

**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH 'C', KOLKATA
(Before Shri N.V.Vasudevan, J.M. &Dr.A.L.Saini, A.M.)**

ITA No. 686/Kol/2016 : Asstt. Year : 2011-12

Mineral Oriental Limited 2 nd Floor Birla Building, 9/1 R N Mukherjee Road, Kolkata- 700001 PAN:AABCM7490C (APPELLANT)	Vs	D.C. of Income Tax, Circle 5(1) P 7 Chowringhee Square, Kol- 69 (RESPONDENT)
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**Appellant by: Shri K.M.Roy, FCA
Respondent by:ShriA.K. Panda, Addl. CIT**

Date of Hearing : 22.09.2016	Date of Pronouncement :- 19/10/2016
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ORDER

Per Dr. A.L.Saini, A.M.:

The captioned appeal filed by the Assessee pertaining to assessment year 2011-12, is directed against the order passed by the Ld. Commissioner of Income-Tax (A) -2, Kolkata,in appeal No.757/CIT(A)-2/Cir-5/14-15 dated 23/12/2015, which in turn arises out of an order passed by the Assessing Officer under section 143(3) of the Income Tax Act, 1961 (in short, 'the Act'), dated 14.11.2013.

2. The facts of the case are stated in brief. The assessee is a limited company and engaged in the business of Mining, Trading & Processing of Marbles and Granites. The assessee company has filed its return of income on 08-08-2011, declaring total income of Rs.

34,37,304/- . The assessee`s case was selected for scrutiny U/s 143(3) of the Act and the Assessing officer had completed the assessment U/s 143(3) by making following additions:

(a) In 26AS details, a payment of Rs.27,840/- has been found to be credited to the assessee company on which Rs.2,784/- has been deducted as tax. The assessee company explained that the amount has been paid by AVVNL as interest on deposits with electricity department. The deposit with electricity department pertains to the land and building, which has been transferred to M/s Nanak Marbles Pvt ltd, but the name of the consumer was not changed. The AO observed that the payment has been received by the assessee company but failed to prove the same, hence interest is treated as income in the hand of the assessee company and added to the total income of the assessee.

(b)In the 26AS details, a payment of Rs. 4,57,769/- has been found to be credited to the assessee company on which Rs. 45,777/- has been deducted as Tax, but the assessee company has accounted for Rs. 1,99,705/- in its books as income with the claim of full TDS. The assessee explained that the interest received from M/s. Goldoleen Marbles & Granites was calculated for wrong period in the preceding year for which rectification has been made in the current F.Y. The assessee has credited net interest in its books and claimed that the balance of Rs. 2,58,064/- has already been taxed in its hands. The explanation offered by the assessee company is not found to be satisfactory regarding the balance interest not credited in the Profit & Loss Account. As such, the balance of interest income amounting to Rs. 2,58,064/- is treated as undisclosed income in the hand of the assessee and added to the total income.

(c) In the 26AS details, a payment of Rs. 8,889/- has been found to be credited to the assessee company on which Rs. 889/- has been deducted as Tax, but the same amount has not been accounted in the books of the assessee company towards income. The assessee company accepted that the interest received from Assistant Engineer, Kherwara has not been credited in the books as the interest was not actually received by the assessee but the same was adjusted from a liability of the assessee. As per Mercantile system of accounting, the interest income is taxable in the hands of the assessee and hence treated as income and added to the total income of the assessee.

3. Aggrieved from the order of the AO, the assessee had filed an appeal before the Id. CIT(A), who has also confirmed the action of the AO by observing the followings :-

"2. Ground No. 1 of the appeal relates to addition of Rs.27,840/- due to TDS mismatch. The AO found from 26AS statement that the assessee company had received interest of Rs.27,840/- from AVVNL for which tax of Rs.2,784/- was deducted at source, but said amount was not included in the total income. Ld. AR in his written submission has stated as follows:

"An amount of Rs. 27,840/- is reflecting in 26AS as interest received from Ajmer VidyutVirtan Nigam Ltd. The deposit pertains to the land and building which has been transferred by the appellant to Nanak Marbles Pvt. Ltd. But the consumer's name was not rectified in the records of the electricity Department and TDS was deducted with the PAN of the assessee, hence the interest shall not be treated as income in the hand of appellant. The land and building has been transferred as on 13.08~2010 and the date of credit of interest as per 26AS was 01.09.2010 which was after the date of transfer and accordingly the interest income belongs of Nanak Marbles Pvt. Ltd. i.e. the buyer. The copy of sale deed has been enclosed herewith for the transfer of Land and building to Nanak Marbles Pvt. Ltd." .

