

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ “एफ” मुंबई
IN THE INCOME TAX APPELLATE TRIBUNAL “F” BENCH, MUMBAI
BEFORE S/SHRI B.R.BASKARAN,AM AND AMARJIT SINGH, JM

आयकर अपील सं./I.T.A. No. 7048/Mum/2011

(निर्धारण वर्ष / Assessment Years: 2001-02)

M/s. Velcord Textiles, Kudrat Building 7th Floor, 15 th Road, Khar, Mumbai 400 052	बनाम/ Vs.	Asstt.Commissioner of Income Tax, Central Circle- 19(1), Mumbai.
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

स्थायी लेखा सं./जीआइआर सं./PAN. : AABFV4557G

अपीलार्थी ओर से / Appellant by	Shri Shekhar Gupta
प्रत्यर्थी की ओर से/Rspondent by	Shri Mohammed Rizvan

सुनवाई की तारीख / Date of Hearing : 25.08.2015

घोषणा की तारीख /Date of Pronouncement:14.10.2015

आदेश / ORDER

Per AMARJIT SINGH , JM:

The present appeal preferred by the assessee is directed against the impugned order dated 7th September 2011, passed by the learned Commissioner (Appeals)-22, Mumbai, for the assessment year 2001-02.

2. The assessee has taken the ground to the effect that the reopening of the assessment for the assessment year 2001-02 is bad in law and also disallowing of interest is not justified as the same was not charged on the loan given by the assessee and the said order has wrongly been confirmed by the Id.CIT(A).

3. The facts of the case are that the assessee firm was engaged in the manufacturing of corduroy fabrics. The firm was having two partners namely Shri Ravindra Jain and Smt. Amla Jain. During the year under consideration, the assessee declared gross profit @11.06% against the turnover of Rs.3.56 crores. The last year's gross profit rate was @ 9.61 % as against the turnover of Rs. 5.05 crores. Initially, the Assessing Officer passed the assessment order dated 24th December 2003 u/s 143(3) of the Act, computing the loss to the tune of Rs.11,76,210. Subsequently, the assessment was re-opened under section 147 of the Act by issuance of notice under section 148 on 28th March 2008, which was duly served upon the assessee on 29th March, 2009. The AO has reopened the assessment on noticing that the assessee has given interest free loans to the tune of Rs.47.03 lacs, whereas, it has paid interest on its borrowings. After re-opening the assessment, the Assessing Officer disallowed the interest to the tune of Rs.8,46,866/- on the amount paid by the assessee company as interest free loan and advance. Feeling aggrieved, the appeal filed before the Id. CIT(A) and the Id. CIT(A) dismissed the plea taken by the assessee by virtue of order dated 7th September, 2011. Feeling aggrieved, the present appeal has been filed.

4. The Id. Counsel for the assessee has argued that in the instant case, the assessment order was finalised by the AO initially on 24th December 2003 and thereafter, the matter was reopened u/s 147 after by issuing notice dated 28.3.2008 after expiry of four years from the end of relevant assessment year. He submitted that there is no failure on the part of the assessee to disclose fully and truly all material facts. Hence he submitted that the AO has reopened the assessment on change of opinion, which is not permissible as per decision of Hon'ble Supreme Court rendered in the case of ACIT V/s ICICI Securities Primary Dealership (2012) (24

Taxmann.com 310).

5. It is also argued that the AO has wrongly added the interest on the loan amount which has been given by the assessee without interest, since the assessee was having sufficient own capital funds about Rs.2.88 crores. In support of this contention, the Id. Counsel for the assessee has placed reliance on the law laid down by the Hon'ble Bombay High Court in the case of CIT V/s Reliance Utilities Power Ltd. reported in 313 ITR 340 (Bom).

6. On the other hand, the Id. DR has refuted the said contentions and argued that the assessee is claiming the deduction of interest against the loan which he had taken but not recovering the interest on the loan which he has advanced and, therefore, under the said circumstances, the AO has rightly added the interest to the tune of Rs.8,46,866/- in the profit of the firm in accordance with law, hence, the appeal of the assessee is liable to be dismissed.

7. We heard the rival contentions and carefully perused the record. We notice that the assessment for the year under consideration was originally completed u/s 143(3) of the Act on 24.12.2003 and it was reopened by issuing notice dated 28.3.2008 u/s 148 of the Act. Hence, the assessment has been reopened after expiry of four years from the end of the relevant assessment year, in which case, the AO is required to comply with the conditions prescribed in the first proviso to section 147 of the Act, which reads as under :

"Provided that where an assessment under sub-section (3) of section 143 or this section has been made for the relevant assessment year, no action shall be taken under this section after the expiry of four years from the end of the relevant assessment year, unless any income chargeable to tax has escaped assessment for such assessment year by reason of the failure on the part of the

assessee to make a return under section 139 or in response to a notice issued under sub-section (1) of section 142 or section 148 or to disclose fully and truly all material facts necessary for his assessment, for that assessment year."

The plain reading of the above said proviso would show that the AO has to show that the assessee has failed to disclose fully and truly all the material facts necessary for the assessment during the course of original assessment proceedings. In the instant case, the AO has not given any finding to the effect that there was failure on the part of the assessee to disclose fully and truly all material facts. In the absence of such a finding, the impugned reopening of the assessment is liable to be quashed as per the decision rendered by the Hon'ble Supreme Court in the case of ACIT V/s ICICI Securities Primary Dealership Ltd (supra).

8. On merits, we notice that the assessee has given interest free advances to the tune of Rs.47.03 lakhs; whereas the assessee is having its own capital to the tune of Rs.2.88 crores. Further, a perusal of the loans availed by the assessee would show that the assessee has availed term loan of Rs.11.28 lakhs from Shamrao Vitthall Co-operative Bank for purchasing plant and machinery. Hence, the said loan could not have been utilised for giving interest free advances. Further, the assessee has availed cash credit loan of Rs.65.78 lakhs from the above said bank, whereas the assessee is holding stock-in-trade to the tune of Rs.2.53 crores and hence the said cash credit loan also could not have been used for giving interest free advances. Under these set of facts, the decision rendered by the Hon'ble Bombay High Court in the case of Reliance Utilities and Power Ltd (supra) shall also support the case of the assessee. Hence, on merits also, the addition made on account of interest expenditure is justified.

9. Since we have held that the reopening of assessment is bad in law, we set aside the order of Id. CIT(A) and quash the impugned assessment order passed by the AO.

10. In the result, the appeal of the assessee is allowed.

Pronounced accordingly on 14th Oct, 2015.

घोषणा खुले न्यायालय में दिनांक: 14th Oct, 2015 को की गई ।

Sd
(B.R. BASKARAN)
ACCOUNTANT MEMBER

sd
(AMARJIT SINGH)
JUDICIAL MEMBER

मुंबई Mumbai: 14th Oct, 2015.

व. नि. स./ SRL , Sr. PS

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)- concerned
4. आयकर आयुक्त / CIT concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /
DR, ITAT, Mumbai concerned
6. गार्ड फाईल / Guard file.

True copy

आदेशानुसार/ BY ORDER,

सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई /ITAT, Mumbai