

आयकर अपीलीय अधिकरण, "ए" न्यायपीठ, मुंबई
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, MUMBAI
श्री बी. आर. बास्करन, लेखा सदस्य एवं श्री अमरजीत सिंह, न्यायिक सदस्य, के समक्ष
BEFORE S/SHRI B.R.BASKARAN, ACCOUNTANT MEMBER

AND AMARJIT SINGH, JUDICIAL MEMBER

आयकर अपील सं/ I.T.A. No.6944/Mum/2010

(निर्धारण वर्ष / Assessment Year: 1997-98)

Income Tax Officer 19(2)(1) Room No. 312, 3 rd Floor, Piramal Chambers, Lalbaug, Parel, Mumbai - 400012	बनाम/ Vs.	M/s. Apposite Trading Co. 159, CST Road, Kalina, Santacruz (E) Mumbai - 400098
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAGFA0314K		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	Ms. Vasanti Patel
Department by:	Shri Somanath S. Ukkali

सुनवाई की तारीख / Date of Hearing: 14.01.2016

घोषणा की तारीख /Date of Pronouncement: 11.05.2016

आदेश / O R D E R

PER AMARJIT SINGH, JM:

This is an appeal filed against the order dated 16.07.2010 passed by the Commissioner of Income Tax (Appeals)-30, Mumbai [hereinafter referred to as the "CIT(A)"] relevant to the assessment year 1997-98.

2. The facts of the case are that the assessee is a partnership firm engaged in the business of trading and investment in shares, securities and financing. The appellant filed return of income on 29.10.1997 declaring total loss of Rs.1,59,38,536/-. The assessment was completed

on 24.03.2000 determining total loss of Rs.80,67,389/-. The Assessing Officer made the following disallowances:-

1. Discounting charges Rs.62,65,735/-
2. Interest on call money Rs.16,00,362/-

3. The interest received on debentures amounting to Rs.4,45,050/- was also taxed separately. The assessee was not satisfied with the above said disallowance therefore filed an appeal before the learned CIT(A) and the learned CIT(A) confirmed the said addition but the assessee again filed the appeal before the Income Tax Appellate Tribunal but the Income Tax Appellate Tribunal 'H' bench, Mumbai accepted the appeal on the basis of decision in the case of East West Corporation in ITA No.6034/Mum/2007 dated 20.08.2007 and remanded the case. Thereafter the Assessing Officer again assessed the income of the assessee and confirmed the addition and thereafter the assessee filed the appeal before the learned CIT(A). The learned CIT(A) allowed the disallowance of discount charges / finance charges and interest on call money therefore feeling aggrieved the revenue has filed the appeal before us.

ISSUE NO.1:-

4. We have heard the arguments advanced by the learned representative of the parties and have gone through the record carefully. The finding given by the learned CIT(A). Before discussing the matter further, it is necessary to advert:-

3.8 I have examined the submissions and perused the records. I find from the records that the issue in the present appeal before me is identical to that in the case of M/s. Wellworth Laboratories, a group concern of the appellant. Under identical circumstances in the case of group concern i.e. Wellworth Laboratories, decided by me in my appellate order No.CIT(A)-30/ITO-19(2)(2)/IT-644/09-10 dated 09.02.2010 for assessment year 1997-98 and CIT(A)-30/ITO-19(2)(2)/IT-643/09-10 for A.Y. 1996-97 the disallowance of discounting charges after examining the issue in detail has been deleted. Therefore, finding of a fact on similar circumstances will have to be followed as judicial propriety requires consistency. Thus, after going through the records, facts and circumstances of the case the Assessing Officer is directed to delete the disallowance of Rs.62,65,735/- on account of discounting charges. The appellant's appeal on this ground is allowed. These ground nos. 1 & 2 are allowed.

4.1 No doubt the learned CIT(A) follow his own order in case of Wellworth Laboratories dated 09.10.2010. But now there is no ambiguity with regard to the allowance of discount charges / finance. The revenue filed the appeal in case of Wellworth Laboratories and the Income Tax Appellate Tribunal in its decision dated 18.12.2014 dismissed the appeal of the revenue and upheld the finding of the learned CIT(A) as correct. This issue has also been covered by the

decision of the Income Tax Appellate Tribunal in case of Delta International in ITA No.5028/Mum/2009 decided on 24.07.2013. The Departmental representative does not brought any distinguishable fact which may justify departure from finding of co-ordinate bench of Tribunal, therefore, respectively following the finding of the co-ordinate bench of Tribunal. This issue is decided in favour of the assessee against the revenue.

ISSUE NO.2:-

5. The issue no.2 is in connection with the allowance of interest paid on call money to the tune of Rs.16,00,362/-. This issue has been decided by the learned CIT(A) by following the decision in case of Nirmala M. Doshi Vs. CIT 82 ITR 648 (Bom). Thereafter the Income Tax Appellate Tribunal in ITA No.5947&5948/Mum/2011 in case of Alpha Corporation decided the issue and allowed the interest on call money. On the basis of the decision in case of Nirmal M. Doshi, consider the said interest as revenue expenditure, therefore allowed the same thereafter on the basis of said case the Tribunal has decided the case M/s. Delta International (Supra). The learned departmental representative did not brought any kind distinguishable facts on record which is contrary to the aforesaid observation. Therefore, in view of the said circumstances we are of the view that the learned CIT(A) has passed the order on this issue judiciously and correctly which does not required to be interfere with at this appellate stage. Accordingly this issue is decided in favour of the assessee and against the revenue.

6. In result the appeal of the Revenue is hereby dismissed accordingly.

Order pronounced in the open court on 11th May, 2016

Sd/-

Sd/-

(B.R.BASKARAN)

(AMARJIT SINGH)

लेखा सदस्य / ACCOUNTANT MEMBER

न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 11th May, 2016
MP

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.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai