

आयकरअपीलीयअधिकरण, 'ए'न्यायपीठ, चेन्नई  
IN THE INCOME TAX APPELLATE TRIBUNAL  
"A" BENCH, CHENNAI

श्री बी.आर. बास्करन, लेखा सदस्य एवंश्रीविकास अवस्थी, न्यायिकसदस्यकेसमक्ष

BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER AND  
SHRI VIKAS AWASTHY, JUDICIAL MEMBER

आयकर अपील सं./ITA Nos. 52, 53, 54 & 55/Mds/2013

निर्धारण वर्ष /Assessment Years : 2004-05, 2005-06, 2006-07 & 2009-10

M/s South India House Estates &  
Properties Ltd.,  
South India House,  
No.73, Armenian Street,  
Chennai - 600 001.

v. The Assistant Commissioner of  
Income Tax,  
Company Circle VI(3),  
Chennai - 600 034.

PAN : AABCS 0520 M

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri S. Sridhar, Advocate

प्रत्यर्थीकीओरसे/Respondent by : Shri P. Radhakrishnan, JCIT

सुनवाईकीतारीख/Date of Hearing : 03.02.2015

घोषणाकीतारीख/Date of Pronouncement : 11.03.2015

**आदेश /O R D E R**

**PER B.R. BASKARAN, ACCOUNTANT MEMBER:**

All the appeals have been filed by the assessee challenging the orders passed by Ld. Commissioner of Income Tax (Appeals)-V, Chennai and they relate to assessment years 2004-05, 2005-06, 2006-07 & 2009-10. Since the issues urged in these appeals are identical in nature, they were heard together and are being disposed of by this common order for the sake of convenience.

2. The grounds urged by the assessee for assessment years 2004-05, 2005-06 and 2006-07 give rise to following two issues:-

- (a) Validity of reopening of assessment under Section 147 of the Income-tax Act, 1961.
- (b) Correctness of assessing the interest income under the head "income from other sources" instead of assessing the same as business income.

3. For assessment year 2009-10, following issues are urged:-

- (a) Correctness of assessing the interest income under the head "income from other sources" instead of assessing the same as business income.
- (b) Disallowance made under Section 14A of the Income-tax Act, 1961.

4. The facts relating to the case are stated in brief. The assessee is engaged in the business of real estate and property development. The Ld. Counsel appearing for the assessee submitted that it was undertaking financing activities also in the earlier years and was registered as Non-Banking Financial Company (NBFC) with Reserve Bank of India. The assessee has furnished in the paper book the certificate of registration dated 22.09.1998 issued by RBI, permitting the assessee to carry on the business of non-banking financial institution, subject to the conditions prescribed thereon. The Ld. Counsel submitted that the

assessee has opted to exit from the NBFC regulations and has accordingly requested cancellation of certificate of registration issued by RBI. Accordingly, the RBI has cancelled the registration, vide its letter dated 07.03.2005. Accordingly, the earlier name of the company, viz., "M/s South India House Investment Ltd", was changed into the present name. The Ld. Counsel submitted that the assessee has been advancing funds only to its sister concerns, even when it was registered as NBFC and offered interest income under the head "income from business". Accordingly, the assessee has continued to offer the interest income during the years under consideration also as its business income, since it was only the continuation of the business already carried on by it.

5. The Ld A.R submitted that the assessment of the assessment year 2004-05 was completed under Section 143(3) of the Act, on 23.10.2006, accepting the interest income as business receipts of the assessee. The returns of income filed for AY 2005-06 and 2006-07 were accepted u/s 143(1) of the Act.

6. The assessing officer took up the return filed for AY 2009-10 for scrutiny. At that point of time, the Assessing Officer re-opened the assessments of AY 2004-05 to 2006-07 by issuing notices under Section 148 of the Act. He submitted that, in all these four

years, the Assessing Officer did not accept the interest receipts as forming part of business income. Accordingly the AO assessed the same as income of the assessee under the head "Income from other sources". The Ld A.R submitted that the assessee was having huge brought forward losses and it has adjusted the same against business income. However, by changing the head of income in respect of interest receipts, the Assessing Officer has denied the benefit of set off of brought forward losses.

