

**IN THE INCOME-TAX APPELLATE TRIBUNAL,
AGRA BENCH, AGRA**

**Before: Shri A.D. Jain, Judicial Member And
Shri Dr. Mitha Lal Meena, Accountant Member**

ITA Nos. 270/Agra/2016

A.Y: 2011-12

ACIT, Circle-2(2)(1), Firozabad (Appellant)	vs.	M/s Firozabad Shikohabad Development Authority, Distt. Firozabad (U.P.) PAN: AAAL E 0020 B (Respondent)
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ITA Nos. 170/Agra/2015

A.Y: 2010-11

M/s Firozabad Shikohabad Development Authority, Distt. Firozabad (U.P.) PAN : AAAL E 0020 B (Appellant)	vs.	ACIT, Circle-2(2)(1), Firozabad (Respondent)
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Appellant by	ShriInderjeet Singh, CIT. DR
Respondent by	ShriAlok Farsaiya, CA

Date of Hearing	09.01.2018
Date of Pronouncement	25.01.2018

ORDER

PER: DR. MITHA LAL MEENA, AM:

These appeals by the revenue and assessee are filed in respect of AYs 2010-11 and 2011-12 against the order of Id.CIT (Appeals), Agra.

2. The grounds of appeal are reproduced hereunder:

ITA No. 270/Agra/2016 (AY 2011-12)

- “1. That the Id. CIT(A)-II, Agra has erred in law and on facts in deleting the addition of Rs.40,38,534/- made by AO without appreciating the facts that the assessee himself has offered the accrued interest on FDRs, which are part of infrastructure Development Fund, for the tax in Assessment Year 2013-14.*
- 2. That the Id. CIT(A)-II, Agra has erred in law and on facts in deleting the addition of Rs.40,38,534/- after relying on the judgment of Hon’ble ITAT Agra Bench Agra in assessee ‘s own case in ITA No. 169/Agra’2015 dated 24.06.2015 for Assessment Year 2006-07 ignoring the facts that the said decision of Hon’ble ITAT Agra Bench Agra was not accepted by the department, but due to monetary limit, the appeal was not fled before the Hon’ble High Court.”*

ITA No.170/Agra/2015 (AY 2010-11)

- “1. That having regard to the facts and circumstances of the case, Ld. CIT (A) has erred in law and on facts in confirming the action of Ld. AO in making addition of Rs. 26,71,081/- being Intereston Year Marked Funds (i.e. Development Fund & Infrastructure Development Fund).*
- 2. That in any case and in any view of the matter Ld. CIT (A) has erred in law and on facts in not deleting the additions/disallowances made by Ld. AO as the assessment order is not sustainable on various legal and factual grounds and more so by recording incorrect facts and finding.”*

3. There is one and common effective issue regarding interest accrued on FDRs, which is part of Infrastructure Development Fund, involved in both the ITA No. 270/Agra/2016 (AY 2011-12) and ITA No.170/Agra/2015 (AY 2010-11) and therefore, both these appeals are adjudicated together for the sake of convenience.

4. The assessee is a statutory authority which was established under the provisions of the Uttar Pradesh Planning and Development Act, 1973. And under the provisions of said Act to carry out development work, the Govt. of U.P. empowers the assessee to collect certain fees/charges/levy from Public as per the prescribed norms, and Govt. of U.P. also make the Provisions of other Grant etc. from its other resources. The Assessing Officer (the 'AO') has made addition in respect of interest accrued on FDRs, which was credited on Infrastructure Development Fund Account maintained by the assessee and considering by it as capital receipt in the books of account as being not offered for taxation.

5. In appeal, the Id. CIT(A) deleted the addition for the AY 2011-12 which was confirmed for AY 2010-11 in the impugned order by observing as under:

AY 2011-12:

"7. I had considered the facts of the case, the written submissions filed by the Ld.AR for the appellant and perused the order of the AO. I find that in the assessment year 2006-07, the matter of taxability of interest on FDRs was remanded back to the CIT(Appeals) by the Hon'ble ITAT, Agra Bench, Agra. In compliance to this order of the Hon'ble ITAT, The CIT(Appeals) decided the issue of taxability of interest on FDRs against the assessee following his order passed in AY 2011-12. The assessee further contested the issue before the Hon'ble ITAT. The Hon'ble ITAT, Agra Bench, Agra in ITA No.169/Agra/2015 AY 206-07 vide order dated 24.6.2015 decided the issue in favour of assessee after observing as under :-

"I have noticed that the CIT(A) has given too much of emphasis on how the monies are invested-in a current account with District Co-operation Bank of in fixed deposits elsewhere. That is not material in the present context. What is material is that income from interest on these funds does not accrue to the assessee and even interest receipts are at the disposal only in accordance with Government directions on disposal of the funds relating to infrastructure development. The assessee does not get any unfettered discretion to use such interest earnings, but these earnings only add up to the corpus which can be used in terms of Government directives and for the purpose of infrastructure

development That aspect of the matter being undisputed before me, I am of the considered view that interest in question cannot be treated as income of the assessee. I, therefore, direct the Assessing Officer to delete the impugned addition at Rs. 7,26,878/-. The assessee gets the relief accordingly."

7.1 In the remand report, the AO has mentioned that order of Hon'ble ITAT(Supra) though accepted by the department, however, it was due to the monetary limit that the appeal was not filed before the Hon'ble High Court. The AO has further stated that the assessee's appeal on the same issue for the assessment year 2010-11 has been decided by the Ld. CIT(Appeals) against the assessee. Thus as per the AO, the appeal for the year under consideration deserves to be rejected. The AO has not disputed the fact that the facts of the case for the year under consideration are the same as in the assessment year 2006-07. I further find that the Hon'ble ITAT while deciding the issue under consideration in ITA No.169/Agra/2015 has duly considered the order of the CIT(Appeals) for the AY 2010-11. Since the issue has been decided by the Hon'ble ITAT vide order dated 24.6.2015 in favour of the assessee after overruling the finding of Ld. CIT(Appeals) given in relation to the assessment year 2010-11, therefore while observing that judicial discipline require that since the order of Hon'ble ITAT has attained finality, therefore it ought to be considered as binding in nature over the issue which already stood adjudicated and which is present in the instant appeal. Thus, while following the decision of the Hon'ble ITAT, Agra Bench, Agra(Supra) in the assessee's own case in AY 2006-07, there is no reason to sustain the addition of Rs. 40,38,534/-as made by the AO on account of accrued interest on FDRs, and the same is hereby deleted. Thus, this ground of assessee is allowed."

AY 2010-11:

“5.5 On examination of the above interest account, it can be seen that even as per its own accounting, the interest shown by the assessee at Rs.6,87,500/- on the FOR with OBC and Rs.4,10,000/- on the FOR with BOM totaling to Rs.10,97,500/- are earned on such FOR that have not been marked as "infrastructure fund" and therefore, such FDRs are admittedly prepared out of surplus fund of the assessee. Therefore, even as per its own accounting, the interest income of Rs.10,97,500/- is a revenue receipt of the assessee (appellant) and taxable in his hand. Therefore, the Ld. AR is not found to be correct in his argument that the entire amount of interest of Rs.26,71,081/- shown by the assessee is part of the Infrastructure Development Fund. As I have shown above that out of Rs.26,71,081/-, interest amount of Rs.10,97,500/- has been earned against such FDRs that are not marked as infrastructure fund, such interest is taxable in the hand of the assessee because this interest is admittedly earned on such FDRs that are made out of surplus fund of the assessee not set apart for Infrastructure Development Fund.

Now, the question arises about the taxability of the balance amount of interest income which comes to Rs.15,73,581/- (Rs.26,71,081 - Rs.10,97,500). Though the assessee has shown earning of such interest income on those FDRs, which are marked as "infrastructure fund" but after examination of details of investment and bank balances maintained by the assessee as found declared in its balance sheet, I have found as already discussed in previous para that the assessee has not maintained Infrastructure Development Fund Account as per the directions contained in G.O. dated 15.12.1998 and rather, it has invested surplus money available with it in FDRs for the purpose of earning interest. Therefore, I agree with the AO that even the balance amount of Rs.15,71,581/- should be considered as revenue income in the hand of the assessee

being earned on the investment made by it and such income cannot be said to be part of the Infrastructure Development Fund because this interest amount is not accumulated on the money deposited in a separate bank account maintained for the purpose of Infrastructure Development Fund to be utilized for infrastructure development of the city. Such account maintained with District Cooperative Bank has balance of Rs.2,23,536/- only. The decisions cited by the Ld.AR in the case of Lucknow Development Authority and Saharanpur Development Authority would not apply in the present case under appeal because in the first case, the assessee was maintaining a separate Infrastructure Development Fund Account in a bank in which, amounts set apart by the assessee as per G.O. dated 15.12.1998 was being deposited and in the second case, the amount was being kept in a Narela Revolving Fund Account and these funds were not being invested by the assessee in FDRs for the purpose of earning of interest as is the case in the present appeal. Therefore, I agree with the AO that the facts of the assessee (appellant) in present appeal is distinguishable from the fact of the above mentioned two cases cited by the Ld. AR and the decisions of the above mentioned two cases cannot be applied in case of the assessee (appellant).

Considering the above facts and circumstances of the case of the assessee (appellant), I find that the amount of Rs.10,97,500/- is taxable in the hand of the assessee in accordance with the accounting of investment shown by it and the balance amount of Rs.15,73,581/- is taxable in the hand of the assessee considering the fact that such interest amount has been earned on FDRs made out of surplus money not set apart as per the direction contained in G.O. dated 15.12.1998. Therefore, I confirm the addition of entire amount of Rs.26,71,081/- made by the AO on account of interest income shown by the assessee. Therefore, Ground No. 2 is dismissed.”

6. The Id. DR supported the assessment order contending that the Id. CIT(A) has erred in law on facts in deleting the addition of Rs.40,38,534/- made by AO, without appreciating the facts that the assessee has offered the accrued interest on FDRs, which are part of infrastructure Development Fund, for the tax in Assessment Year 2013-14. He wrongly relied on the judgment of ITAT Agra Bench Agra in assessee's own case in ITA No. 169/Agra'2015 dated 24.06.2015 for Assessment Year 2006-07, ignoring the facts that the said decision of ITAT Agra Bench Agra was not accepted by the department, but due to monetary limit, the appeal was not fled before the Hon'ble High Court. The Id. DR relied on the following judicial pronouncements:

- i) Commissioner of Income Tax vs. The Lakshmi Vilas Bank Ltd. Madras High Court - dated 13, February, 2007 [Page: 1-4]

Page-2

"Tribunal found that there was close nexus between the business of the company, namely banking, and placing of the funds of the Bank in Government securities. In the circumstances, such conduct arising out of compulsion of its business^ the Interest earned thereon would have to be treated as income from business."

Page-3

"As rightly observed by the Tribunal, the conduct arising out of compulsion of law under the provisions of the Banking Regulation Act cannot be viewed to make a company as an investment company, so long as the principal business continued as a banking company."

Page-4, Para-5

" In the context of the decision of the Supreme Court and this Court that income from securities has to be assessed as income from business and having regard to the admitted position that the true business of the assessee is only banking bus/ness"

STATUTORY RESERVES OF BANKS PLACED WITH RBI - SLR AND CRR - TO REGULATE MONETARY POLICY; LIQUIDITY AND INTEREST RATE- THE INTEREST THEREON QUALIFIES AS INCOME OF ASSESSEE UNDER THE HEAD BUSINESS AND ELIGIBLE TO DEDUCTION U/S SOP IF THE BANK IS A COOPERATIVE SOCIETY.

CONDUCT ARISING OUT OF COMPULSION OF LAW DOES NOT TAKE AWAY THE CHARACTER OF INCOME - THE DEPOSITS ARE IN THE NAME OF THE ASSESSEE AND EVEN AS PER CAG THE INTEREST HAS ACCRUED TO THE ASSESSEE. THE TREATMENT THEREOF IS NOT GOVERNED BY THE CAG OBSERVATIONS –

ii) M/s. Southern Technologies Ltd. vs. JCIT

Civil Appeal No. 1337/2003 - Supreme Court [Page: 5-32]

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"45JA. Power of Bank to determine policy and issue directions (1) If the Bank is satisfied that, in the public interest or to regulate the financial system of the country to its advantage or to prevent the affairs of any non-banking financial company being conducted in manner detrimental to the interest of the depositors or in a manner prejudicial to the interest of the non-banking financial company,- it is necessary or expedient so to do, it may determine the policy and give directions to all or any of the non-banking financial companies relating to income recognition, accounting

standards, making of proper provision for bad and doubtful debts, capital adequacy based on risk weights for assets and credit conversion factors for off balance-sheet items and also relating to deployment of funds by a non-banking financial company or a class of non-banking financial companies or non-banking financial companies generally, as the case may be, and such non-banking financial companies shall be bound to follow the policy so determined and the direction so issued."

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"WBFCs have to accept the concept of "income" as evolved by RBI after deducting the Provision against NPA, however, as stated above, such treatment is confined to Presentation / Disclosure and has nothing to do with computation of taxable income under the IT Act."

- iii) Karnataka Bank Ltd. vs. ACIT
Karnataka High Court - ITA No. 172/2009 [Page: 33-40]

Page-37, Para-31

"Before concluding on this point, we need to emphasize that the 1998 directions has nothing to do with the accounting treatment or taxability of "income" under the Income- tax Act. The two, viz., the Income-tax Act and the 1998 Directions operate in different fields. As stated above, under the mercantile system of accounting, interest/hire charges income accrues with time. In such cases, interest is charges and debited to the account of the borrower as "income" is recognized under the accrual system. However, it is not so recognized under the 1998 Directions and, therefore, in the matter of its presentation under the said directions, there would be an add back but not under the Income-tax Act necessarily. It is important to note that collectability is different from accrual."

