

**IN THE INCOME TAX APPELLATE TRIBUNAL  
"B" Bench, Mumbai**

**Before Shri P K Bansal, Vice President  
and Shri Pawan Singh, Judicial Member**

**ITA No.898 /Mum/2014**  
(Assessment Year: 2010-11)

Income Tax Officer-2(2)(3) Room No. 542, 5th Floor Aayakar Bhavan, M.K. Road Mumbai 400020	Vs.	M/s. Monsoon Trading Co. Ltd. Commerce Hous, 4th Floor 3, Currimbhoy Road Ballard Estate, Mumbai -38 PAN – AABCM4940K
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**Appellant**

**Respondent**

Appellant by: Shri Anand Mohan  
Respondent by: Shri Aditya R. Ajgaonkar

Date of Hearing: 13.09.2017  
Date of Pronouncement: 10.10.2017

**ORDER**

**Per P.K. Bansal, Vice President**

This appeal has been filed by the Revenue against the order of the CIT(A)-5, Mumbai dated 15.11.2013 for A.Y. 2010-11.

2. The only issue involved in this appeal relates to the deletion of addition made by the AO amounting to ₹10,23,83,242/- being the estimated interest on debt.

3. The facts relating to this ground are that the assessee is a public limited company registered with the Reserve Bank of India as a non banking financial company. The assessee filed its return on 29.07.2010 declaring total income of ₹15,58,150/- which was assessed at ₹10,40,01,000/-. The major addition relates to the sum of ₹10,23,83,242/- on account of the notional interest computed on the secured debt of Swadeshi Cement Ltd. (SCL) which the assessee had acquired on payment of ₹1.50 crores. A loan of ₹79 lakhs was taken by SCL from Punjab National Bank (PNB) in May, 1982 and a long of ₹3.22 crores was taken by

SCL from IDBI in December, 1982. The SCL failed to pay the debt/interest thereon. Accordingly its account was declared as Non Performing Assets by the Punjab National Bank and IDBI. In the year 1987 the SCL became sick industrial company within the meaning of section 3(1)(o) of the Sick Industrial Companies (Special Provisions) Act, 1985. The amount payable by SCL to PNB stood at ₹3.9 crores as on 27.09.1994 and further interest accrued thereupon and to IDBI stood at ₹87.92 crores as on 15.12.2006 for the principal along with interest payable. No interest thereafter was calculated or recognized by any person. Subsequently these secured loans granted by PNB and IDBI was assigned and sold to Raghupati Cement Pvt. Ltd. vide assignment deed dated 04.05.2009 for a sum of ₹1.50 crores. The calculated the notional interest income amounting to ₹10,23,83,242/- as being accrued to the assessee in the following manner: -

**i) Debt of Punjab National Bank**

1.	₹2,46,03,833/-	@15% p.a.	=	₹33,83,027/-
2.	₹1,44,77,368/-	@18% p.a.	=	₹23,88,675/-

**ii) Debt of IDBI**

₹87,91,95,000/-	@12% p.a.	=	<u>₹9,67,11,450/-</u>
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**Total** = **₹10,23,83,242/-**

This sum was added to the income of the assessee. When the matter went before the CIT(A), the CIT(A) deleted the said addition. Aggrieved, Revenue is in appeal before the Tribunal.

4. We have heard the rival contentions and carefully considered the same along with the order of the tax authorities below. We noted that the AO has computed the notional interest for 11 months on the debt which the assessee has acquired from Raghupati Cement Pvt. Ltd. which has earlier acquired from PNB and IDBI and which has become non recoverable. As principal amount thereon was also doubtful of recovery, the AO computed the interest on the debts and treated it to be the income of the assessee. When the matter went before the CIT(A), the CIT(A) deleted the addition by observing as under: -

“4. The only ground raised by the assessee is as regards to the addition of notional interest amounting to Rs. 10,23,83,242/- to its income on Secured debts of Swadeshi Cement Ltd that it had acquired on payment of Rs 1.50 crore from Raghupati Cement Pvt Ltd vide assignment deed dated 04.05.2009 executed during the year under consideration. The said company, Swadeshi Cement Ltd (in short SCL) had taken financial assistance (Secured debts) from IFCI, ICICI, PNB and IDBI in the year 1982. The SCL had failed to service its debt and in the year 1987 it became a Sick Industrial Company. Consequently, the debts were declared non-performing assets. In the process, IFCI and ICICI had sold their debts to Asset Care Enterprises Ltd (in short ACE) and PNB and IDBI had assigned/sold their debts to Raghupati Cement Pvt Ltd (in short RCL). In fact, PNB and IDBI had advanced loans to SCL amounting to Rs. 79,00,000/- in May 1992 and Rs 3.22 crore in December 1992 respectively. The amount together with interest payable by SCL to PNB stood at Rs 3.90 crore as on 27.09.1994 and to IDBI at Rs 87.92 crore as on 15.12.2006. No interest thereafter was calculated. Thereafter, PNB and IDBI assigned/sold their debts to RCL which in turn sold the same to the assessee company by the Registered Deed of Assignment dated 04.05.2009 for the full and final amount of Rs 1.50 crore. The AO took the view that assessee ought to have offered the interest income onto to such huge debts of SCL, that it had acquired, on accrual basis. During the assessment proceedings, the assessee placed the entire facts and the circumstances in which it had acquired such debts merely on payment of Rs 1.50 crore and pleaded that the notional interest thereon could not be charged to tax. It was also submitted that the assessee in turn had also planned to sell such secured debts of SCL to Grasim Industries Ltd on consideration of Rs 1.52 crore. The AO did not agree with the explanation given by the assessee and estimated notional interest onto the huge debt of PNB and IDBI at Rs 10,23,83,242/- and added the same to the total income of the assessee.

