

THE INCOME TAX APPELLATE TRIBUNAL
"SMC" Bench, Mumbai
Shri B.R. Baskaran (AM)

I.T.A. No. 1452/Mum/2022 (A.Y. 2010-11)

Arvind Damodarlal Biyani 6-161, Mittal Estate Sir M.V. Road, Andheri-E Mumbai-400 059 PAN : AADPB0689H (Appellant)	Vs.	DCIT 11(2)(1) Mumbai. (Respondent)
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Assessee by	Shri Hiro Rai
Department by	Shri Vivek Upadhyay
Date of Hearing	17.08.2022
Date of Pronouncement	17.08.2022

ORDER

The assessee has filed this appeal challenging the order dated 28.4.2022 passed by learned CIT(A), National Faceless Appeal Centre, Delhi and it relates to A.Y. 2010-11.

2. The assessee has raised an additional ground contending that learned CIT(A) was not justified in dismissing the appeal without adjudicating the issues on merit by observing that the same is beyond his power.

3. The Learned AR submitted that the assessee had preferred an appeal before Ld CIT(A) against the order passed by the AO to give effect to the earlier passed by the first appellate authority against the original assessment order. However, the Ld CIT(A) dismissed the impugned appeal by taking a view that the same would amount to review of his earlier order.

4. The Ld A.R submitted that the assessee is a director in M/s. Damodar Yarn Manufacturing Pvt. Limited. During the year under consideration, he declared income from salary and income from other sources. The assessee had

claimed interest expenditure of Rs. 51,32,155/- against interest income of Rs. 27,33,699/-. The Assessing Officer in the original assessment order dated 11.1.2013 disallowed interest expenditure claimed by the assessee. The assessee challenged the above said disallowance by filing the appeal before learned CIT(A), who vide his order dated 20.3.2014 directed the Assessing Officer to examine nexus between the interest expenditure and interest income and decide the issue accordingly. In order to give effect to the order passed by learned CIT(A), the Assessing Officer passed the order on 23.3.2016, wherein he confirmed the disallowance earlier made by him.

5. Aggrieved by the said order passed by the Assessing Officer, assessee filed the appeal before learned CIT(A) who dismiss the appeal of the assessee by observing as under :-

5.3 It is pertinent to note that the appeal filed against the assessment order passed by the AO on 11.01.2013 had already been decided by the CIT(A)-18, Mumbai on 20/03/2014 vide appeal No CIT(A)-18/IT-359/DCIT-8(3)/12-13. The CIT (A) had disposed the appeal giving direction to the AO to undertake verification while giving effect to the appellate order, as the appellant had not filed any response after receipt of the Remand Report. The AO undertook the verification and did not find any nexus between the loan advanced and loan received. The appeal filed against the appeal effect order cannot be adjudicated as the same would amount to review of the earlier order passed by the CIT (A)-18, Mumbai on 20/03/2014. Hence, the appeal filed by the appellant is dismissed without going into the merit, as the same is beyond the power of the CIT(Appeals).

6. The Learned AR submitted that learned CIT(A) was not right in law in observing that the present appeal would amount to review of the order passed by him earlier. The Learned AR submitted that learned CIT(A) had passed order earlier against assessment order dated 11.1.2013. However, the present appeal has been filed before learned CIT(A) against the order dated 23.3.2016 passed by the Assessing Officer in order to give effect to the earlier order of learned CIT(A). Accordingly, learned AR submitted that both are separate orders and hence the assessee could very well challenge the order passed by the AO to give effect to the earlier order of Ld CIT(A). Hence learned CIT(A) was not justified in dismissing the appeal of the assessee on erroneous

understanding of the law. Accordingly, learned AR prayed that all the issues urged in the present appeal may be restored to the file of learned CIT(A) with the direction to adjudicate them on merit.

7. I have heard learned DR and perused the record. I find merit in the submissions made by learned AR. The impugned appeal has been filed by the assessee before learned CIT(A) against the order dated 23.3.2016 passed by the Assessing Officer in order to give effect to the appellate order passed by learned CIT(A) earlier. Hence, order dated 23.3.2016 passed by the Assessing Officer is separate order against which right of the appeal would lie with the assessee, if he is not agreeing with the order so passed by the Assessing Officer. As rightly submitted by Ld A.R, I agree that adjudication of the said appeal would not result in the review of the earlier order as opined by learned CIT(A). Accordingly, I set aside the order passed by learned CIT(A). Since the first appellate authority has not adjudicated the appeal on merit, I restore all the issues to his file with the direction to adjudicate all the issues on merit.

8. In the result, appeal filed by the assessee is treated as allowed for statistical purposes.

Order pronounced in the open court on 17.08.2022.

Sd/-
(B.R. BASKARAN)
ACCOUNTANT MEMBER

Mumbai; Dated : 17/08/2022

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//

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BY ORDER,

(Assistant Registrar)
ITAT, Mumbai