

**IN THE INCOME TAX APPELLATE TRIBUNAL, BENCH “C”, MUMBAI  
BEFORE SH. B.R. BASKARAN, ACCOUNTANT MEMBER AND  
SH. PAWAN SINGH, JUDICIAL MEMBER  
ITA No.4977/Mum/2013 for A Y: 1993-94)**

M/s Orion Travels Pvt Ltd. 32, Madhuli, Dr. A.B. Road, Worli, Mumbai-400018 <b>PAN : AAACO1591K</b>	Vs.	DCIT, CC 31, Room No. 409, Aayakar Bhavan , M.K. Road, Mumbai-400020
(Appellant)		(Respondent)
Assessee by		Sh. Dharmesh Shah - Advocate
Revenue by		Dr. P. Daniel- Advocate (Standing Counsel)
Date of hearing		04.11.2016
Date of pronouncement		09.11.2016

**Order under section 254(1) of Income Tax Act**

**PER PAWAN SINGH JUDICIAL MEMBER:**

1. This appeal under section 253 of the Income Tax Act (‘Act’) is directed by assessee against the order of Commissioner of income tax (Appeals) 40, Mumbai dated 22/03/2013 for assessment year 1993-04. The assessee has raised has raised following grounds of appeal:
  - (i) *Ld CIT(A) erred in confirming the order of AO.*
  - (ii) *Ld. CIT(A) erred in not appreciating that no income from attached asset can be assessed in the hands of appellant.*
  - (iii) *Ld.CIT(A) erred in making the addition on account of dividend income of Rs 11,06,948/-*
  - (iv) *Ld CIT(A) erred in treating STCG offered at Rs. 344742/-as income from shares trading business.*
  - (v) *Ld CIT(A) erred in not granting deduction on account of interest expenses.*
  - (vi) *Ld CIT(A) erred in charging interest under section 233A,234B and 234C of the Act.*
  - (vii) *Ld CIT(A) erred in charging interest under section 220(2) of the Act.*
2. The briefs facts of the case are that assessee Company engaged in the business activity of hiring motorcar and dealing in shares and securities.

The assessee belongs to Harshad Mehta group. The assessee is a notified person under Special Courts (TORTS) Act 1992. The Special Court vide its order dated 3<sup>rd</sup> Feb 1994 directed the assessee company to get its account audited by specially appointed three firms of Chartered Accountants. The CA firms nominated by the Special Court audited the accounts of assessee and submitted their report to the Custodian appointed by Special Court (TORTS) in 2001. On the basis of information given by the Special Auditors the assessment for AY 1993-94 was reopened under section 147. In response to the notice under section 148 assessee filed its return of Income on 27 June 2001 declaring total loss of Rs. 3,83,548/-. The AO while framing re-assessment order u/s 143(3) rws 147 dated 5<sup>th</sup> March 2003 made various addition and disallowance. Aggrieved by the order of AO, assessee filed appeal before Commissioner (Appeals) but without any success. Thus, further appeal was preferred before Tribunal. The Tribunal remanded the matter to the file of AO for de-novo assessment vide order dated 28 April 2006 in ITA No. 5045/M 05. In compliance of the direction of Tribunal the AO passed fresh assessment order after giving opportunity of hearing to the assessee. However, the AO while passing the fresh order again made addition /confirmed the addition on account of dividend income amounting to Rs. 11,06,948/-and not granted the deduction of interest expenses in its order passed under section 143(3) r.w.s. 254 of the Act. Aggrieved by the order of AO assessee again filed appeal before the Commissioner (Appeals) but no relief was granted on this addition, thus the assessee filed this second appeal before this Tribunal.

3. We have heard Shri Dharmesh Shah Advocate ('ld AR') for assessee and Dr. Daniel Special Standing Counsel ('ld DR') of the revenue and perused the material available on record. At the outset the ld AR of the assessee submitted that he is not pressing Ground No 1, 2 and 4. Thus, in view of the statement of the ld AR for the assessee the Ground No. 1, 2 and 4 are dismissed.

4. The Ground No 3 relates to the addition on account of dividend income of Rs 11, 06,948/-. The Ld AR of the assessee argued the assessee was holding 6,70,000 shares of Mazda Industries and Leasing Ltd. In the year 1992 search was conducted at the premises of assessee as well as at the premises of Mazda Industries and Leasing Ltd. After the search the assets of assessee as well as Mazda Industries and Leasing ltd including their Bank Accounts were attached and were vested in the hands of Custodian appointed by Special Court relating to the trial of offence relating to transactions in Securities Act 1992(TORT). Due to the attachment of Bank accounts of Mazda Industries and Leasing Ltd could not paid dividend to its shareholder. Mazda industries and Leasing Ltd filed an application before the Special Court for seeking permission for allowing it to open and operate their Bank accounts for payment of interest and dividend for the financial year ended on 30 June 1992. The Court vide order dated 31<sup>st</sup> May 1993 allowed Mazda industries and Leasing Ltd open and operate bank account for payment of dividend, (true copy of which is placed on record). The dividend from the said company was received by the assessee during the Assessment Year 1994- 95. The dividend was duly accounted and offered for tax in the return of income for Assessment Year 1994-95. As no dividend income from the said company was received in the year under consideration thus the same cannot be taxed in the hand of assessee in this year. The dividend warrant was issued vide dividend warrant dated 27 August 1993 under folio No. NZO-1673. It was further argued that the assessee made all these submission before the AO as well as before First Appellate Authority but despite furnishing all the information and making submission in writing the lower authorities, the dividend income was added in the income of assessee in the year under consideration, though it has been offered and taxed in subsequent year. The AO made the addition on the basis of letter dated 12.01.1999 allegedly received by auditors from Mazda Industries and leasing ltd. The assessee demanded the copy of letter dated

12.01.1999 but it was never shown to the assessee. The ld AR of the assessee to strengthen his contention relied upon the decision of Allahabad High Court in case of CIT Vs Jai Devi Anandram Jaipuria Public Charitable Trust (245 ITR 295), decision of Bombay High Court in Pfizer Corporation Vs CIT 259 ITR 391, and in CIT Vs Nagri Mills Co Ltd (33ITR 681) and decision of Hon'ble Apex Court in case of CIT Vs Excel Industries Ltd (358 ITR 295).

On the other hand the ld DR for the revenue vehemently argued that that assessee Company was following Mercantile System of Accounting. It was further argued that income must be taxed when it became due and cannot be offered as per the choice of the assessee. The learned DR for revenue further argued that if the contention of the assessee is accepted everybody will manipulate the date of payment. The ld DR for revenue to strengthen his submission relied upon Section 8 of the Income Tax Act.

5. We have considered the rival contention of the parties and gone through the orders of authorities below. The AO while making the addition of observed that Mazda Industries and Leasing Ltd declared dividend for the year ending 31 March 1992. The special auditors have received information from Mazda industries and leasing Ltd vide letter dated 12 January 1999 that they have credited dividend of Rs. 11,02,448/- on shares held by assessee. The AO during the assessment asked the assessee as to why the dividend income should not be taxed in this year. The assessee filed its reply and contended that the dividend income was received during the Assessment Year 1994-95 and the same was duly accounted and offered to tax during the said year. The assessee further contended that the dividend warrant itself issued on 27<sup>th</sup> of August 1993. The contention of assessee was not accepted by AO. The AO concluded that as per s.8 of the Act dividend is taxable in the year in which it is declared. Thus, any dividend declared during the financial year 1992-93 is taxable in AY 1993-94 irrespective of whether assessee actually received it or not. The ld.CIT(A) while considering this ground of appeal

concluded that assessee was following Mercantile System of Accounting and dividend income should have been offered for taxation irrespective of date of receipt and rejected the submission of assessee. We have notice that the lower authorities have failed to bring on record any evidence as to when the dividend was declared by Mazda Industries and Leasing Ltd, when it was communicated or when the income was credited to the assessee. The copy of communication received from Mazda industries and Leasing was not confronted with the assessee. The assessee throughout the proceedings contending that dividend income was received in the subsequent year and the same was offered and taxed in subsequent assessment year. The lower authorities have not given any finding about the taxing of dividend income in the subsequent year nor have referred in their order if there is any tax effect by offering the income in the subsequent year. We are conscious that as per Section 8 the dividend is taxable in the year in which it was declared. However, the facts of the present case are peculiar, particularly when the assets of assessee as well as Mazda industries and Leasing Ltd were attached along with their Bank accounts. Mazda industries and Leasing Ltd filed an application for seeking necessary permission for payment of dividend income, the said permission was granted vide order dated 31 May 1993 for the payment of dividend for the financial year ended on 30 June 1992. We have further notice that neither the AO nor Id CIT (A) referred as to when the dividend was declared or when the income was credited in the accounts of assessee.

The Hon'ble Allahabad High Court in CIT versus Jay Dei Devi Anandram Public charitable trust (supra) held as under;

*“ The court by an interim order dated September 29, 1967, had restrained Swadeshi Cotton Mills Ltd from paying dividend on the said Shares to anyone till further orders. The restrain order continued till May 26, 1972. Thus, during the year under consideration, i.e, the accounting year ending June 30, 1970, the petitioners right to receive dividend was under suspension because of the restrained order passed by the court. In such circumstances, the dividend declared by the company could not be*

*said to have been accrued to the assessee because neither could the company pay the same to the assessee nor could the assessee recover it till the restrained order was vacated.”*

The Hon’ble jurisdictional High Court in CIT Vs Nagri Mills Co Ltd (supra) while dealing with the ratio with regard to the year of taxability of income held as under:

*“ The question as to the year in which a deduction is allowable may be material when the rate of tax chargeable on the assessee in two different years is different; but in case of income of a company, tax attracted at a uniform rate, and whether deduction in respect of bonus was granted in Assessment Year 1952- 53 or in the Assessment Year corresponding to the Accounting Year 1952, that bonus was granted in the Assessment Years 1953- 54, should be a matter of no consequences to the Department; and one should have thought that the Department would not fritter away its energies in fighting matters of this kind. But, obviously, judging from the references that comes up is very now and then, the Department appears to be delight in raising points of character which do not affect the taxability of the assessee or tax that the Department is likely to collect from him whether in one year or in the other.”*

Further the Hon’ble Apex Court in CIT Vs Excel industries Ltd (supra) while dealing with the dispute of year of taxing held as under;

*“The real question concerning us is the year in which assessee is required to pay tax. There is no dispute that in the subsequent accounting year, the assessee did make imports and did derive benefits under the advance licence and the duty entitlement passbook and paid tax thereon. Therefore, it is not as if the revenue has been deprived of any tax. We are told that rate of tax remained the same in the present assessment year as well as in the subsequent assessment year. Therefore, the dispute raised by the revenue is entirely academic or at the best may have a minor tax effect. There, was therefore, no need for revenue to continue with this litigation when it is quite clear that not only was it fruitless (on merits) but also that it may not have added anything much to the public coffers.”*

Now turning to the facts of the case in hand the assessee categorically asserted before the lower authorities that the said dividend income was received in the subsequent year. We have noticed that the letter written by Special Auditor was not confronted to the assessee. The date of declaration of dividend by M/s Mazda Industries and Leasing Ltd was also not brought on record. We noticed that Section 8 provides a legal fiction for taxing the dividend on the date of declaration of dividend. Since, facts relating to the issue were not brought on record. We are of the view that the issue require fresh examination. Accordingly, we restore this issue to the file of AO for his fresh consideration. The assessee should provide with all the material on which the AO place reliance. Thus this Ground of appeal is allowed for statistical purpose.

6. Ground No. 5 relates to disallowance of deduction on account of interest expenses. The Id AR of assessee argued that this ground of appeal is covered in his favour by the decisions of this Tribunal in assessee's own case for Assessment Years 2001-02, 2003-04, and 2007-08 wherein the similar disallowance as were restored to the file of AO. The Id DR for revenue have no objection if the similar direction is given to the AO.
7. We have seen that in assessee's own case for AY 2001-02, 2002-03 in ITA No 7293-94/M/ 2012 dated 10 June 2014 and further for AY 2007-08 in ITA No. 8479/M/2010 dated 15.01.2016 the similar grounds of appeal was restored to the file of AO. Thus following the decision of coordinate bench on similar grounds in assessee's own case this ground of appeal is restored to the file of AO with similar direction for decision in accordance with law. Hence this ground of appeal is allowed for statistical purposes.
8. Ground No. 6 &7 relates to the charging interest under sections 234A, 234B, 234C and 220(2). These ground of appeal are consequential in nature as we have restore the Ground No 3 &5 of the appeal to the file of AO, thus the AO is directed to pass an order in accordance with the Circular

No.334 [F.No. 400/81-IT CC] dated 3<sup>rd</sup> April 1982. Hence, these Grounds of appeal are also allowed for statistical purposes.

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

Order pronounced in open court on 9<sup>th</sup> day of November 2016.

Sd/-

**(B.R.BASKARAN)**

**ACCOUNTANT MEMBER**

Mumbai; Dated 09/11/2016

Sd/-

**(PAWAN SINGH)**

**JUDICIAL MEMBER**

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

BY ORDER,

(Asstt.Registrar)  
**ITAT, Mumbai**