

## **Interest paid by stock-broker was deductible under sec. 57 as borrowings were utilized for deposits with NSE**

**Summary – The Mumbai ITAT in a recent case of Triumph International Finance India Ltd., (the Assessee) held that where assessee stock broker had to make deposit with NSE and said deposits were made after taking loan from banks, interest so paid during period of suspension of assessee as a stock broker should be allowed as deduction under section 57(iii)**

**Where assessee had temporarily discontinued business, depreciation could be claimed in year in which business was recommenced**

### **Facts**

- During the year under consideration, the assessee was not doing any business activity but in earlier years was engaged in the business of trading in shares and securities. The assessee was barred from undertaking any business as stock broker or Merchant banker.
- The assessee filed e-return declaring *NIL* income. In the return of income, assessee claimed loss on account of decrease in valuation of stock and also claimed business loss on account of various expenses. Besides these expenses, the assessee had earned interest income.
- The scrutiny proceedings were initiated against the assessee and statutory notices under section 143(2) and 142(1) were served upon the assessee.
- The Assessing Officer observed that since the assessee was not carrying on any business activity during the year and, accordingly, came to the conclusion that the loss claimed on account of decrease in valuation of stock and expenses claimed in the profit and loss account were not allowable and assessed the total income from interest under the head 'Other sources'.
- Aggrieved by the order of the Assessing Officer, the assessee preferred an appeal before the Commissioner (Appeals). The assessee submitted that interest incurred to bank has direct nexus with the income earned by way of interest from National Stock Exchange and, therefore, covered by provision of section 57(iii). However Commissioner (Appeals) dismissed the appeal of the assessee.
- On assessee's appeal to the Tribunal:

### **Held**

- The business of the assessee was discontinued following the order of SEBI which was upheld by the SAT and Apex Court also and, thus, the business of the assessee came to forced stand still. The assessee was doing business of security and stock broking and trading in shares. The discontinuance of business by the order of SEBI, the National Stock Exchange invoked the guarantees furnished by the assessee and also exercised the lien on FDRs and proceeds of FDR were also send to the National Stock Exchange by the various banks when the assessee was declared defaulter by the NSE resulting into accumulation of deposit to the tune of Rs. 24 crores with National Stock Exchange on which the NSE allowed interest of Rs. 2.60 crores during the financial year 2007-08 relevant to the assessment

year under consideration. These deposit of Rs. 24 crores accumulated out of various bank guarantee invoked and proceeds of FDRs given as security. The source of the said amounts of accumulated funds with the NSE are from the borrowed funds from banks. Now the question is whether the assessee is entitled to deduction of interest incurred to various banks from whom the funds were arranged from the interest received from National Stock Exchange which is assessable under the head 'income from other sources'.

- The interest is not in doubt or disputed that the interest received from the National Stock Exchange on the total amount of deposit with it is assessable as income from other sources'. So far as the question of deduction *qua* interest to various banks is concerned, it was opined that if there is nexus between the interest received and interest to banks on borrowings , the same is to be allowed as deduction under section 57(iii).
- The National Stock Exchange exercised lien on FDRs of Rs. 5 crores on 23-7-2002 (proceeds of FDRs Rs. 5.94 crores) which was purchased on 19-7-2000 out of money borrowed from the Global Trust Bank and the assessee incurred interest on the said bank to the tune of Rs. 95 lakhs. Three other deposits out of interest bearing funds from Global Trust Bank were also given Rs. 2 Lakhs on 7-2-2000, Rs. 6 Lakhs on 21-9-2000 and Rs. 25 Lakhs on 18-10-2000 on which the assessee incurred interest of Rs. 6.27 Lakhs. Interest on bank guarantees invoked by the stock Exchange Rs. 3.15 crores from Global Trust Bank , interest of Rs. 59.85 Lakhs was incurred and on Rs. 3 crores from Centurian Bank out of which Rs. 2.11 crores were interest bearing and interest incurred was at Rs. 33.76 Lakhs. Likewise assessee incurred interest of Rs. 80 Lakhs on the amount of invoked bank guarantee of Rs. 5 crores from ICICI Bank. Thus, the total amount of interest incurred to various banks on the borrowings comes to Rs. 2.74 crores.
- There were clear cut nexus between the interest earned from NSE on deposits with National Stock Exchange out of bank guarantees invoked and proceeds of FDRs and interest incurred on the sources of funds which are from the various banks out of the interest bearing funds given to NSE in the form of the bank guarantees invoked in year 2002 and FDRs with lien in favour of NSE on which the lien was exercised in 2002. The interest incurred to these banks namely Global Trust Bank and Centurion Bank, ICICI Bank should be allowed while assessing the interest income of the assessee from the deposits with NSE. Accordingly, the order of the Commissioner (Appeals) were set aside and direct the Assessing Officer to allow deduction of interest of Rs. 2.74 crores out of the interest received from the National Stock Exchange. This ground is allowed in favour of the assessee.
- The issue raised in respect of depreciation amounting to Rs. 1.79 Lakhs raised in ground No. 2 not allowing the depreciation to the assessee. The assessee has discontinued the business following the order of SEBI and, therefore, there was no activity during the year and the claim of the depreciation of Rs. 1.79 Lakhs cannot be allowed as the assessee did not carry out any business activity. However, the assessee is free to claim deprecation in the year in which the business is re-commenced on the basis of Written Down Value in the year in which the business was discontinued.
- In the result, the appeal of the assessee is partly allowed.