

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ, B, मुंबई ।

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "B", MUMBAI**

**Before Shri Joginder Singh, Judicial Member, and
Shri Ashwani Taneja, Accountant Member**

**ITA No.297/Mum/2010
Assessment Year: 2002-03**

Mahesh B. Mehta, Prop of M/s. Padma Gems 46, Navyug Nagar, Forjett Hill Road, Tardeo, Mumbai-400036	<u>बनाम/</u> Vs.	ITO 16(2)(4), Mumbai
(Appellant)		(Respondent)
P.A. No.AABPM6865E		

**ITA No.1776/Mum/2010
Assessment Year: 2002-03**

ITO 16(2)(4), Mumbai	<u>बनाम/</u> Vs.	Mahesh B. Mehta, Prop of M/s. Padma Gems 46, navyug Nagar, Forjett Hill Road, Tardeo, Mumbai-400036
(Revenue)		(Respondent)
Appellant by	Shri Niraj Sheth (AR)	
Revenue by	Shri Suman Kumar (DR)	
सुनवाई की तारीख/ Date of Hearing:	21/12/2016	
आदेश की तारीख / Date of Order:	13/01/2017	

आदेश / O R D E R

Per Ashwani Taneja:

These cross appeals have been filed against the order of Ld. CIT(A) dated 17.12.2009 passed against the assessment order dated 31.03.2005 u/s 143(3) for A.Y. 2002-03.

First we shall take Revenue's Appeal in ITA No. 1776/Mum/2010 for A.Y. 2002-03

3. During the course of hearing it was jointly stated by the assessee at the very outset by both the sides that tax effect in this case is less than Rs. 10 Lacs. Therefore, appeal filed by the Revenue is not maintainable in view of circular of CBDT No. 21/2015 dated 10.12.2015.

3.1. We have gone through the aforesaid circular and find that Revenue's appeal is not maintainable in view of the fact that tax effect in this case is less than Rs. 10 Lacs as was also admitted by both the parties during the course of hearing. Therefore, appeal filed by the Revenue is treated as withdrawn and dismissed as such.

4. As a result, the appeal filed by the Revenue is dismissed.

Now we shall take appeal filed by the Assessee in ITA No. 297/Mum/2010 for A.Y. 2002-03 on the following grounds:

1. The learned Commissioner of Income Tax (Appeal) - 27 has sustained addition of Rs 2,50,000/- to valuation of closing stock and the same should be deleted.

2. The learned The Commissioner of Income Tax (Appeals) - 27 has sustained disallowance of loss of Rs 67,349/- and the same should be allowed.

3. The learned The Commissioner of Income Tax (Appeals) - 27 has sustained disallowance of Interest of Rs 34,616/- and the same should be allowed.

4. The appellants crave to leave, add, amend or alter any grounds of appeal on or before the hearing of this appeal.

5. Ground No.1: This ground was not pressed by the Ld. Counsel during the course of hearing therefore it is dismissed.

6. Ground No.2: This ground relates to disallowance of loss of Rs.67,349/-

6.1. During the course of hearing it was stated by the Ld. counsel that AO disallowed the loss under the belief that the said loss pertains to erstwhile partnership firm namely M/s. Padma Gems and the therefore, it could not have been set off against the profit of proprietorship of the unit of the assessee. The disallowance was confirmed by the Ld. CIT(A) under the same belief. Whereas, as per Ld. Counsel, the correct fact is that the loss pertains to proprietorship unit of the assessee and not the partnership firm.

6.2. We have gone through the orders passed by the lower authorities and it is noted that there is direct contradiction in the fact as narrated by the Ld. Counsel before us and as narrated by the lower authorities while passing the order. Thus, in our view this issue should go back to the file of the AO for proper verification of facts. Accordingly, this issue is sent back to the file of the AO who shall decide this issue after proper verification of facts and shall pass assessment order after giving adequate opportunity of hearing to the assessee to furnish details and evidences to the assessee. This ground may be treated as allowed for statistical purposes.

7. Ground No.3: This ground deals with the disallowance of interest of Rs.34616/-.

7.1. The brief background is that the assessee had made claim of total interest paid to the bank of Rs.72973/-. The AO disallowed portion of the interest on the ground that part of the loan utilized by the partnership firm for the business of the

partnership firm and the same was not utilized by the proprietorship unit of the assessee.

7.2. The Ld. CIT(A) confirmed the disallowance the following observations:

“Ground No. 6 relates to addition of interest of Rs. 34616/- which was not claimed by the appellant. It is stated that the appellant had paid to the bank at Rs.72,973/- during the period 29.9.2001 to 31.3.2002. The appellant also paid interest of Rs. 23,629/- on export packing credit on 29.9.2001 and on 29.11.2001 Rs. 40,000/- was paid as interest on cash credit facility. On 8.3.2002, the interest of Rs. 36,041/- was paid on discounting of bills. The bank also charged interest of Rs. 7,196/-. The appellant had claimed total interest at Rs. 73,973/- after deducting prepaid interest of previous year of Rs. 33,893/-. The AO has disallowed portion of the interest as it relates to the partnership firm which had filed a separate return for the period for which it was in existence. It was claimed that the partnership firm had not claimed these interest payments and it should be allowed to the individual who took over the partnership. This contention of the appellant is not acceptable as part of the interest pertains to the partnership firm whether the firm has claimed it or not and the disallowance made by the AO was correct and the same is upheld. Accordingly, this ground of appeal is dismissed.

7.3. During the course of hearing nothing has been brought before to show that whole of the amount has been utilised by the assessee for its proprietorship business. Thus, action of the lower authorities in disallowing the proportionate interest pertaining to the loan which was utilized by the partnership firm and not utilized by the proprietorship firm is justified. No interference is called for by us in the order of Ld. CIT(A). This ground is dismissed.

8. As a result, this appeal is partly allowed.

9. In the result, appeal filed by the assessee is partly allowed and appeal filed by the Revenue is dismissed.

Order pronounced in the open court on 13th January, 2017.

Sd/-
(Joginder Singh)

Sd/-
(Ashwani Taneja)

न्यायिक सदस्य / JUDICIAL MEMBER लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 13 /01/2017

Patel, P.S./नि.स.

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

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

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai