

IN THE INCOME TAX APPELLATE TRIBUNAL, BENCH "C", KOLKATA

[Before Hon'ble Shri N.V.Vasudevan, JM & Shri Waseem Ahmed, AM]

ITA No.475/Kol/2013
Assessment Year : **2009-10**

D.C.I.T., Circle-1,
Kolkata

(APPELLANT)

-versus-

M/s.Britannia Engineering Ltd.
Kolkata

(PAN:AABCB4796J)
(RESPONDENT)

C.O.No.45/Kol/2013
A/o ITA No.475Kol/2013
Assessment Year : **2009-10**

M/s. Britannia Engineering Ltd.
Kolkata
(PAN AABCB4796J)
(CROSS OBJECTOR)

-versus-

D.C.I.T., Circle-1,
Kolkata

(RESPONDENT)

For the Department : Shri Sanjit Das,JCIT, Sr.DR
For the Assessee : Shri A.K.Tibrewal, FCA

Date of Hearing : 14.03.2016.
Date of Pronouncement : 6.4.2016

ORDER

Per Shri N.V.Vasudevan, JM

ITA No.475/Kol/2013 is an appeal by the Revenue against the order dated 17.12.2012 of CIT(A)-XXIV, Kolkata relating to A.Y.2009-10.

2. Grounds of appeal raised by the Revenue read as follows :-

1. *The Ld. CIT(A) has erred and not justified in treating the FD interest as business income instead of income from other sources to the tune of Rs.87,54,636/-.*
2. *That the appellant craves leave to add, alter/or amend any of the grounds of appeal during the course of hearing."*

3. The Assessee is a company engaged in the business of manufacturing of various machineries. In the course of assessment proceedings AO noticed that the

ITA No.475/Kol/2013 & C.O.No.45/Kol/2013
M/s.Britannia Engineering Ltd.
A.Yr.2009-10

assessee has earned a sum of Rs.87,54,636/- as interest on bank Fixed Deposits. AO was of the view that since the business of the assessee company was manufacturing of machinery, the said interest income cannot said to be connected with the business of the assessee and therefore had to be assessed as income from other sources. Accordingly the income of assessee was determined by the AO as follows :-

“Profit as declared in the return	Rs.2,41,90,237/-
Less : Income for separate consideration	
Interest on bank FDs	<u>Rs. 87,54,636/-</u>
	Rs.1,54,35,601/-
Add: Legal expenses as discussed above	<u>Rs. 61,00,500/-</u>
Income from business	Rs.2,15,36,101/-
Less:Brought forward business losses	<u>Rs.2,15,36,101/-</u>
Net Business Income	Nil
Income from other sources	<u>Rs. 87,54,636/-</u>
Total Income	Rs. 87,54,636//--“

4. The assessee submitted before CIT(A) that it has to maintain fixed deposits with the banks and those fixed deposits were given as security for the overdraft facility utilized by the Assessee for the purpose of its business. Hence, the income is inextricably connected with the business of the Assessee. The Assessee placed reliance on the following judicial precedents, in support of his contention that interest income which has connection with the business of the Assessee has to be assessed as business income not under the head “Income from other sources”.

- (1) CIT vs. Lok Holdings (308 ITR 356)(Bom)
- (2) CIT vs. Indo Swiss Jewels Ltd. (284 ITR 389)(Bom)
- (3) CIT vs. Vidyut Steel Ltd. (219 ITR 30)(AP)
- (4) CIT vs. Koshika Telecom Ltd. (Del)
- (5) CIT Vs. China Nachimuthu Constructions 297 ITR 70 (Karn.)

5. The CIT(A) agreed with the contention of the Assessee and he held as follows:

2.3 I have considered the above submission of the appellant and also gone through the assessment order. The appellant company is an Enterprise wholly owned by the Government of West Bengal. The appellant has made fixed deposits which have been used for bank overdraft facilities for running various business activities. The Ld. A/R has explained that the present appeal is distinguishable from the facts in the case of Tuticorin Alkali Chemicals & Fertilizers Ltd. Vs. VIT [1997] 227 ITR 172 (sq. In that case, the Hon'ble Supreme Court has decided that there could be no income from

ITA No.475/Kol/2013 & C.O.No.45/Kol/2013
M/s.Britannia Engineering Ltd.
A.Yr.2009-10

business as the business of the assessee-company did not commence. The · Ld. A/R has relied on the decision in the case Chinna Nachimutha Constructions (supra) and various other decisions. The Ld. A/R has also explained that when deposits are made in connection to business activities, interest earned from such deposits constitutes business income. In the present case, the appellant company has made Fixed Deposits which have been used for bank overdraft facilities for running various business activities. The decision 'of the Hon 'ble Karnataka High Court in Chinna Nachimuttha Constructions (supra) is squarely applicable to the facts of the case. Accordingly, the A.O. is directed to treat the interest income of Rs. 87,54,636/- as business income instead of income from other sources after necessary verifications. For statistical purpose, this ground of appeal is allowed."

