

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "F", MUMBAI
BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER AND
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER

ITA No. 1452/Mum/2021 (A.Y.2015-16)

Volkart Fleming Shipping & Services Ltd,

Ground Floor, Cassinath Building,

A. K. Nayak Marg Fort,

Mumbai-400 001

PAN: AAACV1843P

..... Appellant

Vs.

ACIT 2(3)(1)

6th floor, R. No. 609,

Aayakar Bhavan,

M. K. Road,

Mumbai-400 020

..... Respondent

Appellant by : Shri Ketan Ved Ld. AR
Respondent by : Shri Ujjawal Kumar Chavan, Ld. DR

Date of hearing : 29/08/2023
Date of pronouncement : 29/08/2023

ORDER

PER GAGAN GOYAL, A.M.:

This appeal by assessee is directed against the order of Ld. CIT (A) – 6, Mumbai, dated 14.11.2018 u/s. 250 of the Income Tax Act, 1961 (in short 'the Act') for A.Y. 2015-16. The assessee has raised the following grounds of appeal:-

Based on the facts and circumstances of the case, the Appellant respectfully craves leave to prefer an appeal under section 253(1) of the Income-tax Act, 1961 ('the Act') against the order passed dated 14 November 2018 by the Commissioner of Income Tax (Appeal) - 6, Mumbai (prime CIT(A)) on the following grounds, which are independent and without prejudice to each other:

Opportunity of being heard

1. The learned CIT(A) erred in not providing an opportunity of being heard in terms of section 251 of the Act, before making a variation to the assessment order.

Rental Income assessed as Business Income instead of Income from House Property

2. The learned CIT(A) erred in directing the assessing officer to assess the rental income as "Business Income" instead of "Income from House Property", as disclosed in the return of income and assessed by the Assessing Officer,

Addition on account of notional interest on the security deposit under the head Profits and gains of business or profession

3. The learned CIT(A) erred in directing the Assessing Officer to make a notional addition of interest on the total security deposit of Rs. 3,25,00,000 placed with R D Sethna Trust, as income under the head Profits and gains of business or profession.

The Appellant craves for leave to add, amend, vary, omit or substitute any of the aforesaid grounds of appeal at any time before or at the time of hearing of the appeal, so as to enable the Hon'ble Income tax Appellate Tribunal to decide this appeal according to law.

2. The brief facts of the case are that assessee company filed its return of income on 14.09.2015 declaring total income at Rs. 36,38,710/-. Case of the assessee was selected for scrutiny and total income was assessed at Rs. 66,79,590/-. Assessee being aggrieved with this order of AO, preferred an

appeal before Ld. CIT(A)-6, Mumbai who in turn allowed the appeal partly and also made certain variations in the order of AO. Assessee being further aggrieved with this order of Ld. CIT (A) approached us through this appeal.

3. We have gone through the order of AO, order of Ld. CIT(A) and arguments /submissions of the assessee. Assessee raised total 3 substantive grounds on which adjudication is required. Ground wise adjudication of the appeal alongwith facts of the respective ground are as under.

4. Ground no. 1 pertains to variation made to the assessment order without providing an opportunity of being heard in terms of section 251 of the Act. We found this ground as general in nature and assessee also not pressed the same during the appellate hearing, hence **dismissed**.

5. Ground no. 2 pertains to conversion of head from house property to business income. The fact of the matter is that assessee has taken ground floor and 3rd floor at Everest House on lease from R D Sethna Trust at a rent of Rs. 10,000 per month. In addition to this rent, assessee also made deposit of Rs. 3.25 Cr. to R. D. Sethna trust. Assessee is wholly owned subsidiary of Forbes & Co. Ltd. to whom these flats were given on lease rental of Rs. 10,000/- per month. AO assessed the same under the head house property with a further addition of deemed rent amounting to Rs. 26 lakhs i.e. 8% of total security deposit of Rs. 3.25 Cr. (70% of 26 lakhs). Ld. CIT (A) sustained the addition on account of deemed rental but changed the head of income from house property to business income.

6. It is observed and found the order of Ld. CIT (A) to be correct as the assessee was not the owner of property let out to its holding company.

Owner of the property was R. D. Sethna trust from who the assessee took the property on lease and further sub lease the same to its holding company and it's a regular feature in the operation of the assessee to enter into such type of transactions for their holding/ associate concerns. As this fact is not being challenged by the assessee also that it was not the owner of the property, hence Ld. CIT (A) rightly treated the same as income from business. In view of the above, ground no. 2 raised by the assessee is dismissed.

7. Ground no. 3 pertains to charging of notional interest on the security deposit under the head profit and gains of business or profession. On this issue, relevant facts are that assessee provided an interest free deposit of Rs. 3.25 Cr. to the owner of the property i.e. R. D. Sethna Trust, but has not charged any interest from its holding company M/s. Forbes & Co. Ltd. to whom property was given on sub-lease. It is further observed from Schedule 5 of the Balance-sheet that loans from related parties which stood at Rs. 1.85 crores as on 01.04.2014, stood at Rs.65,00,000/- as on 31st March, 2015 and which have primarily been used for subsidizing the costs in the hands of M/s. Forbes & Company Ltd. Earlier when the deposit of Rs.3.25 crores was given to R. D. Sethna Trust as a security deposit, the assessee had taken loan from a group company and in the year 2010-11 and 2011-12, they took loans totaling to Rs. 4 crores from M/s. Forbes & Company Ltd. to repay the said loans taken from M/s. Shapoorji Pallonji & Company Ltd. The loans taken from M/s. Shapoorji Pallonji & Company Ltd. was utilized for making security deposit of Rs. 3.25 crores to R. D. Sethna Trust and subsequently this loan taken from M/s. Shapoorji Pallonji & Company Ltd. was repaid by obtaining loan from M/s. Forbes & Company Ltd. and interest was being paid to M/s.

Forbes & Company Ltd. Before us, Counsel of the assessee argued that this money i.e. interest free security deposit paid to R. D. Sethna Trust was out of his own capital and free reserves. To substantiate its contentions, assessee relied on Circular No. 715 dated 08.08.1993 and a plethora of judgments. We have gone through the same. But, as in this case, assessee is paying interest to its holding company on their outstanding balance in the books of assessee and claiming the same as business expenditure, but not charging any interest on interest free security deposited with R. D. Sethna Trust on the logic of deployment of their own fund as mentioned (supra).

8. In view of above facts, we deem it fit to restore the matter back to the file of AO and also direct the AO to verify whether the contentions of the assessee that interest free security deposit made with the R. D. Sethna Trust is out of borrowed money or out of its own funds. Accordingly, this addition will be made i.e. if it is out of borrowed funds, addition will sustain and if it is out of its own funds, no addition on this account will sustain. **In view of this ground of appeal is partly allowed for statistical purposes.**

9. **In the result, Appeal of the assessee is partly allowed for statistical purposes.**

Order pronounced in the open court on 29th day of August, 2023.

Sd/-

(AMIT SHUKLA)
JUDICIAL MEMBER

Mumbai, दिनांक/Dated: 29/08/2023

Sr. PS (Dhananjay)

Sd/-

(GAGAN GOYAL)
ACCOUNTANT MEMBER

Copy of the Order forwarded to:

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

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai