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***IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 21st November, 2013

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INCOME TAX APPEAL 27/2013

COMMISSIONER OF INCOME TAX: DELHI-VIII...Appellant
Through Mr. Balbir Singh, Standing Counsel.

versus

ASHOK MITTAL Respondent
Through Mr. Mohit Chaudhary, Ms. Damini
Chawla, Ms. Radhika Arora and Mr. Harsh Sharma,
Advocates.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

SANJIV KHANNA, J. (ORAL)

This appeal by the Revenue under Section 260A of the Income Tax Act, 1961 (Act, for short) relates to assessment year 2000-01. By order dated 8th April, 2013, notice limited to the question of addition of Rs.31.5 lacs was issued. The contention of the Revenue is that the respondent-assessee had earned income of Rs.31.5 lacs as “Investment Manager” from Fareast Corporation Pvt. Ltd. and M/s European Investment Ltd. but this income should be taxed under the head “income from other sources”. Tribunal, it is submitted has erred in holding it as “business income”.

2. The respondent-assessee, an individual, was carrying on six



different types of business activities as per paragraph 3.1 of the assessment order. For the purpose of the said activities, the assessee had also setup six different sole proprietorship concerns. The details of the sole proprietorships and the activities carried on are as under:-

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S.No	Name of Concern	Business Activities
1.	M/s Ashok Mittal & Co	Dealing in shares, investments loan finance & related activities
2	M/s Pandy Marble Processors	Dealing in Marble & tiles
3.	Ms. Litolier	Trader/Dealer in Lamps & Lighting, Fittings, Fixtures etc.
4.	Ms. Light & Lighting	Trading in Lamps, Lighting Accessories & Fitting etc.
5.	M/s Carrara Marbles & Granite Industry	Manufacturing of Marble items
6	M/s Ashok Exports	Exports of Marble

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3. The first/original assessment order records that the concerns mentioned from serial number 2 to 6 during the assessment year in question had virtually carried out no business activity. The entire business activity was carried out by M/s Ashok Mittal & Co. The assessment order records that all the six concerns were situated at one premises and M/s Carrara Marble & Granite Industries had a factory at Daman. The assessee has stated that they had maintained a common centralised expenditure account for the six sole proprietorship concerns. The expenditure relating to each concern was apportioned. The stand



of the respondent-assessee was that income of the each sc proprietorship concern was ultimately to be taxed in one hand i.e. the individual and all income and expenditure would have therefore be clubbed. The Assessing Officer in the assessment order has recorded that prima facie the contention of the respondent-assessee appeared to be logical and acceptable, but the assessee had debited huge expenses in the profit and loss account of M/s Litolier and this should not be accepted. He further observed that the claims were too high when compared to the business carried out by the each proprietary concern. He accordingly disallowed on ad-hoc basis some portion of the expenditure incurred by M/s Litolier. First appellate authority agreed with the Assessing Officer. On further appeal before the tribunal, an order of remand was passed for fresh decision after examining the veracity of claim by the assessee.

4. In the second round, the Assessing Officer examined claim of Rs.31,50,000/- received as management and advisory fee from Fareast Corporation Pvt. Ltd. and M/s European Investment Ltd. under the heading “Miscellaneous Income”. The Assessing Officer has held as under:-

“3. Miscellaneous Income

That during the year the assessee has received Rs.31,50,000/- as management & advisory fees from Fareast Corporation Pvt Ltd. and M/s



European Investment Ltd copy of the agreements are enclosed. It may stated that the similar receipt of the assessee in A.Y. 1998-99 and 1999-2000 have been assessed as business income. A comparative chart regarding miscellaneous income received by the assessee for A.Y. 1999-2000 to 2001-02 is enclosed.

The receipt on account of establishment charges has been assessee in earlier assessment years as 'Business Receipts' and following the principle of consistency, the same may be treated as 'Business Receipts'

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5. Thereafter, Assessing Officer has made reference to other issues under the same heading but the same are not relevant. The only finding recorded by the Assessing Officer is as under:-

“During the year, the assessee has claimed the receipt of Rs.31,50,000/- from M/s Fareast Corporation Pvt. Ltd. and M/s European Investment Ltd. The assessee has filed the copy of the agreement entered into by the assessee with both the above parties. On going through the agreement it is seen that the assessee has been appointed as investment manager by both of these firms (namely M/s. Fareast Corporation Pvt. Ltd. and M/s. European Investment Ltd.) to invest and reinvest and manage such of its funds as may from time to time be entrusted to him and in consideration of the services to be rendered by the investment manager under this agreement, the company agreed to pay sum of Rs.1,50,00/- per month. The assessee was asked to indentify expenses attributable to Misc. expenses vide not sheet entry dated 19.11.2010. However, the assessee has stated that he has not maintained the separate records of expenses incurred by M/s Litolier against different sources of income and



segregated the expenses in the ratio of income earned which is not acceptable especially when this income is assessed as income from other sources. This income cannot be accepted to be business income since the assessee has not been able to identify and substantiate the expenses incurred for earning such income. There does not appear to be any expenses on account of infrastructure, staff etc. for earning the income under the head miscellaneous income. Hence this income is to be assessed under the head income from other sources.”

6. It is clear from the aforesaid finding recorded by the Assessing Officer that he has not discussed the nature and character of the said receipt. The Assessing Officer did not dispute genuineness of the receipt. He has accepted that income was received pursuant to the agreements between the assessee and M/s Fareast Corporation Pvt. Ltd. and M/s European Investment Ltd. As noticed above, the assessee also dealt with share investment, loan finance and related activities.

7. The Commissioner of Income Tax (Appeals) in the first appellate order deleted the said addition and has held that the receipt of Rs.31.5 lacs was taxable under the head “business income” and not as “income from other sources”. He observed that the Assessing Officer had not discussed the basis and had assumed that no expenses were incurred for earning of income from management and advisory services and in case the Assessing Officer was not satisfied on the basis of segregation of expenses, he should have adopted some other method for



apportionment of expenses. He further observed that the Assessei had erred in treating the receipt of Rs.31.5 lacs under the head “income from other sources” instead of “business income” as he had neither stated nor held that the assessee was not rendering services to the foreign companies. Moreover, all expenses claimed by the respondent- assessee were allowed by the Assessing Officer under the head “other business income” of M/s Litolier and there was no dispute that expenses were incurred by M/s Litolier. He has held:-

“4.1 After examining the nature of these receipts and the accounting treatment in the appellant’s books of accounts, I am of the opinion that the Assessing Officer has not appreciated the facts. The controversy regarding whether the income is to be treated as business income or as Income from Other Sources has arisen on account of the appellant crediting the gross amount of Rs.31,50,000/- to the Profit & Loss Account of M/s. Litolier, which is engaged in the business of trading of lamps. The Assessing Officer was of the view that the receipts from management and advisory fees had nothing to do with the business activity of M/s Litolier, hence the same could not be treated as business income. However, the Assessing Officer has failed to examine the nature of the receipts independently, as directed by the Hon’ble ITAT. It has been submitted before the undersigned that the copies of the agreements entered into by the appellant with Far East Investment Corporation Ltd. and European Investment Ltd. were filed before the Assessing Officer vide letter dated 27.08.2010 which show that the appellant’s proprietorship concern M/s Litolier was appointed as ‘Investment Manager’ to invest and manage the funds and assets entrusted to him by these Mauritius based companies. The appellant has contended that the management fees were accounted for. In the case of M/s. Litolier



because as per its consistently followed modus operandi, administrative expenses are incurred centrally through M/s Litolier and apportioned in the different proprietorship business concerns in proportion to the turnover. The appellant has not maintained separate record for expenses incurred for separate sources of income and has shown all expenses incurred under one consolidated account for his convenience. However, it cannot be denied that some expenditure has been incurred for earning of the management and advisory fees in terms of common expenses of office overheads, salaries, rent etc. It is also seen that the Assessing Officer has not disallowed any portion of the expenditure claimed by M/s. Litolier, thus, implicitly accepting that the expenditure is duly incurred. Whether the expenditure is deducted against the Income from Business of M/s. Litolier or against the Income from Other Sources, it results in no difference to the taxable income. Moreover, it is seen that the appellant also derives income from business of speculation, dealing, in shares, investments, loan finance and related activities in the name of M/s Ashok Mittal & Co. Hence the management of the funds and assets of the two afore-mentioned companies is along the lines of the business activity of the other proprietorship concern. I find no cogent reason in the assessment order to support the finding that the income from management and advisory fees requires to be assessed as Income from Other Sources. The Assessing Officer has brought nothing on record to prove that the appellant did not carry out the stated activity of investment management. The alleged reason that the appellant could not identify the related expenses does not establish that the income was not derived from the business activity of 'Investment Manager'.

(4.2) The appellant's contention that on the principle of consistency, the income from investment management and advisory fees should have been assessed as business income is also with merit. There is no fundamental difference in the nature of business activity between the present income. In the



Assessment Year 1998-99, the ‘miscellaneous income’ was disclosed and assessed as business income in the order under section 143(3) dated 29.03.2001. This was the first year of the agreement signed with Far East Investment Corporation Ltd. and European Investment Ltd. As there is no change in the terms of the agreement or in the nature of services rendered, even on account of principle of consistency, the Assessing Officer action of treating the income as Income from Other Sources is not justified. For all the above reasons, the appellant succeeds at Grounds of Appeal Nos.1 to 2.”

The aforesaid findings have been affirmed by the tribunal.

9. In view of the aforesaid factual position, we do not find any merit in this appeal and the same is dismissed. No costs.

SANJIV KHANNA, J.

SANJEEV SACHDEVA, J.

NOVEMBER 21, 2013
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