

**आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ, 'ई', मुंबई।**

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCHES, 'E' MUMBAI**

**श्री जोगिन्दर सिंह, न्यायिक सदस्य एवं  
श्री मनोज कुमार अग्रवाल, लेखा सदस्य, के समक्ष**

**Before Shri Joginder Singh, Judicial Member, and  
Shri Manoj Kumar Aggarwal, Accountant Member**

**ITA No.6348/Mum/2013  
Assessment Year: 2010-11**

Shapoorji Pallonji Forbes Shipping Ltd. (Formerly known as SCI Forbes Ltd.), C/o- Kalyaniwalla & Mistry LLP, Esplanade House, 02 <sup>nd</sup> Floor, Hazarimal Somani Marg, Fort, Mumbai-400001	<b>बनाम/ Vs.</b>	Income Tax Officer-5(3)(2), Room No.526B Aayakar Bhavan, M.K. Road, Mumbai-400020
(निर्धारिती / Assessee)		(राजस्व / Revenue)
<b>PAN. No. AAKCS0662F</b>		

निर्धारिती की ओर से / Assessee by	Shri Zareer Mehta
राजस्व की ओर से / Revenue by	Shri V. Justin-DR

सुनवाई की तारीख / <b>Date of Hearing:</b>	<b>15/05/2018</b>
आदेश की तारीख / <b>Date of Order:</b>	<b>15/05/2018</b>

## **आदेश / O R D E R**

Per Joginder Singh(Judicial Member)

The assessee is aggrieved by the impugned order dated 26/08/2013 of the Ld. First Appellate Authority, Mumbai. The first ground raised by the assessee pertains to holding that the interest income of Rs.2,94,226/- was taxable as income from other sources. The second ground raised pertains to holding that interest income of Rs.2,94,226/- will not part of tonnage income of the assessee.

2. At the outset, the Ld. DR, Shri V. Justin, claimed that both these issues are covered against the assessee by the decision of the Tribunal in the case of assessee itself for Assessment Year 2011-12 (ITA No.230/Mum/2015), order dated 15/09/2017. This claim of the ld. DR was fairly agreed by the Ld. counsel for the assessee that the issues in hand are covered against the assessee.

2.1. We have considered the rival submissions and perused the material available on record. In view of the above, factual matrix, we are reproducing hereunder the aforesaid order of the Tribunal dated 15/09/2017 for ready reference and analysis:-

Aforesaid appeal at the instance of the assessee is directed against the order dated 28<sup>th</sup> October 2014, passed by the learned Commissioner (Appeals)-9, Mumbai, for assessment year 2011-12.

2. The assessee has raised three grounds.

3. Grounds no.1 and 2 are against the decision of the Departmental Authorities in taxing the interest income of ₹ 1,35,86,587, as income from other sources.

4. Brief facts relating to this issue are, the assessee a resident company is in the business of owning, operating and chartering of chemical tankers(vessels). The assessee is registered as a Tonnage Tax Company(TTC) under section 115VP of the Income-tax Act, 1961 (for short "*the Act*"), vide order dated 30<sup>th</sup> October 2009 and has opted to be assessed under the Tonnage Tax Scheme(TTS) as provided under Chapter-XII-G of the Act. During the assessment proceedings, the Assessing Officer while verifying the audited Profit & Loss account of the assessee company for the year under consideration found that the assessee has credited 'income from operation' amounting to ₹ 83,04,09,070 and 'other income' of ₹ 1,37,39,294. On further verification, he found that as per Schedule-12 of Profit & Loss account, the 'other income' comprises of interest on deposits amounting to ₹ 1,35,86,587 and interest on income tax refund amounting to ₹ 1,52,707. The Assessing Officer being of the opinion that interest income cannot be treated as business income called upon the assessee to explain why such income should not be taxed as income from other sources under section 56 of the Act. In response, it was submitted by the assessee that it has no other business except shipping, hence, it is covered under the TTS. It was further submitted, the assessee had taken loan from Natixis Bank for purchase of four chemical carriers (tankers). As per loan agreement, there is a covenant to maintain deposits by way of security to the tune of 120% of the loan amount. It was submitted, the said security was placed with Natixis Bank till 31<sup>st</sup> July 2010. Since, Natixis Bank did not pay any interest

on the deposits placed with them as per the loan covenant, the said deposit was transferred to SBI, Paris, via a cash collateral agreement dated 7<sup>th</sup> July 2010, as per resolution of the Board of Directors of the company. The assessee submitted, since, the loan was taken to acquire vessels and as per the terms of loan agreement, the assessee was required to keep a security deposit with the bank on which it earned interest, such interest income forms part of business income as well as shipping activity of the assessee.

