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% 26.11.2009

Present: Mr. Sanjeev Sabharwal for the appellant.  
Ms. Kavita Jha with Mr. Sriram Krishna for the respondent.

+ ITA No. 1111/2009  
ITA No. 1112/2009

(Common Order)

To recapitulate the facts in brief: the assessee herein is admittedly carrying on speculative business in share and stocks. It is registered with certain stock exchanges for this purpose in the relevant assessment years, which are the subject matter of this appeal. The assessee had sustained losses in the said business, i.e. speculative losses. At the same time, the assessee earned some interest on the Fixed Deposit Receipts (FDRs) which were deposited with the stock exchanges. The assessee wanted the interest income earned from the said FDRs to be set off against the speculative losses.

The Assessing Officer (AO) rejected this plea of the assessee on the ground that interest income from the FDRs would not be treated as business income, but would be income from other sources. Appeal preferred by the assessee before the CIT(A) failed as the order of the AO was affirmed. In the second appeal filed by the assessee before the Income Tax Appellate Tribunal (for short, the 'Tribunal'), the assessee has



succeeded partially. The Tribunal has observed that the contention assessee that he is a stock broker who had kept certain FDRs as margin money with the stock exchanges in connection with the business and interest on FDRs should be treated as business income and the said deposit of those FDRs was inextricably linked with the business as without keeping those FDRs with the stock exchanges, it was not possible for the assessee to do the business, has not been dealt with by the AO. Referring to the judgment of this Court in *CIT v. M/s. Koshika Telecom Ltd.*, 286 ITR 479, the Tribunal observed that if the aforesaid FDRs are kept as margin money and are inextricably linked with the business of the assessee, then, it would be treated as business income and not income from other sources. As this exercise was not done by the AO, the Tribunal has remitted the case back to the AO for passing a fresh order after necessary examination in the light of the observations made by the Tribunal in its order.

Up to this, the Revenue has no issues. However, the submission of Mr. Sanjeev Sabharwal, learned counsel appearing for the Revenue in these appeals, is that even if the interest income from those FDRs is treated as business income, the assessee shall not be entitled to seek set off as only speculative income can be set off against speculative losses. For this purpose, he has relied upon the judgment of the Supreme Court in



the case of *Commissioner of Income Tax, Kerala v. Pangal Vittal N Co. Pvt. Ltd.*, 74 ITR 754.

This contention advanced by the learned counsel for the Revenue cannot be gone into in these appeals unless it is first determined whether the interest income is business income or it is income from other sources. For that purpose, matter has to be investigated by the AO, as pointed out above. In these circumstances, we are of the view that proper course would be to direct the AO to determine this issue as well. To put it otherwise, if the AO is of the opinion that the interest income from the said FDRs is to be placed in the category of income from other sources, no further inquiry would be necessary. On the other hand, if he comes to the conclusion that it is an income from business, he shall then decide as to whether such an income has to be treated as speculative income and can be allowed to be set off against the speculative losses.

The appeals are disposed of in the aforesaid terms.

  
A.K. SIKRI, J.

  
SIDDHARTH MRIDUL, J.

November 26, 2009  
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