7. With regard to the re-opening of assessment for AY 2004-05, the Ld A.R submitted that the original assessment was completed u/s 143(3) of the Act and the notice for re-opening of assessment was issued after expiry of four years from the end of the relevant assessment year. He submitted that there is no allegation of failure on the part of the assessee to disclose fully and truly all material facts necessary for the assessment. Accordingly he submitted that, in view of the first proviso to sec. 147 of the Act, the reopening of assessment for AY 2004-05 is bad in law.

8. With regard to the re-opening of assessment of AY 2005-06 and 2006-07, the Ld A.R submitted that the reopening was not in connection with assessing any income escaping the assessment, but it was only for changing the head of income for assessing the

interest income offered by the assessee. The Ld A.R submitted that the AO has assessed the interest income as income of the assessee under the head Income from other sources in AY 2009-10 and by following the same he has reopened the assessment of other three years. He submitted that the Assessing Officer did not have any tangible material to entertain the reason to believe about escapement of income. Accordingly he submitted that the reopening of assessment for these two years is also bad in law.

9. On merits, he submitted that the assessee has all along been showing the interest income as its business income and the Assessing Officer has decided to assess the same as income from other sources, only on the reasoning that the assessee has surrendered its NBFC certificate. The Ld A.R submitted that the NBFC certificate enables the assessee to collect the deposits from public and hence the cancellation of the certificate will not change the character of interest income. Accordingly, he submitted that the Assessing Officer was not justified in changing the head of interest income.

10. On the contrary, the Ld D.R submitted that the assessee has received interest income from its subsidiaries only and not from outsiders. He further submitted that the assessee has surrendered

its certificate as NBFC and hence the Ld CIT(Appeals) was justified in confirming the assessment of interest income as income from other sources. With regard to the re-opening of assessment, the Ld D.R submitted that the assessee has adjusted the brought forward losses against interest income, which the assessee was not entitled to. Accordingly he submitted that the said set off has resulted in escapement of income and hence the Ld CIT(Appeals) was justified in upholding the reopening of assessments.

11. We heard the parties and perused the record. Admittedly, the assessee has all along been declaring interest income as its business income. From the submissions made by Ld A.R as well as from the paper book filed by the assessee, we notice that the assessee has been lending money only to its subsidiaries and the interest income received there from was declared as business income. We also notice that the assessee itself has filed application with the RBI for cancellation of Certificate as NBFC and accordingly, it was cancelled on 7.3.2005. We also notice that the assessing officer has decided to assess the interest income under the head "Income from other sources", only for the reason that the NBFC status of the assessee has been cancelled.

12. With this back ground, we shall examine the validity of re-opening of assessment of the AY 2004-05 and 2005-06. We have already noticed that the Assessing Officer has re-opened the assessment only for the reason that the NBFC certificate has been cancelled by the RBI. For the sake of convenience, we extract below the reasons recorded for re-opening of assessment in AY 2004-05:-

"The assessee company is in the business of "purchase and sale of shares - as stock in trade". Perusal of record shows that the assessee company did not accept any deposit from public and **neither it was a NBFC**. Apart from the stock-in-trade of share it also held shares as investment separately. In the computation of income, dividend income earned was held by the assessee as exempt u/s 10(33) of the Income-tax Act, 1961.

Excluding the dividend income, the assessee company had computed the taxable income as detailed below:

			77,81,402
Business Income			
Set off against business loss			
	AY 1999-00	36,670	
	AY 2000-01	72,93,709	
		<u>1,20,943</u>	<u>77,81,402</u>
			<u>NIL</u>
Property Income			54,488
Or rounded to			54,490

According to the Profit & Loss account the business income included interest income of ₹85,77,230/-. The assessee company did not incur any interest expenses in the previous year relevant to assessment year 2004-05. So, as the assessee company was never engaged in the business of money lending, the interest receipts were required to be classified only as "income from other sources". After

excluding the interest receipt the assessee derived net loss under the head "business income".

Business Income		77,81,402
LESS Interest receipts		<u>85,77,230</u>
Business Income	(-)	<u>7,95,828</u>
Income from other sources		85,77,230

As carry forward business losses cannot be set off against income from other sources, the interest income of ₹85,77,230/- is required to be taxed separately under "income from other sources" as per the regular provisions of the Act."

