

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

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

**ITA No. 25/MUM/2019
Assessment Year: 2013-14**

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| The Jt. Commissioner of Income Tax (OSD), Central Circle-7(1), R. No. 676B, 6 th Floor, Aayakar Bhavan, M.K. Road, Mumbai - 400020 | Vs. | M/s Triumph International Finance India Ltd., Oxford Centre, 10, Shroff Lane, Colaba Causeway, Colaba, Mumbai - 400025 PAN: AAACE0308A |
| (Appellant) | | (Respondent) |

Revenue by : Shri P Daniel (Special Counsel)
Assessee by : Shri Akash Kumar (AR)

Date of Hearing: 19/02/2020
Date of Pronouncement: 24/02/2020

ORDER

PER RAM LAL NEGI, JM

This appeal has been filed by the revenue against the order dated 16.10.2018 passed by the Commissioner of Income Tax (Appeals)-49 (for short 'the CIT(A), Mumbai, for the assessment year 2013-14, whereby the Ld. CIT(A) has partly allowed the appeal filed by the assessee against the assessment order passed u/s 143 (3) of the Income Tax Act, 1961 (for short the 'Act').

2. Brief facts of the case are that the assessee engaged in the business of share & stock broking, investment and trading in shares and securities, filed its return of income for the assessment year under consideration declaring nil income. The case was selected for scrutiny and the AO passed assessment order u/s 143 (3) of the Act determining the total income at Rs. 2,04,76,610/- after making addition of the said amount rejecting the claim of set off interest expenses amounting to Rs. 2,04,76,605/- against the interest income received

on fixed deposits. In the first appeal, the Ld. CIT (A) following the decision of the ITAT Mumbai in assessee's own case for the earlier years directed the AO to allow the set off of interest expenses against the interest income earned u/s 57 (iii) of the Act. The revenue is in appeal against the said findings of the Ld. CIT (A).

3. The revenue has challenged the impugned order passed by the Ld. CIT (A) on the following effective grounds:-

- i. *“On the facts and in the circumstances of the case and in law, the Ld. CIT (A) erred in holding that there is a direct nexus between the interest received on funds/deposits lying with NSE under lien and interest paid by the assessee to various banks, ignoring the fact that the FDs were taken by the appellant company out of its own funds for business purpose and the business activities of the assessee were debarred by the Security & Exchange Board of India (SEBI) and SEBI's order was confirmed by the Securities Appellate Tribunal (SAT).*
- ii. *On the facts and in the circumstances of the case and in law, the Ld. CIT (A) erred in directing to the AO allow the set off interest expenses of Rs. 2,04,76,605/- against the interest income earned u/s 57(iii) of the I.T. Act, 1961, following the decision of the Hon'ble ITAT in the assessee's own case for A.Y. 2008-09 (ITA No. 3225/Mum/2013), 2009-10 (ITA No. 7518/Mum/2013), 2010-11 & 2011-12 (ITA No. 6548, 6549/Mum/2016) without appreciating the fact that the decision of the Hon'ble ITAT for above referred years have not been accepted by the department and appeal have been filed in Hon'ble High Court Mumbai.”*

4. Before us, the Ld. Departmental Representative (DR) submitted that the Ld. CIT (A) has erred in holding that there is direct nexus between the interest received of funds/deposits lying with National Stock Exchange (NSE) under lien and interest paid by the assessee to various banks without considering that the FDs were taken by the assessee company out of its own funds for business purposes and the business and the Security and Exchange Board of India (SEBI) has debarred the assessee from carrying on its business activities.

Therefore, the Ld. CIT (A) has wrongly directed the AO to set off interest expenses of Rs. 2,04,76,605/- against the interest income earned by the assessee u/s 57 (iii) of the Act. The Ld. DR further pointed out that the department has challenged the decision of the Mumbai Tribunal, relied upon by the Ld. CIT (A), before the Hon'ble High Court. In view of the aforesaid facts, the Ld. DR submitted that the order passed by the Ld.CIT (A) may be set aside and the assessment order passed by the AO may be restored.

5. On the other hand, the Ld. counsel for the assessee submitted that the ITAT, Mumbai has decided the identical issue in favour of the assessee in assessee's own cases for the AYs. 2008-09, 2009-10, 2010-11, 2011-12 and 2012-13. The Ld. CIT (A) has decided the issue in the present case by following the decision of the ITAT, Mumbai rendered in the assessee's own case for the AYs. 2008-09, 2009-10, 2010-11 and 2011-12. In view of the aforesaid facts, the Ld. counsel submitted that since the findings of the Ld.CIT (A) are in accordance with the decision of the ITAT, Mumbai, there is no merit in the revenue's appeal. Therefore, the same is liable to be dismissed.

