

आयकरअपीलीयअधिकरण , 'ए' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, CHENNAI

श्री जॉर्जमथन, न्यायिक सदस्यएवंश्री एस जयरामन, लेखा सदस्य केसमक्ष

BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER AND
SHRI S. JAYARAMAN, ACCOUNTANT MEMBER

आयकर अपील सं./I.T.A. No. 3497/Chny/2016

निर्धारण वर्ष/Assessment Year : 2012-13

M/s. India Metal One Steel Plate
Processing Pvt. Ltd.,
Prestige Palladium Bayan,
6th Floor, Door No. 129 to 140
Greams Road, Chennai – 600 006.

The Deputy Commissioner of Income
Tax,
Corporate Circle – 2(2),
121, Mahatma Gandhi Road,
Nungambakkam,
Chennai – 600 034.

[PAN: AACCI 5959F]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

Assessee by : Shri. R. Vijayaraghavan, Advocate
Revenue by : Shri. AR. V. Sreenivasan, JCIT

सुनवाईकीतारीख/Date of Hearing : 27.11.2018

घोषणाकीतारीख/Date of Pronouncement : 27.11.2018

आदेश/ ORDER

PER S. JAYARAMAN, ACCOUNTANT MEMBER :

The assessee filed this appeal against the order of
Commissioner of Income Tax (Appeals)-6, Chennai in ITA No.
185/CIT(A)-6/15-16 dated 18.10.2016 for assessment year 2012-13.

2. M/s. India Metal One Steel Plate Processing Pvt. Ltd., the assessee, a company incorporated on 20.04.2011, is in the process of establishing facility for manufacture of steel plate processing and fabrication of heavy machinery parts and components. While making the assessment, the AO has noted that during the F.Y 2011-12, the assessee was in the process of procurement of plant & machinery as well as setting up various systems and structures for the commencement of business. The commercial production began from 1st August 2012. The AO further noted that the assessee had earned Rs. 3,20,36,214/- as an interest income prior to the setup of business. Rejecting the assessee's submission that the interest income earned from short term deposits in bank are capital in nature, the AO has assessed the interest income under the head "income from other source". In doing so, the AO has placed reliance on the decision of Hon'ble Supreme Court in the case of Tuticorin Aikali Chemicals & Fertilizers Ltd. vs CIT reported in [1997] 227 ITR 172 SC. Aggrieved, the assessee filed appeal before the Ld. CIT(A). The Ld. CIT(A) dismissed the appeal.

3. Aggrieved against that order, the assessee filed this appeal with the following grounds of appeal:

- "1. The order of the Commissioner of Income Tax (Appeals) [CIT (A)] is contrary to law, facts and circumstances of the case.*
- 2. Interest Income taxed under the head Income from Other Sources*

2.1 The learned CIT(A) erred in confirming the order of the Assessing Officer (AO) in treating the interest receipts of Rs. 3,20,36,214 earned prior to setup of business as income taxable under the head "Income from Other Sources".

2.2 The learned CIT(A) ought to have appreciated that the interest earned out of short term deployment of equity funds infused for the purpose of setting up of business is a capital receipt, not subject to tax.

2.3 Without prejudice to the above, the CIT(A) ought to have set-off the expenditure of Rs. 2,55,75,842 debited in the profit & loss account against the aforesaid interest income.

3. The Appellant craves leave to add, alter, amend, substitute, rescind, modify & and/or withdraw in any manner whatsoever all or any of the foregoing grounds of appeal at or before the hearing of the appeal."

4. The Ld. AR presented the case on the lines of grounds of appeal and relied on the Jurisdictional High Court decision in the case of CIT vs VGR Foundations 298 ITR 132. Per contra, the Ld. DR supported elaborately the order of the Ld. CIT(A).

