

**IN THE INCOME TAX APPELLATE TRIBUNAL
[DELHI BENCHES : “ E ” NEW DELHI]**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

**I. T. Appeal No. 666 (Del) of 2015
Assessment Year : 2011-12.**

Deputy Commissioner of Income Tax, Circle : 17 (1) N e w D e l h i.	Vs.	M/s. Modipon Ltd., Hapur Road, Modi Nagar, U.P. – 201 204.
		PAN : AAACM 2069 E
(Appellant)		(Respondent)

Assessee by : Shri Santosh K. Aggarwal, Adv.;

Department by : N O N E;

Date of Hearing : 02.05.2018;

Date of Pronouncement : 10.07.2018.

ORDER.

PER PRASHANT MAHARISHI, A.M. :

This appeal is filed by the Revenue against the order of the learned Commissioner of Income Tax (Appeals)-VIII, New Delhi, dated

11.11.2014 for assessment year 201112 wherein following grounds have been raised :

1. hether on the facts circumstances of the case in law, the Ld. CIT (Appeals) is ustified in deleting the addition on account of Interest income not declared by the assessee amounting to Rs.1,5,42/.

2. hether on the facts circumstances of the case in law, the Ld. CIT (Appeals) is ustified in deleting the addition on account of income chargeable under section 41 of the Act amounting to Rs.,70,5,286/.

. hether on the facts circumstances of the case in law, the Ld. CIT (Appeals) is ustified in accepting the additional evidence under Rule 46A of the IT Act without giving an opportunity to the A.O. for representing Revenue s view on it.

4. That the order of the Ld. CIT (Appeals) is erroneous and is not tenable on facts and in law.

5. That the grounds of appeal are without preudice to each other.

6. That the appellant craves leave to add, alter, amend or forego any ground(s) of the appeal raised above at the time of the hearing.

2. round Nos. 4, 5 and 6 are supportive in nature and, therefore, the same are dismissed.

riefly stated the facts are that assessee is a company, who filed its return of income on 2.07.2011 declaring total income of Rs. NIL. The assessment under section 14() of the Act was made on 28.02.2014 at NIL income. However, as assessee has carried forward losses of Rs.2.75 crores, the additions were made to the total income of the assessee on account of interest income not declared by the assessee, income chargeable under section 41 of the Act and disallowance under section 14A of the Act totaling to Rs.6,5,072/.

4. The assessee aggrieved with the order preferred an appeal before the learned CIT (Appeals), who deleted the addition on account of interest income as well as Rs.,70,5,286/ under section 41(1) of the Act. The disallowance under section 14A of Rs.14,000/ was upheld. Therefore, the Revenue is in appeal before us on account of deletion of the addition on account of interest not declared by the assessee amounting to Rs.1,5,42/ and addition under section 41 of the Act amounting to Rs.,70,5,286/.

5. The first ground of appeal of the Revenue is against deletion

of the addition on account of interest income of Rs.1,5,42/.

6. The brief facts of the case is that during the year on looking at form No. 26AS it was found by the Assessing Officer that assessee has earned income on fixed deposit receipts with Citi an, State an of India and an of aroda amounting to Rs.1,5,42/. However, the same was not declared in its return of income. Therefore, the Assessing Officer made the addition of the above sum.

7. On appeal before the learned CIT (Appeals) he deleted the addition of Rs.66,255/ received from an of aroda, interest received from Citi an NA of Rs.74,655/ and from State an of India of Rs.12,582/.

8. None appeared on behalf of the Revenue. Therefore, this appeal is decided on the basis of facts available before us.

. The learned authoried representative reiterated the submissions made before the learned CIT (Appeals).

10. (i) The above interest income were undisputedly earned by

the assessee during the year as respective banks has reported in form No. 26AS about the interest income accruing on the fixed deposits placed with those banks by the assessee. The learned CIT (Appeals) has deleted the addition merely for the reason that deposits in banks are very old and no interest income was booked in this year. However, the learned CIT (Appeals) deleted the addition with respect to Citibank for the reason that assessee has given a reconciliation that such income has already been taxed in the earlier years. As no fault can be found to the extent of the deletion of the addition of Rs.74,655/, being interest income earned from Citibank NA, where the same has already been taxed in earlier years, the order of the learned CIT (Appeals) deleting the addition to the extent of Rs.74,655/ is confirmed. (ii) With respect to the further addition of Rs.66,255/, it was stated that fixed deposit with State Bank of India is not related to the company as the fixed deposit receipt was made for a litigation and the income would be accounted only when the litigation would be over. The learned CIT (Appeals) was also of the view that even otherwise the income has accrued on fixed deposit receipts would be of the rival party in case the issue is decided against the assessee. Hence, he deleted the addition. We do not agree with the view of the learned CIT (Appeals). The

