

**IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, MUMBAI  
BEFORE SHRI D. KARUNAKARA RAO, ACCOUNTANT MEMBER AND  
SHRI SAKTIJIT DEY, JUDICIAL MEMBER**

I.T.A. No.2584/M/2013 (Assessment Year: **2008-2009**)

Smt. Loretta Mascarenhas, C/o. Mohan Sriharsha & Associates, Chartered Accountants, 302, B Wing, Mangalya, Off Marol Maroshi Road, Near Marol Fire Brigade, Andheri (E), Mumbai – 400 059.	बनाम/ Vs.	ACIT (15)1, Matru Mandir, 1 <sup>st</sup> Floor, Tardeo, Mumbai – 400 007.
स्थायी लेखा सं./PAN : AHMPM0427E		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से / Appellant by	:	Shri Mohan Sriharsha
प्रत्यर्थी की ओर से/ Respondent by	:	Shri A.B. Koli, DR

सुनवाई की तारीख / Date of Hearing : 30.08.2016

घोषणा की तारीख /Date of Pronouncement : 09.09.2016

**आदेश / O R D E R**

**PER D. KARUNAKARA RAO, AM:**

This appeal filed by the assessee on 4.4.2013 is against the order of the CIT (A)-26, Mumbai dated 18.1.2013 for the assessment year 2008-2009. In this appeal, assessee raised the following main grounds which read as under:-

- "1. The Ld CIT (A) was not justified in considering as taxable, interest on NRE accounts of Rs. 3,14,302/- which is exempt from tax under section 10(4)(ii) of the Act while passing his appellate order, dated January 18, 2013. Following the order of the Ld CIT (A), the AO while passing his order dated March 4, 2013 and in the notice of demand u/s 156 dated March 5, 2013, has also not given effect, to the claim of the assessee for treating as exempt, the said interest on NRE accounts.
2. The omission to claim exemption of NRE interest income in the tax return and in the assessment proceedings with the Ld AO was inadvertent and the assessee has filed application dated November 12, 2010 with the Ld AO for rectification of mistake u/s 154 of the act on which no order has been passed by the Ld AO till date.
3. The assessee has pleaded before the CIT (A) to allow the said exemption with detailed justification which has been turned down by the CIT (A)."

2. At the outset, Ld Counsel for the assessee briefly narrated the facts of the case. Bringing our attention to the Ground no. II raised by the assessee before the CIT (A), Ld Counsel for the assessee submitted that the assessment was completed by the AO without taxing the interest amount of Rs. 3,14,302/-, which is otherwise expressly exempt from the tax in view of the provisions of section 10(4)(ii) of the Income Tax Act, 1961. CIT (A) did not adjudicate this issue on merits and the contents of para 4.2 of his order are relevant in this regard. CIT (A) dismissed the said ground no. II stating that this issue is raised for the first time before him. In the process CIT (A) ignored the judgment of the Hon'ble Supreme Court judgment in the case of Goetze (India) Ltd 284 ITR 323, which was relied upon by the assessee in the written submissions before him dated 16.1.2013. Ld Counsel for the assessee also mentioned that all the facts relevant for the adjudication of this ground no.II are already on the records of the AO. Being a legal issue, CIT (A) should have admitted, examine and adjudicate this issue considering the express provisions of section 10(4)(ii) of the Act.

3. On hearing both the parties, we find, the issue raised before the CIT (A) and the Tribunal is a legal issue and it does not call for any investigation to the facts. The provisions of section 10(4)(ii) provide for exemption of such interest receipt on NRE account. Considering the same, as requested by the Ld Counsel for the assessee, we remand this issue to the file of the CIT (A) to admit the ground considering the binding judgment of the Hon'ble Apex Court in the case of Goetze (India) Ltd (supra) and adjudicate the same after granting a reasonable opportunity of being heard to the assessee. Accordingly, grounds raised by the assessee are allowed for statistical purposes.

4. In the result, appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 9<sup>th</sup> September, 2016.

**Sd/-**  
**(SAKTIJIT DEY)**  
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक 09.09.2016  
व.नि.स./ OKK, Sr. PS

**Sd/-**  
**(D. KARUNAKARA RAO)**  
ACCOUNTANT MEMBER

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

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

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,  
उप/सहायक पंजीकार (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / **ITAT, Mumbai**