



#18

% 07.01.2011

Present: Ms. Rashmi Chopra with Mr. Chandramani Bharadwaj,
Advocates for the Revenue.
Mr. Anoop Sharma with Mr. Manu K. Giri, Advocates for the
respondent/assessee.

+ ITA No.174/2010

*

We find from the impugned order passed by the Income Tax Appellate Tribunal (hereinafter referred to as 'the Tribunal') that both the Department as well as the assessee had filed appeals, which are decided by the said common order. Insofar as the appeal of the Department is concerned (which is the subject matter of the present appeal as well), following two grounds were raised:

- (i) The learned CIT(A) has erred in law and in facts and circumstances of the case in allowing the deduction of ₹13,98,888 out of remission of interest income.
- (ii) The learned CIT (A) did not appreciate that the loss of ₹13,98,888 relates to Assessment Year 1993-94, which cannot be set off against the income of Assessment Year 2003-34, as it is beyond the limit of eight years.

Insofar as the first ground is concerned, we may record that the Assessing Officer (AO) has disallowed the deduction of ₹13,98,888 out of remission of interest income. This order of the AO



was reversed by the CIT (A). The Department has challenged the order of the CIT (A) in allowing the said deduction. The Tribunal has decided this ground in favour of the Department clearly holding that the CIT(A) was wrong in allowing the said deduction. It is also categorically stated by the Tribunal that the remission of interest as conceded by the AO is taxable as per the provisions of Section 41(1) of the Income Tax Act. After deciding the aforesaid ground No. (i), in respect of ground No.(ii) the matter is restored to the AO with the following direction:

“12. Accordingly, we allow the ground No. 1 of the appeal taken by the Department and restore ground No.2 of the appeal to the AO with a direction to give effect to the order of the Ld. CIT (A) dated 29.01.1997 for the A.Y. 1993-94 and to re-compute the brought forward losses of earlier years as per provision of law.”

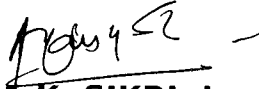
It is against this direction that the Department is agitated and the submission of Ms. Rashmi Chopra, learned counsel appearing for the Department, is that the benefit of brought forward losses could not be given in the appeal beyond the limit of eight years.

No doubt, the Tribunal has directed the AO to give effect to the order of the CIT(A) dated 29.01.1997 for the Assessment Year 1993-94. At the same time, it is also observed that the AO would re-compute brought forward losses of earlier years as per the provision of law. We make it clear that the AO would keep in mind the provision of law and if the assessee is not entitled to carry forward of losses while



giving the appeal effect beyond the limit of eight years, the AO would be free to reject the same.

This appeal is accordingly dismissed.


A.K. SIKRI, J.


M.L. MEHTA, J.

JANUARY 07, 2011
pmc