DR belongs to the assessee and, therefore, interest income shall also be taxable in the hands of the assessee. It does not have any relationship with the outcome of the litigation as fixed deposit receipts are only for the purpose of safeguarding of the right of the parties. In view of this, the order of the learned CIT (Appeals) in respect of interest income of Rs.66,255/ on fixed deposit receipt with State an of India is reversed and the order of the learned Assessing Officer is upheld. (iii) ith respect to the interest income from an of aroda, it was stated that the same has been offered for taxation in the subseuent year and, therefore, the learned Assessing Officer based on the claim of the assessee that when it has been offered for taxation in the subseuent year, the same is not reuired to be added here. Interest on fixed deposit receipt is reuired to be charged on the basis of method of accounting regularly followed by the assessee. As the assessee is a company, it has to follow the accrual method of accounting. The interest income of Rs.66,255/ has accrued during the year and, therefore, same is chargeable to tax in this year only. The income is charged to tax on the basis of the respective provisions as per Income Tax Act and cannot be left at the discretion of the assessee. To that extent we reverse the order of the learned CIT (Appeals) in deleting the

addition of Rs.66,255/ being interest on fixed deposit receipts of an of aroda accrued during the year. (iv) In view of this, ground No. 1 of the appeal of the Revenue is partly allowed.


11. round No. 2 of the appeal is with respect to the deletion of addition made by the learned Assessing Officer under section 41 of the Act amounting to Rs.,70,5,286/.

12. The brief facts shows that during the assessment proceedings, the learned Assessing Officer noted that assessee has reduced the sum of Rs.,70,5,286/ in the computation of taxable income being amount of waiver of liability of loan payable to Allahabad an. The assessee in the tax audit report has shown the above sum as taxable under section 41 of the Act. efore the Assessing Officer the assessee could not satisfy that how the above sum is not chargeable to tax and, therefore, addition was made. The learned CIT (Appeals) deleted the above addition for the reason that assessee has not claimed any deduction, but the same was offered to tax by the assessee. It was noted by him that on account of one time settlement with Allahabad an, interest related to that

loan has been written bac and accounted for in the profit and loss account. However, the same interest expenditure was not at all claimed by the assessee as deduction in earlier years in view of the provisions of section 4 of the Act. The learned CIT (Appeals) therefore, held that as the assessee has not claimed the above sum as deduction in the earlier years because of the provisions of section 4 of the Act, on writing bac the same amount on account of the waiver, it is not chargeable to tax under section 41(1) of the Act.

1. The learned authorized representative reiterated the same submissions before us.

14. We have carefully considered the rival contentions and perused the orders of the learned lower authorities. As the assessee has not claimed any deduction of the interest on above loan, but was disallowed under section 4 in the earlier years, same was not offered to tax under section 41(1) of the Act in the year of waiver. Provisions of section 41 of the Act applies only when such sum is allowed as deduction in earlier years. We do not find any infirmity in the order of the learned CIT (Appeals) in deleting the

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above addition after verification of the details that above sums have been disallowed by the assessee in the earlier years under section 4 of the Act. In view of this, ground No. 2 of the appeal of the Revenue is dismissed.

15. round No. of the appeal is against the additional evidence considered by the learned CIT (Appeals) without giving any opportunity to the Assessing Officer. In the order of the learned CIT (Appeals) we do not find that any additional evidences have been submitted by the assessee and, therefore, the same is dismissed.

16. In view of the above facts, the appeal of the Revenue is partly allowed.

The order is pronounced in the Open Court on : **10th July, 2018.**

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated : the **10.07.2018.**

MEHTA

Copy of the Order forwarded to :

1. Appellant;
2. Respondent;
- . CIT;
4. CIT (Appeals);
5. DR, ITAT, ND.

//True Copy//

ORDER

ASSISTANT REISTRAR

Up-loaded on Website on : <u>10.07.18.</u>	Date
Draft dictated on	09.07.2018
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File sent to the Bench Clerk on :	10.07.2018
Date on which file goes to the AR	
Date on which file goes to the Head Cler.	
Date of dispatch of Order.	