The Assessing Officer has recorded identical reasons for AY 2005-06 and 2006-07 also. However we notice that the NBFC certificate has been cancelled only on 7.3.2005. Hence in the financial year relating to the AY 2004-05 and in the substantial part of financial year relating to the AY 2005-06, the assessee was holding NBFC certificate. Hence, the reason of the Assessing Officer for re-opening of the assessment, in our view, fails in these two years. Accordingly, we are of the view that the re-opening of assessment of AY 2004-05 and 2005-06 are bad in law. The re-opening of assessment of AY 2004-05 is also liable to be cancelled in view of the first proviso to sec. 147 of the Act, since the assessment has been reopened after the expiry of four years from the end of the assessment year after completion of assessment u/s 143(3) of the Act. There is no allegation on the assessee that there was failure on the part of the assessee to disclose fully and truly all material facts necessary for assessment. Accordingly, we set aside the

order of Ld CIT(Appeals) on the issue of re-opening of assessment for AY 2004-05 and 2005-06 and accordingly quash the assessment orders passed for the above said two years.

13. We have earlier noticed that the assessee has voluntarily opted to exit from the NBFC business by filing a letter dated January 12, 2005 and accordingly the RBI has cancelled the NBFC certificate on 7.3.2005. Thus, it is seen that it was a conscious decision of the assessee to exit from NBFC business, meaning thereby the assessee has voluntarily decided to stop NBFC business. We notice that a Non banking financial company can commence or carry on business of non-banking financial institution only after obtaining a certificate of registration from the Reserve Bank of India in terms of Section 45-IA of the RBI Act, 1934. Hence, the assessee is prohibited from carrying on NBFC business after surrender of the NBFC certificate. Accordingly, the assessee has also changed its name to conform to the activities carried on by it. All these facts cumulatively show that the assessee has stopped NBFC business from 7.3.2005 onwards.

14. We further notice that the assessee has received interest income only from M/s South India Investments & Associates during the financial years relevant to the assessment years 2006-07 and

2007-08. Thus, it is seen that the assessee has deposited money with only one company, which happens to be a group company. Hence, on merits also, it is seen that the assessee cannot be considered to be carrying on NBFC business. Hence, in our view, there is no justification for the assessee to claim the interest income as its "business income". As submitted by Ld D.R, the assessee has set off brought forward loss against the interest income, by offering the interest income as its business income. If the interest income is assessed under the head income from other sources, then the assessee would not be entitled to set off the brought forward business loss against the income declared under the head Income from other sources. In that case, the total income of the assessee would go up by the amount so set off. Hence, in our view, there was reason with the AO to believe about escapement of income in AY 2006-07. Accordingly we uphold the re-opening of assessment of that year.

15. In the earlier paragraph, we have held that the assessee has received interest from only one company and hence the same cannot be considered as its business income. Hence, we are of the view that the Ld CIT(A) was justified in upholding the order of assessing officer in assessing the interest receipts under the head

Income from other sources. Accordingly we uphold the order of Ld CIT(A) passed for AY 2006-07 and 2009-10.

16. In AY 2009-10, the assessee has also urged one more ground relating to the computation of disallowance to be made under Rule 8D(2)(iii) of the I.T Rules. The Ld A.R contended that the average value of investments should have been computed by considering only those investments that have actually yielded dividend income. However, when it was pointed out that the relevant rules uses the expression “does not or shall not”, meaning thereby the relevant provision has intended to include all investments, the Ld A.R agreed to the same. Accordingly, this ground of the assessee is also dismissed.

17. In the result, the appeals filed by the assessee for Assessment years 2004-05 and 2005-06 are allowed and the appeals filed for AY 2006-07 and 2009-10 are dismissed.

Pronounced accordingly on 11<sup>th</sup> March, 2015.

sd/-

(विकास अवस्थी)

(VikasAwasthy)

न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,

दिनांक/Dated, 11<sup>th</sup> March, 2015.

Kri.

sd/-

(बी.आर. बास्करन)

(B.R. Baskaran)

लेखा सदस्य/Accountant Member

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)-V, Chennai-34
4. आयकर आयुक्त/CIT, Chennai-III, Chennai-34
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.