6. Aggrieved by the order of CIT(A) the revenue has preferred the present appeal before the Tribunal.

7. The learned DR submitted before us that the CIT(A) has placed reliance on the decision of the Hon'ble Karnataka High Court CIT vs Chinna Nachimuttha Constructions 297 ITR 70(Kar). He pointed out that in that case the assessee was a contractor and in order to secure contract work offered bank guarantee to M/s.KPTCL. The assessee in order to avail bank guarantee invested funds in fixed deposits and interest accrued on such fixed deposits was held to be business income. According to him in the present case there is no business compulsion and the assessee had made fixed deposits on his own and offered the same as security for bank over draft facilities and therefore the interest income was to be assessed under the head income from other sources.

8. We have considered submissions of the learned DR. In our view the income in question has to be assessed under the head income from business. In this regard we find that it is not in dispute that the assessee had to invest funds in fixed deposits and offered them as security for the overdraft facilities it received from banks. The Hon'ble Bombay High Court in the case of Indo Swiss Jewels Ltd.(supra) had held that where interest is earned on inter corporate deposits made from surplus funds which are set apart for payment of imported machinery, the said interest income has to be assessed as business income. In the case of Koshika Telecom Ltd.(supra) the Hon'ble Delhi High Court has taken the view that where deposit of margin money by

ITA No.475/Kol/2013 & C.O.No.45/Kol/2013
M/s.Britannia Engineering Ltd.
A.Yr.2009-10

an assessee with a bank was linked with the furnishing of bank guarantee to be given to the Department of Telecommunications, for obtaining a licence by an assessee who was in the business of telecommunication, the same has to be treated as business income. In the case of CIT vs. Lok Holdings(supra) the Hon'ble Bombay High Court has taken the view that money received by a property developer from prospective purchases during the progress of construction and where such funds were deposited by an assessee with the bank, interest earned on such deposits was held to have arisen out of business activity and, therefore, the same had to be construed as income from business. In view of the above, we are of the view that the order of CIT(A) holding that the interest income is income from business has to be upheld. Accordingly, we uphold the order of CIT(A) and dismiss the appeal of the revenue.

9. We may also add that in A.Y.2006-07, 2008-09 and 2010-11 identical interest income has been considered as business income by the AO. Copies of the relevant assessment orders passed for the aforesaid assessment years u/s 143(3) of the Act were filed before us. It was contended by the learned counsel for the Assessee that following the rule of consistency, the interest income in the present assessment year should also be considered as income from business. In this regard our attention was drawn to the decision of the Hon'ble Calcutta High Court in the case of Mukti Properties Pvt. Ltd. Vs CIT (2011) 12 Taxmann. 2001 (Cal). We are of the view that in the light of the submissions made by the learned counsel for the assessee order of CIT(A) has to be upheld even on the basis of application of rule of consistency. Accordingly we do not find any merits in the appeal of the revenue and the same is dismissed.

10. As far as the Cross Objection filed by the assessee is concerned the same was not pressed at the time of hearing and is therefore dismissed as not pressed.

ITA No.475/Kol/2013 & C.O.No.45/Kol/2013
M/s.Britannia Engineering Ltd.
A.Yr.2009-10

11. In the result the appeal of the Revenue and Cross Objection of the assessee are dismissed.

Order pronounced in the court on 6.4.2016.

Sd/-
[Waseem Ahmed]
Accountant Member

Sd/-
[N.V.Vasudevan]
Judicial Member

Date:.6.4.2016.
R.G.(.P.S.)

Copy of the order forwarded to:

1. M/s.Britannia Engineering Ltd., A-11, 8th Floor, Chatterjee International Centre, 33A, J.L.Nehru Road, Kolkata-71.
2. The D.C.I.T., Circle-1, Kolkata.
3. The CIT-I, Kolkata.
4. The CIT(A)-XXIV, Kolkata.
5. DR, Kolkata Benches, Kolkata

True Copy,

By order,

Deputy /Asst. Registrar, ITAT, Kolkata Benches