

| आयकर अपीलिय अधिकरण न्यायपीठ, मुंबई |
IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH, MUMBAI

BEFORE SHRI NARENDRA KUMAR BILLAIYA, HON'BLE ACCOUNTANT MEMBER
&
SHRI RAJ KUMAR CHAUHAN, HON'BLE JUDICIAL MEMBER

I.T.A. No. 93/Mum/2024
Assessment Year: 2017

Asstt. Commissioner of Income Tax, Circle - 4(1)(1), Mumbai	Vs	Motilal Oswal Home Finance Limited, Mumbai 11 th Floor Motilal Oswal Tower Rahimtullah Sayani Road Opposite Parel St. Depot Prabhadevi Mumbai - 400025 [PAN: AAMCA0234H]
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)

Assessee by :	Shri Malav P. Sheth, A/R
Revenue by :	Shri H.M. Bhatt, Sr. D/R

सुनवाई की तारीख/**Date of Hearing** : 18/07/2024
घोषणा की तारीख /**Date of Pronouncement**: 18/07/2024

आदेश/ORDER

PER NARENDRA KUMAR BILLAIYA, AM:

This appeal by the revenue is preferred against the order of the NFAC, Delhi dt. 07/11/2013 pertaining to AY 2017-18.

2. The grievance of the revenue reads as under:-

"1. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in allowing claim for interest expenditure on Non-Convertible Debentures of Rs 2,02,53,51,864/ as against claim of interest expenditure on Non-Convertible Debentures of Rs 2,00,53,81,881/ made in the return of income when assessee had failed to claim such deduction by filing revised return of income u/s. 139 of the Income Tax Act.?"

2. *Whether on the facts and in law, the Ld.CIT(A) has erred in allowing the claim of the assessee without verification of the genuineness and quantification of the claim, considering that the claim was made for the first time before the Ld. CIT(A) and there was no occasion for AO to verify the genuineness of the claim?*

3. *The appellant craves leave to amend or alter any ground or add new ground which may be necessary".*

3. Representatives of both the sides were heard at length. Case records carefully perused.

4. Briefly stated the facts of the case are that the assessee filed its return of income electronically on 31/10/2017 declaring total income of Rs.114,76,21,960/-. The return was revised on 31/03/2019 at Rs. 112,72,74,750/-. The return was selected for scrutiny assessment through CASS and accordingly, statutory notices were issued and served upon the assessee. Queries were raised during the course of scrutiny assessment proceedings, in response to which the assessee filed online submissions.

5. During the course of assessment proceedings vide submissions dt. 06/12/2019, the assessee requested for claim of interest expenditure on non-convertible debentures on account of short booking in the accounts. In its submissions, the assessee stated that it has incurred interest on non-convertible debentures (NCD) amounting to Rs. 200,53,81,881/- which is grouped under the head 'finance cost' in the profit and loss account. It was pointed out that the NCDs were issued in order to facilitate the working capital requirements of the assessee company and for the purpose of onward lending activities in relation to the housing

finance business of the assessee. It was brought to the notice of the AO that while finalizing the accounts for the financial year ended 31/03/2019, the assessee realized that there was a mistake in computing the provision for the interest on NCD for earlier years. Based on the revised working it was found that the actual interest expenditure pertaining to FY 2016-17 i.e., AY 2017-18 is Rs.2,02,53,51,864/-. The assessee furnished details of the interest incurred based on the revised working and pointing out that interest of Rs.1,99,69,983/- was short-booked.

5.1. While completing the assessment, vide order dt. 16/12/2019 framed u/s 143(3) of the Act, the AO did not consider this claim of the assessee. The assessee raised this claim before the Id. CIT(A) placing strong reliance on the decision of the Hon'ble Supreme Court in the case of *National Thermal Power Co. Ltd. vs Commissioner Of Income Tax* [1998] 229 ITR 383 (SC), and judgment of the Hon'ble Bombay High Court in the case of *CIT vs Pruthvi Brokers & Shareholders* [2012] 23 taxmann.com 23 (Bom). After considering the facts and the submissions and the claim made by the assessee and drawing support from the judicial decisions referred by the assessee, the Id. CIT(A) admitted the claim holding that the Hon'ble Supreme Court in the case of *Goetze (India) Ltd. v. CIT* [2006] 284 ITR 323 (SC), did not put any fetter on the powers of the appellate authority to entertain a fresh claim. After admitting the claim, the Id. CIT(A) perused the details furnished by the assessee and held that the

AO should have perused the details furnished by the assessee and ought to have granted deduction for the additional claim.

6. We have given a thoughtful consideration to the findings of the ld. CIT(A). We are of the considered opinion that though the ld. CIT(A) was well within his powers to admit the fresh claim but we find that the ld. CIT(A) has neither allowed the AO to examine the claim by calling for a remand report nor there is any mention that the ld. CIT(A) himself has verified the genuineness and quantification of the claim. Considering that the claim was made for the first time before him and the AO had no occasion to examine the same, in the interest of justice and fair play, we deem it fit to restore this issue to the file of the AO. The AO is directed to examine/verify the genuineness and the authenticity of the claim and decide the issue afresh after affording a reasonable and adequate opportunity of being heard to the assessee.

7. In the result, appeal of the revenue is allowed for statistical purposes.

Order pronounced in the Court on 18th July, 2024 at Mumbai.

Sd/-
(RAJ KUMAR CHAUHAN)
JUDICIAL MEMBER

Sd/-
(NARENDRA KUMAR BILLAIYA)
ACCOUNTANT MEMBER

Mumbai, Dated 18/07/2024

**S.C.S.P.*

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि ,आयकर अपीलीय अधिकरण, मुंबई /DR,ITAT, Mumbai,
6. गार्ड फाई/ Guard file.

आदेशानुसार/ BY ORDER,
TRUE COPY

Assistant Registrar
आयकर अपीलीय अधिकरण
ITAT, Mumbai