011-12 and 2012-13, whereby the Ld. CIT(A) has partly allowed the appeals filed by the assessee against the assessment orders passed u/s 143 (3) r.w.s. 153A of the Income Tax Act, 1961 (for short the 'Act'). Since, these appeals pertain to the same assessee and the department has raised the identical issue in all the three appeals, these were clubbed, heard together and are being disposed of by this common and consolidated order for the sake of convenience.

2. Since, the facts of these cases are similar, we take the facts of the case pertaining to the AY 2010-11 as a lead case.

3. The assessee engaged in the business of share in stock brokering, investment and trading in shares and securities, filed its return declaring Nil income. The AO completed the assessment u/s 143 (3) of the Act and made addition of Rs. 22,053/- on account of share trading stock and Rs. 1,88,64,396/- on account of disallowance u/s 57(iii) of the Act. The assessee challenged the assessment order before the Ld. CIT (A). The Ld. CIT (A) after hearing the assessee partly allowed the appeal and restricted the deduction of interest expenditure to the extent of the interest income earned during the year. Aggrieved by the decision of the Ld. CIT (A) the assessee as well as the revenue filed the cross appeals. The revenue challenged the action of the Ld. CIT (A) in upholding the action of the AO in not allowing sum of Rs. 3,28,65,299/- which was restricted to 1,88,64,396/- being interest expenses against the income from other sources on the ground that the lending bank has discontinued providing for interest w.e.f. 1st April, 2003 and hence there is no liability/obligation of the appellant to pay the bank.

4. On the other hand, the revenue challenged the findings of the Ld. CIT (A) on the ground that the Ld. CIT (A) erred in allowing interest expenses of Rs. 3,28,65,299/- restricted to 1,88,64,396/- against interest income brought to the tax under the head income from other sources. The only ground raised by the revenue in the present appeal is as under:-

“On the facts and in the circumstances of the case and in law, the Ld. CIT (A) erred in allowing interest expense of Rs. 3,28,65,299/- (restricted to Rs. 1,88,64,396/-) against interest income brought to tax under the head income from the other sources, without considering the fact that the assessee company has sourced the fund of the amount kept in FD out of own fund on which no interest is being paid by the assessee.”

5. At the outset, the Ld. counsel for the assessee submitted that the assessee and the revenue filed cross appeals against the common order dated 30.09.2016 passed by the Ld. CIT(A). The Tribunal decided the assessee's appeal vide order dated 24.10.2017, however, the present appeal remained undecided. The Ld. counsel further pointed out that in the assessee's appeal the ITAT has allowed the interest claimed by the assessee vide consolidated order dated 24.10.2017 pertaining to the AYs. 2010-11, 2011-12 and 2012-13. In the light of the said order, the revenues appeals have become infructuous.

5(a). On the other hand, the Ld. Departmental Representative Sh. P. Daniel, Senior Counsel fairly admitted that the Tribunal has allowed the appeal of the assessee and in view of the said order, the Department's appeals have become infructuous.

6. We have perused the material on record including the decision of the coordinate Bench in assessee's appeals. We notice that the facts of the case pertaining to the AYs. 2011-12 and 2012-13 are identical except the interest income claimed by the assessee and the issues involved in all the three assessment years are identical. The coordinate Bench has decided the assessee's appeals ITA No. 6548/Mum/2016 for the AY 2010-11, ITA No. 6549/Mum/2016, for the AY 2011-12 and ITA No. 6550/Mum/2016 for the AY 2012-13 by following the decision of the coordinate Bench rendered in the assessee's own case for the AYs. 2008-09 and 2009-10 in ITA No. 3225/Mum/2013 and 7518/Mum/2013 and allowed the assessee's appeals. The findings of the coordinate Bench in the assessee's appeals for the AYs. 2010-11, 2011-12 and 2012-13 read as under:-

"10. We have considered rival contentions and carefully gone through the orders of the authorities below. We had also gone through the order of the Tribunal wherein para No.7 & 8 of page 8 & 12 for the A.Y.2008-09 and 2009-10, the tribunal have allowed assessee's claim of deduction of interest out of interest income.

11. The CIT(A) in his order in para no 8.2.1 on page no 9 observed that the facts of the case for the year under reference are similar to the facts involved in the order of the Tribunal for income-tax assessment years 2008-09 and 2009-10: however, he did not

follow the order of Tribunal. In connection with interest to GTB (since merged with OBC), he referred to Schedule N, being notes on accounts (Note no 1 l(a)) and observed that the bank has stopped providing for interest with effect from 1/4/2003 and that since, the assessee are following mercantile system of accounting, he concluded that there is no liability/ obligation of interest payable to the bank. For similar reasons, he has not allowed interest payable to ICICI bank; for which the assessee have not provided for any interest in the accounts.