2.1. The reason given by Ld. AR for non inclusion of interest income is not convincing. Had the interest received from AVVNL belonged to Nanak Marbles Pvt. Ltd. with the transfer of building, the assessee should not have claimed credit of TDS made on such interest. Since the assessee claimed

credit of TDS of Rs.2,784/-, corresponding income ought to have been included in its income. The addition of Rs.27,840/- is therefore, sustained.

3. Ground No. 2 of the appeal relates to addition of Rs.2,58,064/- being suppression of interest income from M/s. Goldoleen Marbles & Granites to that extent. The AO found from 26AS statement that the assessee had received interest of Rs.4,57,769/- against TDS of Rs.45,777/-. However, the assessee accounted for only Rs.1,99,705/- in its books. The AO, Therefore, added the balance interest income of Rs.2,58,064/- after considering assessee's explanation. In the matter, Ld. AO has contended as follows:

"In the assessment year 2010-11 the M/s. Goldoleen Marbles and Granite has credited a sum of Rs. 5,86,506/- in our account and TDS of Rs. 58,651/- was deducted which was duly recognised by the assessee in that year. M/s. Goldoleen Marbles and Granite had rectified the above interest credited in our account by a sum of Rs. 2,58,064/- by debiting the assessee's account for erroneous calculation of interest which was rectified by the assessee in the assessment year 2011-12 due to late information by the M/s. Goldoleen Marbles and Granite. It is to be noted that the above error in recognizing the income in the assessment year have no tax effect and the income which was offer for tax in the assessment year 2010-2011 cannot be tax twice. In support of the above facts ledger confirmation of party and interest income party wise as recognised by the assessee in the assessment year 2010-2011 and 2011-2012 along with copy of Form No. 26AS is enclosed here with for your kind perusal and you are earnestly requested to consider the undisputed facts.

3.1. I have duly considered the submission of the AR but not inclined to accept his version. He has precisely stated that since M/s. Goldoleen Marbles and Granite adjusted the excess interest of Rs.2,58,064/- paid in the last year with the interest payable for the current year, the assessee company accounted for less interest in the current year to that extent. The argument put forward by Ld. AR has no legal sanctity as the income of a particular year is to be assessed in that year itself. For the reduction of interest payments by M/s. Goldoleen Marbles and Granite for the previous assessment year, the remedial action lied in A.Y. 2010-11. For this year, the assessee received interest income of Rs.4,57,769/- against TDS of Rs.45,777/- and same should have been accounted for. In view of such, addition of Rs.2,58,064/- is confirmed.

4. Ground No. 3 of the appeal relates to addition of Rs.8,889/- being suppression of interest income from assistant engineer, Kherwara. The AO again found from 26AS statement that the assessee had received interest of Rs.8,889/- against TDS of Rs.889/-, but the same was not accounted for. Ld. AR though stated that- 'interest on security deposit with Ajmer Bidyut Nigam Limited of Rs.8889/- has already been accounted for by way of adjustment in corresponding expenses payable to same person', but failed to

produce any evidence in this regard. The addition of Rs.8,889/- is therefore, confirmed.”

4. Not being satisfied with the order of the Id. CIT(A), the assessee is in further appeal before us and has taken the following grounds :-

“i) That the CIT (A)-2 erred in law as well as on the facts in sustaining the addition of Rs.27,840/- without appreciating the fact that there was no accrual of Income.

ii) That the CIT (A)- 2 was not justified in upholding the addition of Rs.2.58,064/- as concealed income when it was clearly explained that such interest was already taxed in the earlier year.

iii) That the addition of Rs 8889/- is not tenable because such income has been already accounted by way of deduction of Electricity expenditure.

iv) That appellant reserves the right to add to the above grounds of appeal and/or to amend, delete any of them on or before the date of hearing of appeal.”

Ground No.1 – Additon of Rs.27,840/-

5. The Id.AR for the assessee has submitted that the Income of Rs 27,840/- does not belong to the appellant in view of the transfer of assets and liabilities to M/s. Nanak Marbles Pvt. Ltd, Since the appellant does not have the right over the Income, it can't be taxed on the same. The entire electricity deposit was transferred to the M/s. Nanak Marbles Pvt. Ltd. However name transfer was not made by the Board. The transfer of Business has not been found to be ingenuine and has been acted upon. The inadvertent mistake of deductor cannot foist any artificial liability on the company. When the interest was not received by the assessee, there was no question of paying back to Nanak Marbles Pvt. Ltd. It is an artificial income in the hand of the company. Further no entries were passed in the

book for interest. However since the TDS has been claimed in the return for Rs.2,784/, only the same may be taxed u/s 199 for sake of natural justice.

