

Reserved

Case :- INCOME TAX APPEAL No. - 181 of 2005
(Assessment year 1983-84)

Appellant :- Commissioner Of Income Tax (Central), Kanpur

Respondent :- M/S Sahara India (Firm), Lucknow

Counsel for Appellant :- Alok Mathur

Counsel for Respondent :- Waseeq Uddin Ahmed

Hon'ble Rajiv Sharma,J.

Hon'ble Dr. Satish Chandra,J.

(Delivered by Hon'ble Dr. Satish Chandra, J)

The present appeal under Section 260-A of the Income Tax Act, 1961 has been preferred by the department against the judgment and order dated 12.05.2005 passed by the Income Tax Appellate Tribunal, Lucknow in Income Tax Appeal No.743/Alld/2000 for the assessment year 1983-84.

The sole grievance of the department is pertaining to the nature of the receipt i.e. amount of Rs.14.82 lakhs, which was treated by the appellate authorities as a capital receipt.

The brief facts of the case are that the assessee is a partnership firm. During the assessment year under consideration, the assessee was engaged in running some financial schemes in which deposits were collected from the Public. The assessment was completed on 19.03.1986 at a loss of Rs.10,86,858/- as against the return loss shown by the assessee for Rs.17,30,930/-. But, the assessment was set aside by the CIT (A) and a fresh

assessment was completed on 26.03.1991 on an income of Rs.1,75,18,520/- in the status of URF. The said assessment was again set aside by the first appellate authority vide his order dated 29.11.1991. In consequence, a fresh reassessment order was passed on 30.03.1994 at the return loss of Rs.17,33,930/-. In this order, the A.O. has treated the amount of Rs.14,82,727/- as the revenue receipt in nature. Being aggrieved, the assessee has filed an appeal before the CIT (A) and claimed that the said amount is a part of the deposit received as per the schemes run by the assessee and is capital in nature and no amount, therefore, was liable to be taxed. The CIT (A) has allowed the claim of the assessee by observing that the deposits are capital receipts. The same was confirmed by the Tribunal vide its impugned order. Still not being satisfied, the department has filed the present appeal.

With this background, heard Sri Alok Mathur, learned counsel for the Revenue and Sri Waseeq Uddin Ahmad learned counsel for the assessee.

After hearing both the parties and on perusal of record, it appears that the similar issue has come up before this Hon'ble Court in the case of *Commissioner of Income Tax vs. Sahara Investment India Limited*; 266 ITR 641 where it was observed

that:

“when a person deposits some money in a bank that amount does not become the income of the Bank but is rather the capital of the bank in the form of borrowed capital. Income is ordinarily that which flows out of capital. The court has to see the true nature of the receipts and not go only by the entry in the books of account.”

In the instant case, the assessee – company was engaged in the business of collecting deposits from the public under different finance schemes. The A.O. rejected the assessee's claim and treated the amount in question as the income of the assessee. But fact remains that no part of the deposit is the income of the assessee. The assessee is merely a custodian of the deposit. The income arises from the deposits i.e. dividend, interest etc. The facts and circumstances of the ratio laid down in the case of ***Sahara Investment India Limited (supra)*** are identical. So, the present appeal has no merit and the same is liable to be dismissed.

Needless to mention that although any amount which was earned by the assessee on these deposits made with it, minus any legitimate expenses incurred in the business, would amount to income of the assessee the deposits themselves could not amount

to income. The department did not controvert the statement that during the year in question there was no forfeiture of any deposit and did not discharge the onus which was cast on it to prove that the deposits were revenue receipts and therefore, liable to tax. Therefore, there was no question of law that arose out of the order of the Tribunal.

In view of above, we find no reason to interfere with the concurrent findings of the appellate authorities and the same are hereby sustained along with the reasons mentioned therein. No substantial question of law is emerging from the impugned order.

In the result, the appeal filed by the department is dismissed at the admission stage.

Order Date :- 20th November, 2013
VNP/-