

IN THE INCOME TAX APPELLATE TRIBUNAL
"G" BENCH, MUMBAI
BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND
SHRI ASHWANI TANEJA, ACCOUNTANT MEMBER

ITA no.7031/Mum./2013
(Assessment Year : 2010-11)

Income Tax Officer
Ward-8(2)(2), Aayakar Bhawan
101, M.K. Road, Mumbai 400 020

..... Appellant

v/s

Shri Gautam Ahuja
111, Soona Villa, Perry Cross Road
Bandra (W), Mumbai 400 050
PAN - AGAPA3935E

..... Respondent

Revenue by : Shri Nitin Waghmode
Assessee by : Shri Reepal Tralshawala

Date of Hearing - 21.01.2016

Date of Order - 29.01.2016

ORDER

PER SAKTIJIT DEY, J.M.

Instant appeal by the assessee is directed against the order dated 4th September 2013, passed by the learned Commissioner (Appeals)-17, Mumbai, for the assessment year 2010-11.

2. Department has raised following grounds:-

1. *On the facts and in the circumstances of the case and in law, the CIT(A) erred in upholding the claim of the assessee that the interest received is business income, ignoring the fact that the assessee had no systematic, regular business activity of financing.*

2. On the facts and in the circumstances of the case and in law, the CIT(A) erred in upholding the claim of the assessee that the interest received is business income, ignoring the fact that the assessee had merely borrowed funds from relatives and group concerns and invested the same with sister concerns only in the form of FCDs and thus, no finance business has been carried out by the assessee.

3. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in upholding the claim of the assessee that the interest received is business income, ignoring the fact that there is no risk element involved in the investments made by the assessee to term it as a business activity.

5. At the outset, learned Counsel for the assessee submitted before us that the tax effect on the ground raised by the Department is nil as the only issue in dispute is interest income whether is to be treated as business income as claimed by the assessee and accepted by the learned Commissioner (Appeals) or income from other sources, as held by the Assessing Officer.

6. Learned Counsel for the assessee submitted whether it is assessed as business income or income from other sources, there is no impact on the tax payable by the assessee. To demonstrate such fact, assessee has submitted a working of tax effect as under:-

Total Expenses claimed in Profit and Loss account		
a) Interest expenses	₹ 1,08,25,390	
b) Other business expenses	₹ 12,86,675	₹ 1,21,12,065

1) AO treated business income as income from other sources		
a) Disallowed entire other business expenses which is also confirmed by CIT(A)		₹ 12,86,675
b) Out of total interest expenses		₹ 1,08,25,390
i) Interest expenses disallowed since no nexus		₹ 20,96,189
Balance interest expenses where nexus established		₹ 96,48,417
Interest expenses disallowed due to rate of interest, though nexus established		₹ 75,52,228
Balance interest expenses allowed by A.O.		₹ 11,76,973
ii) CIT(A) - whether business income or income from other sources Out of total interest expenses		₹ 1,08,25,390
Interest expenses confirmed where no nexus	₹ 20,96,189	
Interest expenses where nexus found - deleted disallowance made on account of rate difference - ₹ 75,52,228		₹ 20,96,189
		₹ 87,29,201

7. He, therefore, submitted, as there is no tax effect or nil tax effect in the dispute raised by the Department, the appeal need not be entertained in view of the CBDT Circular no. Circular no.21 of 2015 dated 10th December 2015.

8. The learned Departmental Representative has not controverted the aforesaid factual position.

9. Having considered the submissions of the parties and perused the material on record and more particularly the working of tax effect submitted by the learned Counsel for the assessee, we are of the view that the appeal of the Department is covered by CBDT Circular no. Circular no.21 of 2015 dated 10th December 2015, as the dispute raised by the Department does not have any tax effect. Therefore, the appeal of the Department is not maintainable and, accordingly, grounds raised by the Department are dismissed. However, liberty is given to the Department to file miscellaneous application for recalling this order in case the Department finds that the tax effect in the dispute raised in grounds by the Department is above monetary limit fixed in the CBDT Circular referred to above and working of tax effect submitted by the assessee is not correct. We further make it clear that the Department is not precluded from raising the issue in dispute as referred to in the grounds of appeal in an appropriate case in any other assessment year as the instant appeal of the Department is dismissed only on tax effect without going into the merit of the issues.

10. In the result, appeal stands dismissed.

Order pronounced in the open Court on 29.01.2016

Sd/-
ASHWANI TANEJA
ACCOUNTANT MEMBER

Sd/-
SAKTIJIT DEY
JUDICIAL MEMBER

MUMBAI, DATED: 29.01.2016

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The CIT(A);*
- (4) *The CIT, Mumbai City concerned;*
- (5) *The DR, ITAT, Mumbai;*
- (6) *Guard file.*

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

(Dy./Asstt. Registrar)
ITAT, Mumbai