

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. 2282/मुं/ 2021 (नि.व. 2014-15)  
आअसं. 2283/मुं/ 2021 (नि.व. 2017-18)  
ITA NO. 2282/MUM/2021(A.Y.2014-15)  
ITA NO. 2283/MUM/2021(A.Y.2017-18)

Asst. Commissioner of Income Tax, CC-7(1),  
R.No.676B, 6<sup>th</sup> Floor,  
Aaykar Bhavan, M.K.Road,  
MUMBAI – 400 020

..... अपीलार्थी /Appellant

बनाम Vs.

M/s. Triumph International Finance India Ltd.  
10 Shroff Lane Oxford Centre,  
Colaba causeway, Colaba,  
Mumbai – 400 005  
PAN: AAACE-0308-A

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : Dr. P. Daniel, Special Counsel

प्रतिवादी द्वारा/Respondent by : Shri Rajiv Khandelwal

सुनवाई की तिथि/ Date of hearing : 14/07/2022

घोषणा की तिथि/ Date of pronouncement : 04/10/2022

**आदेश/ ORDER**

**PER VIKAS AWASTHY, JM:**

These two appeals by the Revenue are directed against the orders of Commissioner of Income Tax (Appeals)-49, Mumbai [in short 'the CIT(A)] for the assessment year 2014-15 (dated 03/09/2021) and for assessment year 2017-18 (dated 16/09/2021), respectively. Since common issues have been

raised in both these appeals, these appeals are taken up together for adjudication and are decided by this common order.

2. Both these appeals are time barred by 2 days. The Id. Departmental Representative submitted that the impugned order was passed during COVID 19 Pandemic. The limitation for filing of the appeal was extended by the Hon'ble Supreme Court of India by way of General Order [Re. Cognizance for Extension of Limitation, 117 taxmann.com 66(SC)]. In the light of extension granted by Hon'ble Apex Court, there is no delay in filing of appeals.

ITA NO.2282/MUM/2021-A.Y. 2014-15:

3. The solitary ground raised by the Revenue in its appeal reads as under:

*1. "On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in allowing interest expense of Rs.2,80,73,071/- against interest income brought to tax under the head income from 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. "*

4. Shri Rajiv Khandelwal appearing on behalf of the assessee/respondent submitted that similar addition on account of interest expenditure was made by Assessing Officer in preceding assessment years starting from assessment year 2008-09. The matter travelled to the Tribunal. The assessee filed appeal in ITA No.3225/Mum/2013 for assessment year 2008-09 assailing the addition. The Tribunal vide order dated 25/08/2016 deleted the same. Thereafter, in subsequent assessment years i.e. assessment year 2009-10 to 2013-14 the Assessing Officer has been consistently making similar addition and the Tribunal has deleted the addition in each of the aforesaid assessment years. The CIT(A) has deleted the addition in the impugned assessment year by following the order of Tribunal for assessment years 2008-09 and 2009-10.

5. Dr. P. Daniel representing the Department fairly admitted that identical issue has been decided by Tribunal in assessee's own case in preceding assessment years.

6. Both sides heard, orders of authorities below examined. The assessee was engaged in the business of investing and trading in shares and securities and stock broking. The assessee received interest income of Rs.2.80 crores on NSE deposits and fixed deposits. The assessee claimed set off of interest expenses against the aforesaid interest income. The assessee had made deposits with NSE in earlier years when the assessee was carrying on the business of share broking. The NSE gives interest on such deposits even though the assessee had discontinued the business of share broking. The assessee also earned interest income on fixed deposits with ICICI Bank. The aforesaid fixed deposits were made against bank guarantee given by the bank to NSE. The contentions of the assessee are that there is direct nexus between interest bearing funds and the deposits with NSE/ICICI Bank on which interest was received by the assessee. However, the Assessing Officer was not convinced with the submissions of assessee, hence, the Assessing Officer rejected assessee's claim of direct nexus between interest paid and the interest received. We find that the issue is perennial. The Assessing Officer disallowed interest expenditure for the first time in assessment year 2008-09. The Co-ordinate Bench of Tribunal vide order dated 25/08/2016(supra) allowed appeal of the assessee by observing as under:

*"7. .... The interest is not in doubt or disputed that the interest received from the National Stock Exchange on the total amount of deposit with it 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 (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."*

In the subsequent assessment years, the Tribunal has been following the findings of Co-ordinate Bench on this issue. No contrary material has been brought to our notice. Hence, following the decision of Co-ordinate Bench in assessee's own case, the solitary ground raised by the Revenue in its appeal is dismissed. Hence, the appeal of the Revenue for assessment year 2014-15 is dismissed.

ITA NO.2283/MUM/2021, A.Y.2017-18:

7. The Department in its appeal has raised three grounds. The ground No.1 of the appeal is identical to the ground adjudicated by us in appeal of the

assessee for assessment year 2014-15(supra). Both sides are unanimous in stating that the facts are identical except the amount of interest income, therefore, the submissions made in assessment year 2014-15 would equally apply to assessment year 2017-18. In the light of above, findings given while adjudicating the ground of appeal for assessment year 2014-15 would *mutatis mutandis* apply to ground No.1 of the present appeal. For parity of reasons the ground No.1 of Departmental appeal is dismissed.

8. The ground of appeal No.2 reads as under:

*2. "On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in allowing interest expense of Rs.3,92,88,043/- against interest income brought to tax under the head income from 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."*

9. The Id. Authorized Representative for the assessee submitted that the Assessing Officer had made addition of Rs.2.67 crores on account of difference between the interest received from NSE and reflected in Form No.26AS. The Id. Authorized Representative for the assessee submitted that NSE had granted excess interest, however, the same was reversed. The Id. Authorized Representative for the assessee referred to the table at page 28 of the paper book to show the interest received on FDRs. He further pointed that these facts were brought to the notice of Assessing Officer however, the Assessing Officer failed to take note of interest reversal entry by NSE. The Id. Authorized Representative for the assessee submitted that the CIT(A) after examining the documents on record accepted the contentions of the assessee.

10. Per contra, Id.Departmental Representative vehemently defended the assessment order.

11. Both sides heard, orders of authorities below examined. The Assessing Officer had made addition on account of mismatch of interest statement from NSE and Form No.26AS. The contention of the assessee is that the NSE had carried out rectification of interest payments and reversed the interest on FDRs. The Id. Authorized Representative for the assessee has brought to our notice the statement of interest at page 28 of the paper book. The CIT(A) after examining the facts directed the Assessing Officer to delete the addition after factual verification from the revised ledger account issued by NSE. We find no infirmity in the findings of CIT(A) on this issue. Accordingly, ground No.2 of the appeal by Revenue is without any merit, hence, dismissed.

12. The ground No.3 of appeal reads as under:

*“3. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in allowing set off of brought forward depreciation loss against income from the other sources ignoring the facts that the business of the assessee had been discontinued due to the cancellation of its registration by SEBI, to carry on the business as Stock Brokers”*

14. The Id.Departmental Representative submitted that the assessee has claimed set off of brought forward depreciation loss against income from ‘other sources’. The assessee has discontinued the business, therefore, depreciation loss cannot be allowed to be set off. The Id.Departmental Representative pointed that the assessee had closed its business on 18/07/2007. The Id.Departmental Representative prayed for reversing the findings of CIT(A) on this issue and upholding the addition made in the assessment order.

15. Per contra the Id. Authorized Representative of the assessee vehemently defended the findings of CIT(A) and reiterated the submissions made before the First Appellate Authority. The crux of the submissions made by Id.

Authorized Representative of the assessee is that the Assessing Officer ought to have allowed set off of brought forward depreciation against the income declared under the head 'income from other sources', as the same is in accordance with the provisions of section 32(2) of the Income Tax Act, 1961 [in short 'the Act'].

16. Both sides heard. In so far as the facts are concerned, they are not in dispute. The point of contention is whether the brought forward depreciation could be set off against 'income from other sources'. The CIT(A) has granted relief to the assessee by following the decision rendered in the case of CIT vs. GTM Synthetics Ltd. 347 ITR 458 (P&H). No contrary decision has been brought to our notice by the Revenue. In the light of above, no interference in the findings of CIT(A) are warranted. The ground No.3 of appeal by Revenue is dismissed, accordingly.

17. In the result, appeal of Revenue for assessment year 2017-18 is dismissed.

18. To sum up, appeal by Revenue for assessment year 2014-15 and 2017-18 are dismissed.

Order pronounced in the open court on Tuesday the 4<sup>th</sup> day of October, 2022.

Sd/-

( M. BALAGANESH )

लेखाकार सदस्य/ACCOUNTANT MEMBER

मुंबई/ Mumbai, दिनांक/Dated 04/10/2022

Vm, Sr. PS(O/S)

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

**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.

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BY ORDER,

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