

Expenditure incurred on issue of Foreign Currency Convertible Bonds was deductible as revenue expenditure

Summary – The Mumbai ITAT in a recent case of Reliance Natural Resources Ltd., (the Assessee) held that where assessee incurred expenditure in connection with issue of foreign currency convertible bonds, said expenditure was deductible as revenue expenditure

Facts

- The assessee-company was engaged in the business of providing fuel and facilitation services in various forms to power plants and was also engaged in the joint venture operations for exploration and production of coal based Methane blocks.
- For the relevant assessment year 2009-10, it claimed deduction of certain expenditure incurred in connection with the issue of foreign currency convertible bonds (FCCB).
- The Assessing Officer following his orders passed in the assessee's own case in earlier years on the identical issue disallowed the said expenses by treating the same as capital expenditure.
- The Commissioner (Appeals) having noticed that he had allowed the identical claim of the assessee made in the earlier years reversed the order passed by the Assessing Officer.
- On appeal to Tribunal:

Held

- The Coordinate Bench of the Tribunal has considered an identical issue in IT Appeal No. 1425/Mum/2011, dated 8-7-2016 relating to the assessment year 2007-08 and also in IT Appeal No. 6711/Mum/2012, dated 24-8-2016 relating to the assessment year 2008-09. In both the years, the Tribunal has confirmed the decision rendered by the Commissioner (Appeals) and accordingly decided the issue in favour of the assessee.
- The decision rendered in the assessment year 2007-08 has been followed in assessment year 2008-09. In the assessment year 2007-08, the Coordinate Bench has followed the decision rendered by the Tribunal in the case of *Prime Focus Ltd. v. Dy. CIT* [IT Appeal No. 836 (Mum.) of 2011, dated 4-2-2016]. In the case of *Prime Focus Ltd.*, the Tribunal observed that the FCCB is akin to borrowings made by issuing debentures and both of them are different types of debt instruments only. Accordingly it was held in the case of *Prime Focus Ltd.* that the expenses incurred in connection with FCCB are revenue in nature. The Tribunal, in the instant case, further noticed that FCCB holders never had any voting rights as the same were not converted into equity shares of the company during that year. In view of these facts, the Coordinate Bench held that the expenditure incurred by the assessee in connection with the issue of FCCB is revenue in nature.

- Since the Coordinate Benches have already taken a view in this matter, consistent with the view taken by the Tribunal, it has to be held that the Commissioner (Appeals) was justified in holding that the expenditure incurred in connection with the issue of FCCB is deductible as revenue expenditure.