

IN THE INCOME TAX APPELLATE TRIBUNAL KOLKATA BENCH 'C', KOLKATA

[Before Shri J. Sudhakar Reddy, Hon'ble Accountant Member &
Shri Aby T. Varkey, Hon'ble Judicial Member]

[Through Virtual Court]

I.T.A. No. 810/Kol/2019
Assessment Year 2015-16

The Peerless General Finance & Investment Co. Ltd.....Appellant
Peerless Bhavan, 3, Esplanade East,
Kolkata - 700069.
[PAN: AABCT 3043 L]

vs

DCIT, Circle - 3(1), Kolkata.....Respondent
P-7, Chowringhee Square,
Kolkata - 700 069.

Appearances by:

Shri S.K. Tulsian, Advocate appearing on behalf of the Assessee.
Shri Vijay Shankar, CIT appearing on behalf of the Revenue.

Date of concluding the hearing : September 01, 2020

Date of pronouncing the order : September 18, 2020

ORDER

SHRI J. SUDHAKAR REDDY, AM

This is an appeal filed by the assessee against the order of the Commissioner of Income Tax (Appeals) – 1, Kolkata dated 04.03.2019 (CIT(A) for short) passed u/s 250 of the Income Tax Act, 1961 ('the Act' for short) for A.Y. 2015-16 on the following grounds:

"1(a). That on the facts and in the circumstances of the case, the Ld. CIT(A) erred in confirming the action of the Assessing Officer in treating 'Government Securities' as Bonds or Debentures for the purpose of the third proviso (now fourth proviso) to section 48 of the Income-tax Act, 1961.

1(b). That the Ld. CIT(A) erred in upholding the action of the Assessing Officer in disallowing long term capital loss on sale of 'Government Securities' amounting to Rs. 237,98,30,607/-"

2. The learned counsel for the assessee, Shri S.K. Tulsian submitted that the only issue that arises for adjudication is whether the Ld. Assessing Officer is correct in treating the 'Government Securities' as bonds or debentures for the purpose of the third proviso (now fourth proviso) to section 48 of the Income-tax Act, 1961 and consequently disallowing the long term capital loss on sale of 'Government Securities'. He submitted that the very same issue has arisen before the Kolkata 'B' Bench of the Tribunal in assessee's own case in ITA No. 937/Kol/2018 for the Assessment Year 2010-11 and the Tribunal, vide its order dated 24.03.2019, adjudicated the issue in favour of the assessee. He further submitted that Kolkata 'B' Bench of the Tribunal in ITA No. 1486/Kol/2019 for A.Y. 2014-15 order dated 22.07.2020 has upheld the order of the CIT(A) on this issue by following the proposition of law laid down on this issue for A.Y. 2010-11 by the ITAT 'B' Bench and decided the issue in favour of the assessee. Thus, he submits that the issue is squarely covered in favour of the assessee by the decision of the co-ordinate bench of this Tribunal, on this very issue, in assessee's own case and hence relief should be granted to the assessee.

3. The Ld. CIT, DR, Mr. Vijay Shankar, on the other hand, opposed these contentions and submitted that the Tribunal in its order for A.Y. 2014-15 at para 5 has observed that the Revenue had not been pointed any distinctive features on facts or law from that of the facts for A.Y. 2010-11 and accordingly followed its earlier order. He submitted that in the present appeal he would demonstrate that 'B' Bench of the Tribunal in its order for the A.Y. 2010-11 has

misinterpreted the law and had wrongly given relief to the assessee. He read out the finding of the Tribunal from page 18 to 24 of the order of the Tribunal for the A.Y. 2010-11 and submitted that the decision of the Tribunal is legally incorrect for the reason that, any security given by the Government of India which yields a fixed rate of return, is a bond and nothing else. He argues that the term bond 'encourages' within its meaning, a number of instruments including, promissory notes, bonds or securities given by the Government. He argued that the 'Government Securities' are only a subspecies' of bonds. He further argued that the Government Securities in question carried a fixed rate of return and hence no benefit of indexation should be granted on sale of such Government Securities for the purpose of computation of capital gains, as indexation benefit for computation of capital gains is provided as a measure against the inflation. The sum and substance of his submission is that, he differs from the ratio that the decision of the ITAT in assessee's own case, on the very same issue, in the earlier assessment years. On a query from the Bench, the Ld. CIT, DR submitted that he has to enquire and report as to whether the Revenue has carried this matter in further appeal to the Hon'ble Calcutta High Court for the earlier assessment years. We requested the Ld. CIT, DR to furnish this information within one week from the date of hearing.

4. The learned counsel for the assessee submitted that the then Ld. CIT for the A.Y. 2014-15 had agreed that the issue is covered against the revenue whereas the present CIT, DR, desires to challenge

the order of the Tribunal, on the very same issue, before the Tribunal itself and that such arguments are not maintainable.

5. We have heard rival contention. On a careful consideration of all the facts and circumstances of the case, we find that the issue in question has been adjudicated in favour of the assessee in assessee's own case in ITA No. 937 & 938/Kol/2018 order dated 24.03.2019 for A.Y. 2010-11 and ITA No. 1486/Kol/2019 order dated 22.07.2020 for A.Y. 2014-15.

6. Consistent with the view taken that the Tribunal for the A.Y. 2010-11 and 2014-15, we allow ground no. 1a & 1b of the assessee.

7. Coming to the arguments of the Ld. CIT, DR, we are not an appellate forum against the orders of the coordinate bench of this Tribunal. The proposition that, when fixed return is assured on a capital asset, indexation should not be granted, is not correct. Even on buildings or land fixed rental income is earned. Just because there is fixed returning income, it cannot be concluded that on sale of such asset no indexation would be granted of the asset is a long term capital asset.

8. This bench has not been informed as to whether the department has accepted the earlier order of the Tribunal on this issue for A.Y. 2010-11 and A.Y. 2014-15 in and carried the matter in appeal before the Hon'ble High Court in either of the case, we do not see any reason to deviate from, the proposition of law laid down by

the coordinate bench of this Tribunal, on the very same issue in the case of the assessee itself, in the earlier assessment years.

9. Ground No. 3 is general in nature.

10. In the result, the appeal of the assessee is allowed.

Order Pronounced in the Open Court on 18th September, 2020.

Sd/-

(A.T. Varkey)
(JUDICIAL MEMBER)

Sd/-

(J. Sudhakar Reddy)
ACCOUNTANT MEMBER

Dated: 18/09/2020

Biswajit, Sr. P.S.

Copy of order forwarded to:

1. The Peerless General Finance & Investment Co. Ltd., Peerless Bhavan, 3, Esplanade East, Kolkata – 700 069.
2. DCIT, Circle - 3(1), Kolkata.
3. The CIT(A)
4. The CIT
5. DR

True Copy,

By order,

Assistant Registrar
ITAT, Kolkata Benches