

आयकर अपीलिय अधिकरण, मुंबई न्यायपीठ 'डी, मुंबई ।
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "D", MUMBAI

सर्वश्री आर.एस. स्याल, लेखा सदस्य एवं संजय गर्ग, न्यायिक सदस्य, के समक्ष ।

Before Shri R.S.Syal, AM and Shri Sanjay Garg, JM

ITA No.4273/Mum/2011 : Asst.Year 2006-2007

M/s.Dolphin Offshore Enterprises (I) Ltd. 1001, Raheja Centre, 214 Nariman Point Mumbai – 400 021. PAN :AAACD0522D.	बनाम/ Vs.	The Dy.Commissioner of Income-tax Circle 3(1) Mumbai.
(अपीलार्थी /Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से /Appellant by : Shri M.V.Subramanian

प्रत्यर्थी की ओर से /Respondent by : Shri Pavan Ved (CIT-DR)

सुनवाई की तारीख / Date of Hearing : 26.06.2013	घोषणा की तारीख / Date of Pronouncement : 28.06.2013
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आदेश / ORDER

Per R.S.Syal (AM) :

This appeal by the assessee is directed against the order dated 28.3.2011 passed by the Commissioner of Income-tax u/s 263 of the Act, in relation to the assessment year 2006-2007.

2. Briefly stated the facts of the case are that the assessment in this case was completed u/s 143(3) determining total income at ₹13.65 crore. During the year relevant to the assessment year under consideration, the assessee raised funds by issue of Foreign Currency Convertible Bond (FCCB) and an amount of ₹2.35 crore was debited to the Profit and loss account as “Bond issue expenses”. The Assessing Officer allowed the claim u/s 37(1). The learned CIT noticed that since FCCB were convertible into equity shares at the

option of the bond holders at a future date, the expenditure was not eligible u/s 37(1). In his view, such amount was required to be considered within the purview of section 35D, being the amortization of preliminary expenses. The assessment order was set aside by holding it to be erroneous and prejudicial to the interest of revenue and the A.O. was directed to complete the assessment afresh after allowing a reasonable opportunity of being heard to the assessee.

3. We have heard the rival submissions and perused the relevant material on record. From the impugned order it is noticed that the only dispute is about the deductibility in full or otherwise of the FCCB issue expenses amounting to ₹2.35 crore. Whereas the assessee claimed deduction for such expenditure u/s 37(1) in one go which was accepted by the A.O., the learned CIT opined that this expenditure should have been amortized over the period as per section 35D of the Act. It is noticed that this issue has come up for adjudication before several Benches of the Tribunal including the Mumbai Bench in the case of *Mahindra & Mahindra v. DCIT [(2012) 54 SOT 146 (Mum) (URO)]*. The Tribunal in this case has held that expenses incurred with regard to FCCB are revenue in nature deductible in full in the year of incurring. No contrary decision has been brought to our notice by the learned Departmental Representative. In view of the fact that the Tribunal has held such expenses to be deductible, the assessment order taking similar view cannot be said to be erroneous and prejudicial to the interest of revenue so as to empower the CIT to revise such assessment order u/s

263. The scope of proceedings u/s 263 is confined to cases in which the assessment order is not only erroneous but also prejudicial to the interest of the revenue. If an issue is found to be settled in assessee's favour, then the CIT can not pass revisional order. Similarly if an issue is debatable, in the sense that two possible views exist on the issue and the AO has followed one of such legally possible views, then also the CIT cannot exercise his jurisdiction u/s 263 on this point. In view of the availability of the afore-said order passed by the Mumbai Bench in the case of *Mahindra & Mahindra (supra)*, we are of the considered opinion that the learned CIT was not correct in setting aside the assessment order by holding it to be erroneous. The impugned order is, therefore, vacated.

4. परिणामतः अपीलें स्वीकृत की जाती है । In the result, the appeal is allowed.

Order pronounced on this 28th day of June, 2013.

आदेश की घोषणा दिनांक: को की गई ।

Sd/-

(Sanjay Garg)

न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-

(R.S.Syal)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 28th June, 2013.

Devdas*

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT, Mumbai.
4. आयकर आयुक्त / CIT, Mumbai
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER.

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai