

Additional Commissioner of Vs. Dresdner Bank Ag

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Court : Income Tax Appellate Tribunal ITAT Mumbai

Decided On : Oct-08-2004

Reported in : (2006)105TTJ(Mum.)185

Judge : P Kumar, A Jain

Appellant : Additional Commissioner of

Respondent : Dresdner Bank Ag

Judgement :

1. This is an appeal filed by the Revenue and is directed against the order dt. 31st Jan., 2001, passed by the CIT(A) for the asst. yr.

1997-98 and in the matter of assessment under Section 143(3) of the IT Act, 1961. The only grievance raised by the Revenue is as follows : On the facts and in the circumstances of the case and in law, the learned CIT(A) has erred in holding that 'gross interest' earned on foreign currency deposits should be considered for deduction under Section (15)(iv)(fa) as against the 'net interest' considered by the AO as per the decision of the Supreme Court in Escorts Ltd. v. Union of India , (i.e., gross interest reduced by the expenses attributable to earning of interest on foreign currency deposits).

2. The factual matrix giving rise to this dispute before us is as follows. The assessee is a foreign bank and it operates in India through its permanent establishment in Mumbai. During the course of assessment proceedings, the AO

noticed that in the IT return the assessee had made a claim of exemption of interest income of Rs. 25,58,820 under Section (15)(iv)(fa) of the Act. Vide letter dt. 9th Sept., 1997, however, this claim was revised to the amount of Rs. 1.66.23.772 and vide another letter dt. 22nd Sept., 1999, it was again revised for Rs. 1,65,45,773. In support of the proposition that an assessee can so revise its claim during the assessment proceedings, the reliance was placed on the judgments of Hon'ble Allahabad High Court in the cases of Aschaiajlal Ram Parkash v. CIT and Subhash Chandra Sarvesh Kumar v. CIT as also on the judgment of Hon'ble Calcutta High Court in the case of CIT v. Shree Bajrang Electric Steel Co. (P) Ltd. . The AO declined to accept the revised claim on the ground that "the assessee has filed the revised return and now there can be no further change on the part of the assessee to change his figure of taxable income" and that "what has been denied by the statute cannot be allowed by the AO". Reliance was also placed on the judgment of Hon'ble Supreme Court in the case of Kumar Jagdish Chandra Sinha (Dead) through LRs Etc. v. CIT for the merits of the claim of deduction, the AO was of the view that the exemption under Section can only be in respect of the 'income' which essentially implies the net figure of income and not the gross receipts. It was thus concluded that what is to be exempted under Section (15)(iv)(fa) was not the gross interest receipt but the net income from such interest i.e. interest income minus the expenditure incurred to earn that interest income. The AO, relying upon the judgment of Hon'ble Supreme Court in the case of CIT v. United General Trust Ltd. , concluded that "where it is not possible to determine accurately the expenses, proportionate expenses have to be determined". The AO further observed that as per P&L a/c of the assessee, it has incurred an expenditure of Rs. 46,07,69,133 to earn an income of Rs. 44,51,43,674 resulting in a net loss of Rs. 1,56,25,459. On this basis, it was concluded that "the proportionate expenditure for earning income claimed to be exempt would be more than the income". The AO thus inferred as "that means there is net loss for income claimed to be exempt under Section (15)(iv)(fa)". It was in this backdrop that the claim of exemption of interest income of Rs. 1.65.45.773 was rejected by the AO. Aggrieved, assessee carried the matter in appeal before the CIT(A) who disapproved this action of the AO for more reasons than one. The CIT(A) was of the view that the assessee deserves to succeed on

the basis of judgment of Hon'ble Supreme Court in the case of Rajasthan State Warehousing Corpn. v. CIT (2000) 159 CTR (SC) 132 : (2000) 242 TFR 450 (SC), which lays down that where the assessee is carrying out an indivisible business and even if a part of profits of such business is exempt from tax, entire expenditure incurred for the purpose of said business is to allowed as deduction. The CIT(A) further held that since the assessee has not incurred any expenditure for the purpose of earning the impugned interest income, it is not fair to restrict the exemption by reducing the same by estimated expenditure without any scientific basis.

Finally, the CIT(A) also held that Section (15)(iv)(fa) contemplates exemption of income on gross basis and not net basis. Revenue is not satisfied and in appeal before us.

3. We have heard Shri Maheshwari, learned GIT (Departmental Representative), and Shri Pardiwala, learned Counsel for the assessee.

We have also carefully perused the material before us and duly considered the applicable legal position in the light of facts of the case.

4. We consider it necessary to reproduce the Section (15)(iv)(fa) which provides as follows : 10. In computing total income of a previous year of any person, any income falling within any of the following clauses shall not be included : (fa) by a scheduled bank to a non-resident or to a person who is not ordinarily resident within the meanings of Sub-section (6) of Section 6 on deposits in foreign currency where the acceptance of such deposits by the bank is approved by the Reserve Bank of India." In the context of the above legal provision and as evident from the ground of appeal itself, Revenue's reliance on the judgment of Hon'ble Supreme Court in the case of Escorts Ltd. v. Union of India appears to be misplaced. No doubt, the said judgment lays down that double deduction cannot be a matter of inference, it must be provided for in clear and express language having regard to its unusual nature and serious impact on the revenues of the State, but then the case before us does not deal with the double deduction at all. The basic issue here is whether the exemption under Section (15)(iv)(fa) is on net basis or on gross basis and Revenue's objection is that in case the exemption is to be allowed

on gross basis, the same will be inequitable inasmuch as cost of funds for earning of the said interest income will also be allowable to the assessee, as deduction in computing the profits attributable to PE. Learned Departmental Representative has also relied upon the provisions of Section 14A in support of the contention that no deduction can be allowed in respect of the expenditure incurred by the assessee in relation to an income exempt from tax. Whichever way one looks at it, the basic objection of the Revenue is that effectively only net income i.e. eligible interest minus the expenditure incurred to earn the interest, can be allowed exemption from tax. This objection, however, proceeds on the assumption that there is a cost of the funds which have been invested to earn the interest exempt under Section (15)(iv)(fa) but, in the statement of facts, the assessee has made a categorical assertion that the assessee "has neither incurred any expenditure nor borrowed any amount which can be identified as towards earning of the aforesaid interest" and the CIT(A) has, on this basis, held that on these facts it was not open to the AO "to estimate the expenditure without any scientific basis". We have noted that this finding of the CIT(A) has not been challenged by the Revenue. Once the Revenue accepts this finding, as they have chosen to do in the case before us, the grievance raised before us is rendered purely academic. It does not merit any adjudication by us. In any event, no specific costs have been pointed out which are incurred by the assessee to earn the eligible interest. We, therefore, decline to entertain and adjudicate on this academic question i.e. whether the exemption under Section (15)(iv)(fa) is to be allowed on gross basis or on net basis. Revenue's grievance, therefore, must be rejected as devoid of substance and devoid of any legally sustainable merits on the facts of this case.

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