4.1 The relevant part of the written submissions filed by the assessee during appellate proceedings finds place in para 3 of this order. The issue is considered. It is noted that the various banks which had advanced loans to SCL were unable to recover their dues; and SCL was declared Sick Industrial Unit. In the circumstances, the banks had sold their debts to RCL and RCL in turn had sold the same to the assessee company. Thus the assessee company could obtain the same rights as those banks [PNB fit IDBI] had with regards to the loan given to SCL which totaled to Rs 91,82,76,201/- by paying a small amount of Rs 1.50 crore. This itself shows that there was a little chance to recover the huge sum outstanding against the SCL otherwise the huge debts would not have been passed over on payment of merely Rs 1.50 crore. Therefore, in my considered view the notional interest thereon could not be charged to tax as has been done by the AO.

*4.2 Before me, it has also been submitted that ultimately the movable and immovable assets of SCL were put to auction on 03.05.2010 by Asset Care Enterprises Ltd [to whom the other two banks IFCI & ICICI had assigned their debts] and that the assessee company had got the entire assets of SCL [land, building Plant & machinery and scrap] on payment of Rs 6.20 crore as full and final payment. The physical possession of SCL's assets were received by assessee on 17.05.2010 and the sale deed was registered on 26.05.2010. Thus, the gain on the transactions needs to be assessed in the A.Y.2011-12 based on the market value of those assets as on the date of its possession over SCL's entire assets with reference to the cost [including that of Rs 1.50 crore which was paid by the assessee while the loans of PNB & IDBI was assigned to it from RCL vide the Registered deed of Assignment dated 04.05.2009 as well as the amount that it had paid on account of acquiring the entire assets by way of auction by the ACE]. The adjustment on account of the assessee's share of rights onto the SCL's assets by way of acquiring the debts on payment of Rs 1.50 crore of course needs to be adjusted for arriving at the gain in A.Y. 2011-12 on account of such transactions. It is also noted that the scrap out of SCL's assets so acquired by the assessee was sold for Rs 1.90 crore in the year relevant to A.Y. 2012-13; but the Profit thereon amounting to Rs 4,87,000/- only has been offered to tax. The adequacy and appropriateness of the gain and profit needs to be examined/ ascertained by the AO in A.Y. 2011-12 and 2012-13. The AO may take note of these observations accordingly. As far as the issue of taxing the notional interest on accrual basis in the year under consideration, which is the subject matter of the appeal, is concerned the same stands allowed in favour of the assessee as discussed in para 4.1 above. Accordingly, the entire amount of addition of Rs 10,23,83,242/- is deleted.”*

5. The learned D.R. before us even though vehemently relied on the order of the AO but could not adduce any evidence or material which may prove that the interest income added by the AO has actually accrued to the assessee so that it can be added in the income of the assessee. It is not denied that the interest which has been computed by the AO on the debt the recovered of which itself is doubtful for the last several years. In view of this fact we are of the view that no interference is called for in the order of the CIT(A). In our opinion the issue involved is duly covered by the decision of the Hon'ble Supreme Court in the case of UCO Bank vs. CIT 237 ITR 889 in which it was held that in respect of sticky advances if the interests are not taken into the Profit & Loss Account but taken to the suspense account cannot be the income of the assessee and such interest is not

actually received or accrued to the assessee. In the impugned case it is not denied that the debt which has been taken over by the assessee relate to SCL which has become sick industrial undertaking in the year 1987 itself and off these debts have become nonperforming assets. In the process IFIC and ICICI had sold their debts to Asset Care Enterprises Ltd. and the PNB and IDBI had assigned/sold their debts to Raghupati Cement Pvt. Ltd. which in turn sold the same to the assessee company by way of Registered Deed of Assignment dated 04.05.2009 for the full and final amount of ₹1.50 crores. In view of this fact we are of the view that the CIT(A) has correctly held that no notional interest on such debt can be charged to income tax. We accordingly confirm the order of the CIT(A).

6. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced in the open court on 10<sup>th</sup> October, 2017.

Sd/-  
**(Pawan Singh)**  
**Judicial Member**

Sd/-  
**(P.K. Bansal)**  
**Vice President**

Mumbai, Dated: 10<sup>th</sup> October, 2017

Copy to:

1. *The Appellant*
2. *The Respondent*
3. *The CIT(A) -5, Mumbai*
4. *The CIT - 2, Mumbai*
5. *The DR, "B" Bench, ITAT, Mumbai*

*By Order*

//True Copy//

*Assistant Registrar*  
*ITAT, Mumbai Benches, Mumbai*

n.p.