

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH: 'D' NEW DELHI**

**BEFORE SH. H.S. SIDHU, JUDICIAL MEMBER  
AND  
SH. O.P. KANT, ACCOUNTANT MEMBER**

ITA No. 5464/Del/2011  
Assessment Year: 2008-09

Asstt. Commissioner of Income Tax, Circle-17(1), C.R. Building, New Delhi	<b>Vs.</b>	M/s. Vashulinga Finance Pvt. Ltd., 1004, Chiranjiv Tower, 43, Nehru Place, New Delhi
<b>GIR/PAN :AABCV4461G</b>		
<b>(Appellant)</b>		<b>(Respondent)</b>

Appellant by	Ms. Sulekha Verma, CIT (DR)
Respondent by	Sh. K.P. Garg, CA

Date of hearing	26.05.2016
Date of pronouncement	14.07.2016

**ORDER**

**PER O.P. KANT, A.M.:**

This appeal of the Revenue has arisen consequent to the judgment of the Honøble High Court of Delhi in ITA 274/2013, dated 07/08/2014 in the case of the assessee, wherein the issue of -head of taxabilityø has been remitted back to the Tribunal for deciding a fresh.

2. The facts in brief of the case are that in the assessment proceedings, the Assessing Officer observed that in the return of income filed, the assessee claimed set off of brought forward business losses against income of Rs. 24,94,407/- for the year under consideration. Further, on perusal of profit and loss account, it was revealed that the assessee earned interest income amounting to Rs. 91,26,226/- from the deposits in banks, which was shown under the head -business incomeø According to the Assessing Officer, the interest income should have been taxed under the head -income from other sourcesø It was explained by the assessee, that it was registered as a non-banking financial

institution and engaged mainly in the business of advancing loan and earn interest and in the year under review, the company could not find suitable borrowers and, therefore, fund remained with banks and earned interest income from banks. Accordingly, the assessee claimed that interest income was business income and therefore set off of brought forward losses against the business income was justified. The Assessing Officer (in short the AO) did not accept the submission of the assessee. According to the AO the assessee had not earned any income by way of interest on loans and advances while the entire interest income was earned from bank deposits. The interest income was accordingly assessed by the AO under the head income from other sources and set off of brought forward business loss against the interest income was denied to the assessee. On appeal, the Ld. Commissioner of Income-tax (Appeals), following the order of Id. Commissioner of Income-tax (Appeals) in the immediately preceding year, held the interest income as income from business and allowed set off of brought forward business losses accordingly. Aggrieved, the Revenue filed appeal before the Tribunal raising following grounds of appeal:

1. *On the facts and in the circumstances of the case an in law the learned CIT(A) has erred in allowing the appeal of the assessee company by holding that the interest on FDR etc. amounting to Rs. 91,26,226/- was assessable under the head 'business income' and hence the benefit of set off brought forward business loss was to be allowed.*
2. *The appellant craves for reserving the right to amend, modify, alter, add or forego any ground(s) of appeal at any time before or during the hearing of appeal.*

3. The Tribunal in its order dated 22/05/2012 dismissed the appeal of the Revenue on the ground that in the preceding assessment year 2007-08, the issue was decided against the Revenue. On appeal by the Revenue under section 260A, the Honøble High Court, remanded the matter back to the Tribunal to decide the issue of head of taxability afresh as the reliance placed by the Tribunal in the order of assessment year 2007-08 was not correct, as the issue in

dispute was not dealt by the Tribunal in order for assessment year 2007-08. The relevant finding of the Honøble High Court is reproduced as under:

*“During the course of hearing before us, it is accepted by the ld. counsel for the parties that the issue regarding head of income under which interest income should be taxed was not raised by the Revenue before the Tribunal in the assessment year 2007-08. This is the correct position. Thus, order of the Tribunal relating to assessment year 2007-08 dated 15.06.2011 had not dealt with and examined the said issue. The Tribunal could have followed their order of assessment year 2007-08, if the issue of head of income was decided by them in the earlier order dated 15.06.2011. Nature and character of the deposit, the source, purpose for which they were used etc. are relevant aspects which have to be examined before the said question can be answered. Further each assessment year is separate and findings in one year can be applied to maintained consistency and certainty, but after considering and holding that factual matrix is same/similar. Failure or absence of appeal before Tribunal in one year, need not be fatal foreclosing the issue.*

*In these circumstances, we pass an order of remand directing the Tribunal to decide the issue of “head of taxability” afresh. The question of law is, accordingly, answered in favour of the Revenue and against the respondent-assessee, but clarifying that we have not made any observations as to the head under which income from interest would be taxable.”*

4. Before us, the ld. Senior Departmental Representative relying on the order of the Assessing Officer submitted that the assessee company did not earn any interest on loans, which was its primary business activity and the interest income earned on the surplus money lying ideally in the banks was rightly assessed under the head income from other sources by the Assessing Officer. On the other hand, the ld. Authorized Representative of the assessee supported the order of the Ld. Commissioner of Income-tax (Appeals).

5. We have heard the rival submissions and perused the material on record. The Ld. Commissioner of Income-tax (Appeals) has held the interest income is assessable under the head -business incomeø The relevant finding of Ld. Commissioner of Income-tax (Appeals) on the issue in dispute is as under:

“8. The assessee is a Non Banking Financial Institution registered with RBI from 19.06.2002 and it has been regularly assessed to tax.

9. Similar issue has arisen in the A.Y. 2007-08 and the issue was decided in favour of the appellant by CIT(A) in the order dated 04.10.2010 in Appeal No. 254/2009-10. The findings and conclusions of the CIT(A) are as under:

“10.1 There is no dispute that the assessee is an NBFC and interest income on the loan advanced and the interest on the Bank deposits was offered as business income which was accepted in the earlier years as seen from assessment orders passed as detailed below:

A.Y.	Interest from Bank Deposits	Other interest receipts	Nature of Order	Date of Order
2004-05	29,98,556	10,17,941	143(3)	29.12.06
2005-06	31,35,589	7,05,705	143(1)	13.03.06
2006-07	31,38,833	2,09,164	143(3)	15.12.08

10.2 It is a fact that monies/funds are stock in trade or circulating capital in an NBFC. The funds are rolled out either in the shape of loans or Bank deposits depending upon the business needs/ contingencies. Some times when there is no suitable borrower of funds, the funds are temporarily parked as Bank deposits.

10.3 In the light of the above discussion, the interest on Bank deposits and other interest receipts are to be considered as income from business and the action of the AO in treating as ‘income from other sources’ is not upheld.”

10. Facts and the issue being the same, following the appellate order for A.Y. 2007-08 as mentioned above, the action of the A.O. is not upheld.”

6. It was submitted by the assessee before the learned Commissioner of Income-tax (Appeals) that at the relevant period, the assessee was a registered non-banking financial company duly registered with the Reserve Bank of India for the past many years and the investment in the banks was also equal to any private investment. Further, it was submitted that discretion to invest an amount with a particular entity was entirely that of the assessee and cannot be dictated by the Assessing Officer. It was urged that in view of the nature of the business activity of the assessee company, the interest income earned from bank was in the nature of business activity. It was submitted that the assessee company

deployed its business fund on commercial consideration such as safety, rate of return, reputation etc of the entity where money was to be deposited. Further, it was submitted that in the financial year 2007-08 the financial market was in flux an investment entities were facing a difficult time, in such circumstances banking investment was the safest destination for funds. The Ld. Senior Departmental Representative could not controvert the above factual position. In view of above facts and circumstances, the interest income has been rightly held by the Ld. Commissioner of Income-tax (Appeals) as income from business activity. Further, the Ld. Commissioner of Income-tax (Appeals) has also noted that interest income is being assessed under the head -business incomeø from assessment year 2004-05 onwards by the Department itself and, therefore, rule of consistency also warrant that the interest income is to be assessed under the head -profit and gains of business and professionø In our opinion, the findings of the learned Commissioner of Income-tax (Appeals) on the issue in dispute are well reasoned and no interference is required. Accordingly, we uphold the finding of the Ld. Commissioner of Income-tax (Appeals) on the issue in dispute. The ground of the appeal is dismissed.

7. In the result, appeal of the Revenue is dismissed

The decision is pronounced in the open court on 14<sup>th</sup> July, 2016.

Sd/-

**(H.S. SIDHU)**

**JUDICIAL MEMBER**

Dated: 14<sup>th</sup> July, 2016.

Laptop/-

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Sd/-

**(O.P. KANT)**

**ACCOUNTANT MEMBER**

Asst. Registrar, ITAT, New Delhi