7. The Id. counsel for the assessee submitted that the assessee is a statutory authority which was established under the provisions of Uttar Pradesh Planning and Development Act, 1973; that the government order dated 15.01.1998 is an administrative instruction of State Government, explaining as to which part of the certain receipts are to be transferred and set a part and thereafter how and for what purposes this accumulated amount has to be applied and thus out of the gross receipts the funds belonging to the State Government to be utilized as per their direction and are kept in separate bank account. The assessee do not have any ownership or control over such funds as the assessee is only a trustee.

8. The Id. counsel for the assessee further submitted that the same issue was earlier decided in favour of the assessee in ITA No. 169/Agr/2015 order dated 24.06.2015, AY 2006-07, in the assessee's own case by ITAT Agra Bench, Agra. He also submitted that the department has not filed appeal before the Honble Allahabad High Court against the said order of ITAT Agra Bench Agra in the assessee's case as he has not received any

notice from the High Court in this reference till date. In support, he placed reliance on the cases of 'CIT vs. Delhi State Industrial Development, 295 ITR 419 (Del) and 'Saharanpur Development Authority vs. CIT, in ITA No. 132/Del/2009 where it is observed that interest earned by investing the surplus fund in banks belonging to state administration and not to the assessee and therefore, the interest could not be included in the income of the assessee.

9. We have heard the rival contentions, perused the material on records and the case laws cited in support. It is not disputed that the assessee is a statutory authority engaged in the Planning and Development work as per the government order dated 15.01.1998. It is noted that the Saharanpur Development Authority, Lucknow Development Authority and assessee all are statutory authority which were established under the provisions of the Uttar Pradesh Planning Development Act, 1973, and thus, governed by the same rules of Government of U.P. The Id. counsel in counter argument to the Id. DR that the decision of ITAT, Delhi Bench in the case of Saharanpur Development

Authority (Supra) is absolutely clear as regards to the taxability of income earned on the Infrastructure Funds.

10. The Id. DR has not disputed the facts of the case under consideration are similar to that of the AY 2006-07, decided by ITAT, Agra Bench, Agra in ITA No. 169/Agr/2015 in favour of the assessee, which are duly considered in the order of the CIT(A)'s for the AYs 2010-11 and 2011-12, the appeals before us. We find that the issue is squarely covered by the order of the ITAT, Agra Bench, (Supra) by observing Para 6 as follows:

“6. I have noticed that the CIT(A) has given too much of emphasis on how the monies are invested – in a current account with District Cooperative Bank or in fixed deposits elsewhere. That is not material in the present context. What is material is that income from interest on these funds does not accrue to the assessee and even interest receipts are at the disposal only in accordance with Government directions on disposal of the funds relating to infrastructure development. The assessee does not get any unfettered direction to use such interest earnings, but these earnings only add up to the corpus which can be used in terms of Government directives and for the purpose of infrastructure development. That aspect of the matter being undisputed before me, I am of the considered view that interest in question cannot be treated as income of the assessee. I, therefore, direct the Assessing Officer to delete the impugned addition of Rs.7,26,878/-. The assessee gets the relief accordingly.”

11. In view of above, following the aforesaid decisions in the assessee's own case, we hold that the interest in question cannot be treated as income of the assessee, therefore, the grievance of the assessee is accepted and as such allowed. The grounds of the Department's appeal is found without merits and substance and hence, dismissed.

12. In the combined result, the revenue appeal in ITA No. 270/Agr/2016 is dismissed and appeal of the assessee in ITA No. 170/Agr/2015 is allowed.

Order pronounced in the open court on 25/01/2018

**Sd/-
(A.D. Jain)
Judicial member**

**Sd/-
(Dr. Mitha Lal Meena)
Accountant Member**

Dated: 25.01.2018

Aks/-DOC

Copy of order forwarded to:

(1) <i>The appellant</i>	(2) <i>The respondent</i>
(3) <i>Commissioner</i>	(4) <i>CIT(A)</i>
(5) <i>Departmental Representative</i>	(6) <i>Guard File</i>

By order

*Assistant Registrar
Income Tax Appellate Tribunal
Agra Bench, Agra*

		Date		
1.	Draft dictated / DOC	18.01.2018		PS
2.	Draft placed before author	24.01.2018		PS
3.	Draft proposed & placed before the second member			JM/AM
4.	Draft discussed/approved by Second Member.			JM/AM
5.	Approved Draft comes to the Sr.PS/PS			PS/PS
6.	Kept for pronouncement on			PS
7.	File sent to the Bench Clerk			PS
8.	Date on which file goes to the AR			
9.	Date on which file goes to the Head Clerk.			
10.	Date of dispatch of Order.			