12. However, the finding of CIT(A) is not correct in so far as with similar facts for allowing interest was present in the years for which Tribunal have passed the order. Since the facts and circumstances during the year under consideration are same, the CIT(A) ought to have followed the order of the Tribunal in as much as the Tribunal is a higher forum and for this purpose reliance is placed on the decision of the Supreme Court in the case of Collector of Central Excise v. Dunlop India Ltd, [1985] 154 ITR 172, which held that "the better wisdom of the Court below must yield to the higher wisdom of the Court above. Therefore, the decision of a High Court on a relevant issue must be followed in the absence of any contrary decision of any other High Court on the issue, because ignoring the decision of a High Court by a Tribunal would amount to demeaning the authority of law which is not correct, "

13. With regard to obligations of the assessee to pay interest, reliance can be placed on the following decisions of co-ordinate Benches of the Tribunal at Mumbai, in the case of associate concerns of the assessee –

Name of the Company	ITA Nos
Chat Computers Pvt. Ltd	4818/Mum/2007
NH Securities Ltd	78/Mum/2009
Panther Fincap & Management Services Pvt. Ltd	7278/Mum/2007 193 and 369/Mum/2008

14. We found that the banks have stopped providing the interest as they are governed by the NPA guidelines of the RBI and as the account of the assessee has turned NPA long back, the banks have stopped providing the interest, this should not come in the way of allowing the interest as the liability and obligation of assessee to pay interest persists.

15. The break-up of interest expenditure debited to the profit and loss account are as under:-

A. Y.	Interest debited to the P&L account	Break-up of interest expenditure debited to the profit and loss account	Remarks
2010-11	Rs 8,59,64,086	1. MNCB- Rs 48,63,019 2. GTB - Overdraft - Rs 7,50,15,304 3. GTB Bank guarantee - Rs 59,85,000 4. HDFC-Rs 3,003 5. Service tax - Rs 97,760	Interest received on Fixed deposits Rs. - 1,88,64,396 and Therefore, the interest Expenditure is Restricted to the Income earned.

16. With regard to applicability of provisions of Section 43B, we observe that the same are applicable to income computed under the head "business income" only and are not applicable to incomes under the head "income from other sources".

17. As per our considered view if the bank later on waives the interest to be paid to them by the assessee, the provisions of section 41(1) shall not be applicable but the provisions of section 59 of the Act which are similar to section 41(1) will be applicable.

18. Since the allowability of interest expenditure are with respect to the details of interest due with the above banks, whereas the one time settlement entered by the assessee for assessment year 2005-06 is with Centurion Bank; hence, the contention of learned DR is not applicable to the facts of the case.

19. Even though assessee has not paid the interest to the bank but as per provisions of Section 145(1), assessee has to compute its income under the head 'Profit and Gains of business and profession' or 'income from other sources' subject to provisions of sub-section (2) in accordance with either cash or mercantile system of accounting regularly employed by the assessee. Thus, the interest expenditure need not be paid in as much as the income chargeable to tax under business income or income from other sources shall be computed in accordance with cash or mercantile basis regularly employed by the assessee.

20. The precise observation of Tribunal in its order dated 25/08/2016 was as under:-

allowed as deduction u/s 57(iii) of the Act. A plain reading of provisions of section 57(iii) of the Act reveals that any expenses which is not of capital in nature and is wholly and exclusively incurred or expended for the purpose of making or earning of such income has to be allowed against the income which is earned and assessable under the provisions of section 56 of the Act. We also find that the National Stock Exchange exercised lien on FDRs of Rs. 5 crores on 23.07.2002 (proceeds of FDRs Rs. 5,94,03,209/-) which was purchased on 19.07.2000 out of money borrowed from the Global Trust Bank and the assessee incurred interest on the said bank to the tune of Rs. 95.00 lakhs. Three other deposits out of interest bearing funds from Global Trust Bank were also given Rs. 2,00,000/- on 07.02.2000, Rs. 6,00,000/- on 21.09.2000 and Rs. 25,00,000/- on 18.10.2000 on which the assessee incurred interest of Rs. 6,27,000/-. Interest on bank guarantees invoked by the stock Exchange Rs. 3,15,00,000/- from Global Trust Bank, interest of Rs. 59,85,000/- was incurred and on Rs. 3,00,00,000/- from Centurian Bank out of which Rs. 2,11,00,000/- were interest bearing and interest incurred was at Rs. 33,76,000/-. Likewise assessee incurred interest of Rs. 80,00,000/- on the amount of invoked bank guarantee of Rs. 5,00,00,000/- from ICICI Bank. Thus the total amount of interest incurred to various banks on the borrowings comes to Rs. 2,74,88,000/-