6. On the other hand, the ld. DR for the revenue has primarily reiterated the stand taken by the ld. AO and the ld. CIT(A), which we have already noted in our earlier para, and is not being repeated for the sake of brevity.

7. Having heard the rival submissions, perused the materials available on record, we are of the view that there is merit in the submissions of the ld. AR for the assessee, as he pointed out that inadvertent mistake of deductor cannot foist any artificial liability on the company. When the interest was not received by the assessee there was no question of paying back to M/s. Nanak Marbles Pvt. Ltd. It is an artificial income in the hands of the company. However no entries were passed in the book for interest. Therefore based on the factual position we allow the appeal filed by the assessee on this ground. However, since the TDS has been claimed in the return for Rs.2784/- only the same may be rectified and disallowed by the AO

8. In the result, the appeal filed by the assessee on this issue is allowed for statistical purposes.

Next ground relates to the addition of Rs.2,58,064/-

9. The ld. AR for the assessee has submitted that the difference in income of Rs.2,58,064/- was already offered for taxation in earlier year. The same income cannot be taxed twice. The AO has simply brushed aside the explanations without any cogent reason. Just because TDS was made in single year does not imply that entire income become taxable in assessment year 2011-12. There cannot be any double taxation of same income because such interest was already booked in A.Y 2010-11.

10. On the other hand, the ld. DR for the revenue has primarily reiterated the stand taken by the ld. AO and the ld. CIT(A), which we have already noted in our earlier para, and is not being repeated for the sake of brevity.

11. Having heard the rival submissions, perused the materials available on record, we are of the view that there is merit in the submissions of the ld. AR for the assessee, as the propositions canvassed by the ld. AR for the assessee are supported by the facts cited above. The amount of Rs.2,58,064/- has already suffered taxation in the earlier year. Therefore the said amount cannot be taxed twice. Therefore we delete the said addition.

12. In the result, the appeal filed by the assessee on this issue is allowed.

The next ground relates to the addition of Rs.8,889/- on account of difference in interest :

13. The ld. AR for the assessee has submitted that the difference in interest of Rs.8,889/- has already been accounted by way of adjustment in corresponding expense payable to same person. Hence, even by the wildest stretch of imagination such income cannot again be brought under the purview of tax because such income has already been accounted for by way of set off from expenditure. Such adjustment has been made suo motto by the service provider in the bill and the amount as per bill was paid after deduction of net amount of Rs.8000/- Accordingly a sum of Rs.889/- may be taxed & credit of TDS may also be allowed.

14. On the other hand, the ld. DR for the revenue has primarily reiterated the stand taken by the ld. AO and the ld. CIT(A), which we have already noted in our earlier para, and is not being repeated for the sake of brevity.

15. Having heard the rival submissions, perused the materials available on record, we are of the view that there is merit in the submissions of the Id. AR for the assessee, as the propositions canvassed by the Id. AR for the assessee are supported by the facts cited above. As he has explained that the said income cannot again be brought under the purview of the tax because such income has already been accounted for by way of set off from expenditure. Such adjustment has been made suo motto by the service provider in the bill and the amount as per the bill was paid after deduction of the net amount of Rs.8000/-. However a sum of Rs.889/- may be taxed and credit of TDS may also be allowed. Therefore, we direct the AO to examine the assessee's claim afresh after verifying the relevant documents and allow him necessary relief.

16. In the result, the appeal filed by the assessee on this ground is allowed for statistical purposes.

17. In the result, the appeal filed by the assessee is partly allowed for statistical purposes.

Order Pronounced in the Open Court on 19.10.2016

Sd/-
(N.V.Vasudevan)
Judicial Member

Sd/-
(Dr. A.L.Saini)
Accountant Member

Dated: 19.10.2016

Copy of the order forwarded to:

1. Revenue
2. Assessee
3. The CIT-I,
4. The CIT(A)-I,
5. DR, Kolkata Benches, Kolkata

ITA No.686 /Kol/2016
Mineral Oriental Ltd
A.Y.2011-12

True Copy,

By order,

Asst. Registrar, ITAT, Kolkata Benches