

Neutral Citation No. - 2024:AHC:137519-DB

Court No. - 40

Case :- INCOME TAX APPEAL No. - 71 of 2024

Appellant :- Phoenix Lamps Ltd

Respondent :- Deputy Commissioner Of Income Tax Dcit

Counsel for Appellant :- Chhaya Gupta,Sujeet Kumar

Counsel for Respondent :- Gaurav Mahajan

With

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Appellant :- Phoenix Lamps Ltd

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Counsel for Respondent :- Gaurav Mahajan

Hon'ble Shekhar B. Saraf,J.

Hon'ble Manjive Shukla,J.

1. Heard Sri Shashwat Bajpai, learned counsel appearing on behalf of appellant and Sri Gaurav Mahajan, learned counsel appearing on behalf of Respondent.
2. The instant appeals under Section 260A of the Income Tax Act, 1961 arise from an order dated 26.07.2023 passed by the Income Tax Appellate Tribunal, Delhi Bench for the A.Y.s 2011-12 & 2012-13.
3. Assessee/Appellant has raised the following questions of law:
 - A. Whether the Ld. Tribunal erred in ignoring that the Ld. DRP/AO erred in law on facts and circumstances of the case by exceeding jurisdiction in re-characterizing inter-company receivables as unsecured loan in the absence of a statutory provision?*
 - B. Whether the Ld. Tribunal erred in not appreciating that the Ld. DRP/TPO/AO erred in law on facts and circumstances of the case by notionally treating receivables as separate international transaction, which is admittedly not leveled?*
 - C. Whether in the facts and circumstances of the case, Ld. Tribunal has erred in passing Contradictory observations, even after accepting the principles laid down by the Courts that once working capital adjustment is*

granted to the assessee, there is no need for further imputation of notional interest on outstanding receivables at the end of the year as the same gets subsumed in the working capital adjustment?

*D. Whether the Ld. Tribunal erred in not appreciating that the Appellant-Assessee has maintained complete uniformity **and** has **not charged any interest from both relates and unrelated party and hence there is no differential treatment** between alleged AE and other parties?*

*E. Whether the Ld. Tribunal grossly erred in simply accepting the TPO / AO's order without providing any cogent reasoning for upholding it and **without conducting any enquiry despite evidence being specifically provided to it, highlighting complete Non application of Mind?***

4. Upon perusal of the order, we find that the appellant relied on the judgement of the Delhi High Court dated 25.04.2017 passed in ***ITA No. 765 of 2016, Pr. Commissioner of Income Tax-V Vs. Kusum Health Care Pvt. Ltd.*** The Tribunal has considered the judgement of the Delhi High Court and stated that they have no quarrel to the proposition laid down by the aforesaid judgement that once working capital adjustment is granted to the assessee, there is no need for further imputation of interest on outstanding receivables at the end of the year as the same gets subsumed in the working capital adjustment. After agreeing with this proposition, the Tribunal has directed the TPO to once again look into the bills submitted by the appellant and directed TPO to ascertain whether interest is to be imputed on bills that have been realised after credit period of 70 days. The direction given to the TPO are provided in paragraph 16 of the order which is delineated below:

“16. Further, we have absolutely no quarrel to the proposition laid down by the Hon'ble Delhi High Court that once working capital adjustment is granted to the assessee, there is no need for further imputation of interest on outstanding receivables at the end of the year as the same gets subsumed in the working capital adjustment. However, it has to be seen that the Id. TPO, in the instant case, had granted credit period of 70 days to the assessee to recover its dues from its AEs. Hence, the Id. TPO is directed to look into the following:-

(a) In respect of bills raised on or after 01.04.2010 to its AEs, what was the date of realization and whether the same has been realized within the credit period allowed of 70 days. If not, interest is to be imputed on those bills also.

(b) In respect of outstanding bills as on 01.04.2010 (i.e., opening balance) from these AEs, what was the date of realization thereof and if the bills are realized beyond the granted credit period of 70 days, interest is to be imputed on those bills also.”

5. In our view, the direction given to the TPO to examine the bills is correct, however, the direction for imputing interest on the bills was not necessary and the TPO is required to act keeping in view the judgment of ***Kusum Health Care (Supra)***.

6. Accordingly, the impugned order is modified to the extent that the TPO shall look into the entire aspect in light of the judgement of ***Kusum Health Care (Supra)*** and pass orders accordingly.

7. In light of the same, appeals are disposed of with the direction given above.

Order Date :- 28.8.2024

A. Mandhani

(Manjive Shukla, J.) (Shekhar B. Saraf, J.)