8. Considering the above facts and arguments of the rival parties we find clear cut nexus between the interest earned from NSE on deposits with National Stock Exchange out of bank guarantees invoked and proceeds of FDRs and interest incurred on the sources of funds which are from the various banks out of the interest bearing funds given to NSE in the form of the bank guarantees invoked in year 2002 and FDRs with lien in favour of NSE on which the lien was exercised in 2002. We find merit in the arguments of the Id.AR that the interest incurred to these banks namely Global Trust Bank and Centurian Bank, ICICI Bank should be allowed while assessing the interest income of the assessee from the deposits with NSE and we are not convinced with the findings of Id.CIT(A) that there is no nexus between the funds/deposits lying with the NSE under lien and NSE have various deposits or FDR under lien or deposits out of sources as discussed supra and the interest expense accrued in favour of various banks on the money borrowed for the purpose of FDRs for security and also for bank guarantees to NSC. Accordingly, we set aside the order of Id.CIT(A)

and direct the AO to allow deduction of interest of Rs. 2,74,88,000/- out of the interest received from the National Stock Exchange. This ground is allowed in favour of the assessee.

9. The issue raised in ground no.4 is against the non allowance of credit of tax Rs. 38,79,584/-. This ground was taken before the Ld. CIT(A) who dismissed the ground by holding that the assessee was free to move an application u/s 154 of the Act before the AO and accordingly, claim the credit of TDS and thus dismissed the appeal of the assessee. The Id. AR submitted before us that the AO has not allowed the credit of TDS deducted on behalf of the assessee amounting to Rs. 38,79,584/-. At the time of hearing, the (Id.AR submitted that the Id. CIT(A) also erred in directing the assessee to move an application u/s 154 of the Act instead of issuing direction to the AO to allow credit of TDS which was a legitimate claim to which the assessee was legally entitled.

10. On the contrary, the Id. DR relied heavily on the order of Id. CIT(A).

11. We have carefully considered the submissions of the parties, perused the material placed before us including the orders of authorities below. We find that the assessee has not been allowed credit of Rs. 38,79,584/- being TDS at source on behalf of the assessee by NSE/Banks and the Id. CIT(A) has just dismissed the ground by directing the assessee to file rectification application u/s 154 of the Act which is not correct in our view and hence we are of the view that it would meet ends of justice if the AO is directed to allow the credit of TDS of Rs. 38,79,584/- after verifying the claim of the assessee after allowing reasonable opportunity of being heard to the assessee. This ground is allowed for statistical purposes.

12. The issue raised in respect of depreciation amounting to Rs. 1,79,634/- raised in ground No.2 not allowing the depreciation to the assessee. The Id. CIT(A) also rejected the ground of the assessee on the ground that business has ceased and therefore no depreciation was allowable in the current year or in the subsequent years. Aggrieved by the order of Id. CIT(A) the assessee in appeal before us.

13. After hearing the rival contentions and on perusal of the record, we find that the assessee has discontinued the business following the order of SEBI and therefore there was no activity during the year and the claim of the depreciation of Rs. 1,79,634/- cannot be allowed as the assessee did not carry out any business activity.

However, the assessee is free to claim depreciation in the year in which the business is re-commenced on the basis of Written Down Value in the year in which the business was discontinued.

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

15. Now, we shall take the appeal in ITA No. 7518/Mum/2013 relating to the assessment year 2009-10

16. We have already decided an identical issue in ITA No. 3225/Mum/2013 (AY-2008-09) and therefore, in our decision in ITA No.3225/Mum/2013 would mutatis mutandis would apply to these appeals as well. The AO is directed accordingly.

21. Respectfully following the decision of Tribunal in assessee's own case, the interest claimed by assessee is to be allowed to the assessee primarily on the basis of consolidated order of the Tribunal for income-tax assessment years 2008-09 and 2009-10. We direct accordingly."

7. Since, the coordinate Bench has decided the issue pertaining to the interest expenses in favour of the assessee and against the department vide common order dated 24.10.2017 in assessee's appeals for the AYs. 2010-11, 2011-2012 and 2012-2013 discussed above the present appeals filed by the revenue have become infructuous. Hence, we dismiss the present appeals being infructuous.

In the result, appeals filed by the revenue for assessment years 2010-11, 2011-2012 and 2012-2013 are dismissed.

Order pronounced in the open court on 31st January, 2020.

Sd/-
 (RAJESH KUMAR)
 ACCOUNTANT MEMBER

Sd/-
 (RAM LAL NEGI)
 JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated: 31/01/2020

Alindra, PS

आदेश 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.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai