

आयकर अपीलीय अधिकरण
मंबई पीठ "ई"
श्री विकास अवस्थी. न्यायिक सदस्य एवं
श्री एम बालगणेश, लेखाकार सदस्य के समक्ष
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH " E ", MUMBAI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
SHRI M. BALAGANESH, ACCOUNTANT MEMBER
आअसं. 2475/मुं/ 2015 (नि.व. 2009-10)
ITA NO. 2475/MUM/2015(A.Y.2017-18)

Jyoti H. Mehta,
32, Madhuli, Dr. A.B.Road,
Worli, Mumbai 400 018
PAN:ABNPM-8233-B

..... अपीलार्थी /Appellant

बनाम Vs.

Astt. Commissioner of Income-tax,
Central Circle -23.[Now ACIT-CC-4(1)]
Aaykar Bhavan, M.K.Road,
Mumbai – 400 020

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : Shri Dharmesh Shah & Ms. Mitali Gopani
प्रतिवादी द्वारा/Respondent by : Shri Rajesh Damor(CIT-DR)

सुनवाई की तिथि/ Date of hearing : 05/07/2022
घोषणा की तिथि/ Date of pronouncement : 03/10/2022

आदेश/ ORDER

PER VIKAS AWASTHY, JM:

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals)-52, Mumbai [in short 'the CIT(A)] dated 05/02/2015 for the assessment Year 2009-10.

2. The assessee In appeal has raised six grounds and has also filed an additional ground of appeal.

3. Shri Dharmesh Shah appearing on behalf of the assessee stated at the outset that he is not pressing ground No.1 of the appeal and the additional ground of appeal.

4. The Id. Authorized Representative (AR) of the assessee submitted that in ground No.2 of appeal, the assessee has assailed disallowance of interest expenditure amounting to Rs.22,02,61,759/-. The Id. Authorized Representative of the assessee submitted that the assessee had made provision of interest payable to group concerns. The Assessing Officer and CIT(A) disallowed the same. Similar provisions was created in the past. The Tribunal in assessee's own case for assessment year 2010-11 in ITA No.419/Mum/2016 decided on 27/12/2017 has restored the issue back to the file of Assessing Officer with a specific direction. This ground may be decided in same terms.

5. In ground No.3 of appeal, the assessee has assailed adhoc addition on account of personal household expenses amounting to Rs.10,80,000/-. The Id. Authorized Representative of the assessee submitted that the addition has been made merely on estimations. In assessment year 2010 -11, the Tribunal restricted the disallowance to Rs.1.50 lacs. In the impugned assessment year The Assessing Officer made disallowance of Rs.21,60,000/-. The CIT(A) restricted it to Rs.10,80,000/-. The Id. Authorized Representative of the assessee .prayed that the disallowance may be restricted to Rs.1,50,000/- as was done by the Tribunal in assessment year 2010-11.

6. The Id. Authorized Representative of the assessee submitted that in ground No.4 of appeal, the assessee has assailed confirming levy of interest charges u/s. 234A, 234B and 234C of the income Tax Act, 1961[in short 'the Act'] The Id. Authorized Representative of the assessee fairly admitted that his issue has been decided against the assessee by Hon'ble Bombay High Court in the case of CIT vs. Divine Holdings Pvt. Ltd. 2 ITR-OL 558(Bom) and CIT vs. Cascade Holdings Pvt. Ltd., 365 ITR 84 (Bom).

7. In ground No.5 of appeal, the assessee has assailed charging of interest u/s. 234B and 234C of the Act in respect of the income which was subject to TDS. The Id. Authorized Representative of the assessee submitted that this issue has already been considered by the Tribunal in assessee's own case in assessment year 2010-11. The ground of appeal may be decided in similar terms.

8. Shri Rajesh Damor representing the Department vehemently defended the impugned order The Id.Departmental Representative stated that majority of the issue raised in this appeal are either considered by the Tribunal in assessee's own case or decided against the assessee by the Hon'ble Bombay High Court However, in respect of ground No.3 of appeal, the Id.Departmental Representative prayed for upholding the addition in respect of household expenses to 25% as was done by the Tribunal in assessee's own case in preceding assessment years.

9. Both sides heard orders of authorities below examined. The Id. Authorized Representative of the assessee stated at Bar that he is not pressing ground No.1 of appeal and additional ground raised vide application dated

08/07/2019. In view of the statement made by Id. Authorized Representative of the assessee, ground No.1 of the appeal and additional ground is dismissed as not pressed.

10. In ground of appeal No.2 the assessee has assailed disallowance of interest expenditure . We find that identical issue was considered by Tribunal in assessee's own case for assessment year 2010-11 in ITA No.419/Mum/2016 (supra). The Co-ordinate Bench disposed of this ground with the following observation:

“51. So far as the ground relating to the claim of interest after disallowing proportionate interest is concerned in both the assessment years, both the parties agreed that similar issue has arising in ground 1 in ITA No. 5799/Mum/2015 in the case of Shri Sudhir S. Mehta and whatever view this Tribunal may take in the case of Shri Sudhir S. Mehta same may be taken in the case of the assessee. While disposing of the appeal for A.Y. 2009-10 ITA No. 5799/Mum/2015 in the case of Shri Sudhir S. Mehta relating to disallowance of interest we have deleted the said disallowance and directed the AO to allow the deduction of interest after reducing proportionate interest out of the interest earned on deposits. Respectfully following the said decision in the preceding paragraph we allow the ground on similar directions as given in ITA No. 5799/Mum/2015 relating to the claim of interest taken by the assessee.”

Both sides are unanimous in stating that the facts in the impugned assessment year are identical to the facts in assessment year 2010-11. Following the decision of Co-ordinate Bench, ground No.2 of appeal is allowed in similar terms.

11. In ground No.3 of appeal, assessee has assailed addition on account of household expenses. We find that in the impugned assessment year the Assessing Officer had made addition of Rs.21,60,000/- under section 69C of the Act in respect of household expenses. In First Appellate proceedings, the CIT(A) restricted the addition to 50% i.e. Rs.10,80,000/-. The assessee has drawn our

attention to assessee's own case for assessment year 2010-11(supra), wherein addition in respect of household expenses was restricted to Rs.1,50,000/-. We find that the Tribunal in assessment year 2010-11 had restricted the disallowance to 50%. The same parameter is applied in the impugned assessment year. The CIT(A) restricted the addition to 50% of the addition made by Assessing Officer. However, in terms of quantum the addition is on higher side. The addition in respect of household expenditure is merely on estimations. There is no change in facts in the impugned assessment year. Taking into consideration entirety of facts, the ends of justice would be met if the addition is restricted to Rs.2,50,000/-. We hold and direct accordingly. The ground No.3 of appeal is thus, partly allowed.

12. In ground No.4 of appeal, the assessee has assailed levy of interest under section 234A, 234B and 234C of the Act. The Id. Authorized Representative of the assessee has fairly conceded that this issue has been decided against the assessee in the case of CIT vs. Cascade Holdings Pvt. Ltd.,(supra). In view of the fair admission made by Id. Authorized Representative of the assessee, ground No.4 of appeal is dismissed.

13. In ground No.5 of the appeal, assessee has assailed charging of interest under section 234B and 234C of the Act in respect of income subject to TDS provisions. We find that similar issue was considered by the Tribunal in assessee's own case for assessment year 2010-11. The issue was restored back to the file of Assessing Officer with a direction to recompute interest liability after reducing amount of tax deducted at source on the income earned. This issue is restored to the file of Assessing Officer with similar

directions. Consequently, ground No.5 of appeal is allowed for statistical purposes.

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

Order pronounced in the open court on Monday the 03rd day of October, 2022.

Sd/-

(M. BALAGANESH)

लेखाकार सदस्य/ACCOUNTANT MEMBER

मुंबई/ Mumbai, दिनांक/Dated 03/10/2022

Vm, Sr. PS(O/S)

प्रतिलिपि अग्रेषितCopy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त(अ)/ The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
6. गार्ड फाइल/Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar) /
Sr.Private Secretary
ITAT, Mumbai