5. The Assessing Officer, however, did not find merit in the submissions of the assessee. The Assessing Officer observed, the provisions contained under Chapter-XII-G are special provisions relating to income of shipping company which provides specific manner to compute tonnage income which will qualify to be assessed under the special provisions of the Act. Referring to the provisions of sections 115VE, 115VF and 115VG the Assessing Officer observed, interest income earned by the assessee being not part of tonnage tax scheme cannot come within the purview of the said scheme but is covered by the provisions of sections 56 and 57 of the Act. Referring to the definition of "*relevant shipping income*" as defined under section 115V-I r/w rule 11R, the Assessing Officer observed, earning of interest income is neither a core activity nor incidental activity to consider it as "*relevant shipping income*". Therefore, he held that the interest income of ₹ 1,37,39,294, is to be taxed as income from other sources and accordingly, he completed the assessment. Being aggrieved of the addition so made, the assessee preferred appeal before the first appellate authority.

6. The learned Commissioner (Appeals), after considering the submissions of the assessee and keeping in view the facts and material on record as well as relevant statutory provisions, held that the interest income earned by the assessee is to be assessed under the head income from other sources. While doing so, he observed that in assessment year

2010-11, in assessee's own case it was held that interest earned by the assessee is taxable as income from other sources under section 56.

7. Learned Authorised Representative reiterating the stand taken before the Departmental Authorities submitted, the only business carried on by the assessee is operating shipping vessels / tankers. He submitted, not only the assessee has exercised its option to be taxed under Chapter-XII-G containing special provisions relating to income of shipping companies, but, the assessee has also been granted approval under the tonnage tax scheme. The learned Authorised Representative submitted, the assessee borrowed money from Natixis Bank for purchase of four shipping vessels and all such vessels qualify as operating ships. He submitted, the income earned from the operation of the shipping vessels has been computed as tonnage income as provided under section 115BG of the Act. He submitted, the loans taken from Natixis Bank were specifically for the purpose of procuring the shipping vessels. He submitted, as per the terms of the agreement, the assessee had to retain a security of 120% towards the loan. He submitted, in terms with the loan agreement, assessee kept the security with Natixis Bank. However, since the security kept in Natixis Bank was not earning any interest, assessee shifted the security deposit to SBI, Paris, by furnishing a cash collateral. The learned Authorised Representative submitted, since, the interest earned on security is directly related to the loan taken for acquiring vessels and since, operating shipping vessels is the only business of the assessee, the interest income being integrally connected with the core business activity of the assessee is part of the 'relevant shipping income', hence, covered under the TTS. He submitted, as per section 115VA of the Act, the income from business of operating qualifying ships not only has to be computed at assessee's option in accordance with the provisions of Chapter-XII-G, but, such income shall be deemed to be the profits and gains of such business chargeable to tax

under the head profits and gains of business or profession. Referring to the provisions of section 115VE of the Act, the learned Authorised Representative submitted, the tonnage tax company engaged in the business of operating qualifying ships shall compute the profits from such business under the TTS. He submitted, as per section 115VF of the Act, the tonnage income shall be computed as per section 115VG of the Act and such income shall be deemed to be the profit chargeable under the head profits and gains of business or profession and the relevant shipping income referred to under sub-section (1) of section 115V-I of the Act shall not be chargeable to tax. He submitted, once the assessee's income from shipping operation is computed under section 115VG of the Act, the 'relevant shipping income' cannot be brought to tax. Referring to the definition of shipping income as provided under section 115V-I of the Act. The learned Authorised Representative submitted, the interest income earned by the assessee constitutes its profit from core activities as referred to in sub-section (2) of section 115V-I of the Act. In this context, he specifically referred to clause (i) of sub-section (2) of section 115V-I of the Act. Referring to the loan agreement and terms of cash collateral and pledge document, learned Authorised Representative submitted, a careful reading of these documents would establish a clear nexus between acquisition of tankers, borrowals and the pledge. He submitted, the cash collateral security being directly linked to acquisition of vessels / tankers, the interest income earned on such security is part of 'relevant shipping income', hence, covered under Chapter-XII-G of the Act. In support of such contention, he relied upon the following decisions:-

- i) CIT v/s Varun Shipping Co. Ltd., 334 ITR 263;*
- ii) DCIT v/s Hari Orgochem P. Ltd., 45 taxmann.com 381;*
- iii) Empire Pumps Pvt. Ltd. v/s ACIT, 229 taxman 379;*
- iv) PCIT v/s Facor Power Ltd., 380 ITR 474;*
- v) CIT v/s Arihant Threads Ltd., 12 taxmann.com 69;*
- vi) Bharat Oman Refineries Ltd. v/s ITO, 52 taxmann.com 347;*

- vii) *CIT v/s Indo Swiss Jewels Ltd., 284 ITR 389;*
- viii) *Keshavji Ravji and Co. v/s CIT, 183 ITR 1;*
- ix) *ACG Associated Capsules Pvt. Ltd. v/s CIT, 343 ITR 89;*
- x) *Liberty Footwear Co. v/s CIT, 383 ITR 195.*

8. Learned Departmental Representative strongly relying upon the observations of the learned Commissioner (Appeals) and the Assessing Officer submitted, as per the TTS under Chapter–XII–G, only the income from operating qualifying ships are to be considered as ‘relevant shipping income’ as provided under section 115VI of the Act. He submitted, as per the definition of ‘relevant shipping income’, income directly arising out of operating qualifying ships would come within the said definition. He submitted, as per the TTS, once the tonnage income is computed under section 115VG of the Act, the relevant shipping income arising to the assessee would not be taxable. He submitted, the provisions contained under Chapter–XII–G being special provisions providing the mode of computation of tonnage income of shipping companies, have to be followed strictly and these provisions being distinct and separate from other provisions of the Act would not apply to any other income except shipping income. He submitted, the interest earned by the assessee can neither be considered to be from core activity nor incidental activity to constitute relevant ship income under section 115V–I of the Act. Further, the learned Departmental Representative submitted, none of the decisions relied upon by the learned Authorised Representative being directly on the issue of applicability of tonnage tax scheme cannot be relied upon.

9. We have patiently and carefully heard rival contentions and perused the materials available on record. We have also applied our mind to the decisions relied upon at the Bar. The factual matrix of the case reveals that the assessee is in the business of operating qualifying ships and in terms of section 115VA of the Act, the assessee has exercised its option for computation of income from business of operating qualifying ships under the TTS as provided

under Chapter–XII–G of the Act. It is also a fact that the Department has accepted the option exercised by the assessee. From the audited Profit & Loss account, a copy of which is placed at Page–7 of the paper book, it is evident that the assessee has offered income from operations of ₹ 83,04,09,070, the Department has no dispute with fact that the aforesaid income from operation constitutes relevant shipping income in terms of section 115V–I of the Act, hence, has proceeded to compute tax in respect of such income on tonnage basis as provided under section 115VG of the Act. Besides, the income from operation referred to above, the assessee has also offered 'other income' of ₹ 1,37,39,294. On a perusal of Schedule–12 to the Profit & Loss account, it is seen that the 'other income' is comprised of interest earned on deposit amounting to ₹ 1,35,86,587 and interest on income tax refund amounting to ₹ 1,52,707. As far as interest on income tax refund is concerned, the assessee has no quarrel with the Department that it is taxable as income from other sources under section 56 of the Act. The only issue in dispute is with regard to taxability of interest earned on deposits amounting to ₹ 1,35,86,587. While the assessee has claimed it as part of 'relevant shipping income', the Assessing Officer has assessed it to tax as income from other sources. Before we proceed to decide the issue, it is necessary to look into relevant provisions contained under Chapter–XII–G which are special provisions relating to computation of income of shipping companies. As per the definition of 'qualifying company' under section 114V(g) of the Act, it must be an Indian company, the place of effective management of the company must be in India, it must own at least one qualifying ship and the main object of the company is to carry on the business of operating ships. 'Qualifying ships' as defined in section 115V(h) r/w section 115VD of the Act means, it is a sea going ship or vessel of 15 net tonnage or more or it is a ship registered under Merchant Shipping Act, 1958, or a ship registered outside India in respect of which a license has been issued by the Director General of shipping under

section 406 or 407 of the Act of the Merchant Shipping Act, 1958 and a valid certificate in respect of such ship indicating its net tonnage is in force. However, there are exceptions providing for non-inclusion of certain ships/vessels as a qualifying ship. As per section 115V(i) of the Act, 'tonnage income' means the income of a tonnage tax company computed in accordance with the provisions of Chapter-XII-G of the Act. As per section 115V(k) of the Act, 'tonnage tax activity' has been defined to mean the activity referred to in sub-section (2) and (5) of section 115V-I of the Act. Section 115V(a) of the Act says 'tonnage tax company' means a qualifying company in relation to which tonnage option is in force. Section 115V(m) defines 'tonnage tax scheme' to mean a scheme for computing profit or gain of business of operating qualifying ships under the provisions of Chapter-XII-G of the Act. Section 115VA provides for computation of profit and gains from the business of operating qualifying ships under Chapter-XII-G, in case assessee exercises its option for such computation. It also provides for such income being treated as the profits and gains of business or profession. Section 115VE of the Act provides the manner of computation of income under TTS. As per the said provision, the business of operating qualifying ships giving rise to income referred to in sub-section (1) of section 115V-I of the Act, shall be considered as a separate business distinct from all other activities or business carried on by the company. It further provides that the profits derived from business of operating qualifying ships shall be computed separately from the profits and gain from any other business. Section 115VG of the Act provides that tonnage income shall be computed in accordance with section 115VG of the Act and the income so computed shall be deemed to be the profits chargeable under the head profit and gain of business and the relevant shipping income referred to in sub-section (1) of section 115V-I of the Act, shall not be chargeable to tax. Section 115VG of the Act provides for computation of tonnage income on the basis of the net tonnage of qualifying ship and

not on the income earned by operating such ship. Section 115V-I of the Act defines 'relevant shipping income' to mean - (i) profits from core activities referred to under sub-section (2) and its profit from incidental activities referred to in sub-section (5). Core activities under sub-section (2) has been defined to mean its activities from operate qualifying ships and other ship related activities such as shipping contracts in respect of earning from pooling arrangement and contracts of affreightment. Further, the other ship related activities would also include specific shipping trade as defined under clause (b) of sub-clause (2) of section 115V-I of the Act. Profit from incidental activities as per sub-section (5) would mean activities which are incidental to core activities as prescribed under rule 11R. As per rule 11R, the following activities have been treated as incidental activities.

- i) Maritime Consultancy Charges;*
- ii) Income from loading and unloading charges;*
- iii) Ship management fee or remuneration received for managed vessels; and*
- iv) Maritime education or recruitment fee.*

10. Thus, entire TTS as provided under Chapter-XIIG would indicate that it is a code by itself and provides for computation of profit and gain of shipping business under the said scheme as a completely distinct and separate activity from all other activities carried on by assessee. In other words, except the profits from shipping business, the income derived from all other activities will be assessed separately as per other provisions of the Act. Keeping in perspective the aforesaid statutory provisions if we examine the facts of this case, it will emerge that the dispute is only with regard to the interest on deposits earned by the assessee, which the assessee claims to be its profit from core activity of operating qualifying ships, hence, forms part of 'relevant shipping income'

as defined under section 115V-I of the Act. We are afraid; we cannot accept the aforesaid claim of the assessee. The TTS which is a special provision for computation of income from shipping business was introduced in view of the steep competition faced by Indian companies vis-a-vis foreign shipping lines and in order to ensure an easily accessible, fixed rate, low tax regime for shipping companies. The whole purpose of introduction of TTS was to make the Indian Shipping Industry more competitive in the global space by rationalizing its tax cost. Thus, the TTS was introduced with an object to give certain benefits to the companies in shipping business, as per which, income from operation of qualifying ships is computed on the basis of tonnage of ships instead of actual profit derived from operating qualifying ships. In other words, the assessee opting for TTS is required to pay tax on the basis of tonnage of ships operated by him and not on actual profit derived from operating the ships. The definition of 'relevant shipping income' as provided under section 115V-I of the Act clearly indicates that the core activities as per section 115V-I of the Act is, profit from operating qualifying ships and other ship related activities mentioned under sub-section (2) of section 115V-I of the Act. By no stretch of imagination it can be said that interest income earned by the assessee on security deposits kept in the bank amounts to profit from the activity of operating qualifying ships.