6. We have heard the rival submissions of the parties and carefully gone through the material on record including the decisions of the coordinate Bench rendered in the assessee's own case for the earlier assessment years. We notice that the Ld. CIT (A) has decided the issue in the present case by following the decisions of the coordinate Bench in the assessee's own case for the AYs 2008-09 to 2012-13. The operative part of the order passed by the Ld. CIT (A) reads as under:-

"7.2 However, this is a recurring issue and the facts for this year are identical to the facts of AYs 2008-09, 2009-10, 2010-11 and 2011-12 wherein the Hon'ble ITAT, Mumbai vide orders dated 25.08.2016 and 24.10.2017 has decided the issue in favour of the assessee. While deciding the issue for AY 2008-09 and 2009-10, the Hon'ble ITAT held as under:-

"7. We have carefully considered the submissions of the parties, perused the material placed before us including the orders of authorities below and case laws relied upon by the parties. We find that the business of the assessee was

discontinued following the order of SEBI which was upheld by the SAT and Apex Court also and thus the business of the assessee came to forced stand still. The assessee was doing business of Security and stock broking and trading in shares. We find that following the discontinuance of business by the order of SEBI, the National Stock Exchange invoked the guarantees furnished by the assessee and also exercised the lien on FDRs and proceeds of FDR were also declared defaulter by the NSC resulting into accumulation of deposit to the tune of Rs. 24,35,12,813/- with National Stock Exchange on which the NSE allowed interest of Rs. 2,60,42,297/- during the financial year 2007-08 relevant to the assessment year under consideration. We find that that these deposit of Rs. 24 crores accumulated out of various bank guarantee invoked and proceeds of FDRs given as security. The source of the said amounts of accumulated funds with the NSC are from the borrowed funds from banks. Now the question before us is whether the assessee is entitled to deduction of interest incurred to various banks from whom the funds were arranged from the interest received from National Stock Exchange which is assessable under the head "Income from other sources." For the sake of convenience and better understanding, the provisions of section 57(iii) are reproduced below:

"57. The income chargeable under the head "Income from other sources" shall be computed after making the following deductions, namely:-

(i)

(ia)

(ii)

(iia)

(iii) any other expenditure (not being in the nature of capital expenditure) laid out or expended wholly and exclusively for the purpose of making or earning such income.

(iv)

The interest is not in doubt or disputed that the interest received from the National Stock Exchange on the total amount of deposit with its is assessable as income from other sources."So far as the question of deduction qua interest to various banks is concerned, we are of the opinion that if there is nexus between the interest received and interest to banks on

borrowings, the same is to be 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 (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 source 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 Ld. AR that the interest incurred to these banks namely Global Trust Bank and Centurion 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 the ld. CIT (A) that there is no nexus between the funds/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 guarantee to NSC. Accordingly, we set aside the order of ld. CIT (A) and directed the AO to allow deduction of interest of Rs. 2,74,88,000/- out of the total interest received from the National Stock Exchange. This ground is allowed in favour of the assessee.”

7. As pointed out by the Ld. counsel for the assessee, the coordinate Bench has decided the identical issue in assessee’s own case for the earlier assessment years. The Ld. CIT (A) has decided the issue in this case in favour of the assessee by following the decisions of the coordinate Benches rendered in the assessee’s own cases referred above. We further notice that the coordinate Bench has decided the identical issue in favour of the assessee in assessee’s case for the AY 2012-13 by following the decision of the coordinate Bench in assessee’s case for the earlier years. Since, the findings of the Ld. CIT (A) are based on the decisions of the coordinate Benches rendered in the assessee’s own cases and since there is no change in the facts of the present case, we do not find any reason to interfere with the findings of the Ld. CIT (A). Hence, respectfully following the decisions of the coordinate Benches, we uphold the order passed by the Ld. CIT (A) and dismiss the revenue’s appeal.

In the result, appeal filed by the revenue for assessment year 2013-2014 is dismissed.

Order pronounced in the open court on 24th February, 2020.

Sd/-

(RAJESH KUMAR)

ACCOUNTANT MEMBER

Sd/-

(RAM LAL NEGI)

JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated: 24/02/2020

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//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / **ITAT, Mumbai**