11. In this context, it is necessary to refer to the loan agreement between the assessee and Natixis Bank. Reading of loan agreement, a copy of which is at Page-38 of the paper book, would indicate that such loan was provided to the assessee for acquiring four vessels. As per the term of the said agreement, the assessee was required to not only mortgage the ships but in respect of such mortgaged ships the assessee shall keep security deposit in dollars to the tune of 120% of the outstanding loan amount for a period commencing on the delivery date and until the expiry of the security period. As per assessee's own admission, in terms of the agreement the assessee

had placed the security deposit in dollars with Natixis Bank till 31<sup>st</sup> July 2010. However, since Natixis Bank did not pay any interest on the deposits, the said deposit was transferred to SBI, Paris, via the cash collateral agreement dated 7<sup>th</sup> July 2010. Thus, in this process, the assessee earned interest on the security deposits. From the aforesaid facts, it is clear that there was no compulsion on the assessee to shift the security deposit from Natixis Bank to SBI, Paris. Rather, it is obvious, for earning interest income, the assessee had shifted the security deposit from Natixis Bank to SBI, Paris. That being the case, the earning of interest income has no direct or proximate nexus with the activity of operating qualifying ships or other shipping related activities. The interest earning activity is a completely distinct and separate activity not connected to the shipping business of the assessee. Even, the interest income earning activity cannot also be considered as incidental to its core activity in the context of rule 11R. The TTS being a special provision carved out in the statute for taxing income from shipping business, no other income or activity unconnected with the activity of operating qualifying ships can be brought into the purview of TTS.

12. Moreover, it is also a fact that interest income earned in assessment year 2010-11 was assessed to tax as income from other sources. Though, the learned Authorised Representative has tried to distinguish the order passed for the assessment year 2010-11, however, we are not convinced with the same. As far as the decisions relied upon by the learned Authorised Representative are concerned, on careful reading of the said decisions, we are of the view that they will not apply to the facts of the present case as they are rendered in respect of other provisions of the statute and not in the context of Chapter-XII-G which is a special provision and a complete code in itself providing for taxation of income from shipping business. Therefore, we do not find the necessity to elaborately deal with the decisions relied upon by the learned Authorised

Representative. In view of the aforesaid, the grounds raised are dismissed.

13. In ground no.3, assessee has raised the issue of abatement of interest income against interest expenditure for computing relevant shipping income under section 115V-I of the Act.

14. Before the Assessing Officer, the assessee made a without prejudice claim that, since, the interest income is not an independent source of income, but is only an abatement of interest expenditure, hence, are of same character. Therefore, netting-off of interest income against interest expenditure should be allowed. However, the Assessing Officer rejected the claim of the assessee on the reasoning that interest income being assessable as income from other sources and the interest expenditure being relatable to shipping business, netting-off cannot be allowed.

15. Before us, the learned Authorised Representative reiterating the submissions made before the Departmental Authorities pleaded for netting-off of interest income against interest expenditure. In support of such proposition, the learned Authorised Representative relied upon a number of decisions.

16. Learned Departmental Representative supported the reasoning of the Assessing Officer.

17. We have heard rival contentions of the parties and perused the material available on record. While deciding ground no.1 and 2 raised by the assessee herein before, we have held that interest income cannot be considered as part of relevant shipping income as provided under section 115V-I of the Act. That being the case, the issue raised in this ground has become otiose, hence, dismissed.

18. In the result, assessee's appeal is dismissed."

2.2. We find that in the aforesaid order dated 15/09/2017, the Tribunal considered the factual matrix and found that earning of interest income is neither the core activity nor incidental activity it as 'relevant shipping income' therefore, it has to be taxed as income from other sources . The Tribunal also considered various decisions, which are mentioned at page-7 (para-7 of the order). Following the aforesaid order and admission of the assessee that the issues are covered against the assessee, we dismiss the appeal of the assessee.

Finally, the appeal of the assessee is dismissed.

This Order was pronounced in the open court in the presence of Ld. representative from both sides at the conclusion of hearing on 15/05/2018.

**Sd/-**

(Manoj Kumar Aggarwal)

लेखा सदस्य / ACCOUNTANT MEMBER

**Sd/-**

(Joginder Singh)

न्यायिक सदस्य / JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 15/05/2018

*Shekhar, P.S.नि.स.*

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant (Respective assessee)

2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT, Mumbai.
4. आयकर आयुक्त / CIT(A)- , Mumbai,
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR,  
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / **ITAT, Mumbai**