5. We heard the rival submissions and gone through the relevant material. The assessee's financials disclose that out of share capital of Rs. 1,227,000,000/- as on 31.03.2012, the assessee kept Rs. 230,500,000/- in deposit accounts. On which, it earned interest income on fixed deposits with banks at Rs. 32,035,509/-. In the P&L account for the period from 20.04.2011 to 31.03.2012, with the above interest it added other income of Rs705/- and shown the total

of Rs. 32,036,214/-, as an income under the head "other income". As against this, the assessee has shown expenses Rs. 5,47,429/- towards employee benefits expenses, Rs. 1,340,133/- towards depreciation and amortisation expenses and Rs. 23,688,280/- towards other expenses and thus arrived the profit before tax at Rs. 6,460,372/-. The relevant portion of the order of the Ld. CIT(A) is extracted as under:

"6. The matter is considered. In the case of M/s. Indian Oil Panipat Power Consortium Ltd (supra), primarily relied upon by the appeal. The facts were that due to legal entanglement with respect to the title of land sought to be acquired by the Government for the assessee, the share capital contribution was put in fixed deposit with Bank. The Hon'ble Delhi High Court distinguished this case from the ratio of Hon'ble Supreme Court's decision in M/s. Tuticorin Chemicals (supra) that in the matter before the Hon'ble Apex Court, the assessee had surplus funds. Whereas, in the case of M/s. Indian Oil Panipat Power Consortium Ltd (supra), the assessee was forced to park the funds in the short term deposit due to the 'legal entanglement'. Hence it is to be noted that the distinction from Tuticorin chemicals (supra) has been made by the Hon'ble Delhi High Court on the basis facts.

7. In appellant's company's case, there were no such impediments or legal entanglements that forced it to park the funds in short term deposits. The appellant company had untrammelled freedom to utilize the funds the way it wanted. The fact that it chose to park its surplus funds during the commencement period in short term deposits to earn interest income was a voluntary decision, and not a forced one. Hence, in my considered view, the ratio of Hon'ble Apex Court in the case of Alkali Chemicals & Fertilizers Ltd (supra) is squarely applicable on the appellant's case. In this case, the Hon'ble Apex Court has held that interest earned by the assessee prior to

commencement of business in short term deposits with banks out of term loan secured from financial institutions is income chargeable under the head "income from other sources" and would not go to reduce, the interest payable by the assessee which would be capitalized after the commencement of commercial production. The relevant excerpt from the decision of Hon'ble Supreme Court in Tuticorin Chemicals (supra) is reproduced as under:

The basic proposition that has to be borne in mind in this case is that it is possible for a company to have six different sources of income, each one of which will be chargeable to income-tax. Profits and gains of business or profession is only one of the heads under which the company's income is liable to be assessed to tax. If a company has not commenced business, there cannot be any question of assessment of its profits and gains of business. That does not mean that until and unless the company commences its business, its income from any other source will not be taxed. If the company, even before it commences business, invests the surplus funds in its hands for purchase of land or house property and later sells it at profit, the gain made by the company will be assessable under the head "Capital gains". Similarly, if a company purchases a rented house and gets rent, such rent will be assessable to tax under section 22 as income from house property. Likewise, a company may have income from other sources. It may buy shares and get dividends. Such dividends will be taxable under section 56 of the Act. The company may also, as in this case, keep the surplus funds in short-term deposits in order to earn interest. Such interest will be chargeable under section 56 of the Act. The company has chosen not to keep its surplus capital idle, but has decided to invest it fruitfully. The fruits of such investment will clearly be of revenue nature. In other words, if the capital of a company is fruitfully utilised instead of keeping it idle, the income thus generated will be

of revenue nature and not an accretion to capital. Whether the company raised the capital by issue of shares or debentures or by borrowing, will not make any difference to this principle. If borrowed capital is used for the purpose of earning income, that income will have to be taxed in accordance with law. Income is something which flows from the property. Something received in place of the property will be capital receipt. The amount of interest received by the company flows from its investments and is its income and is clearly taxable even though the interest amount is earned by utilising borrowed capital. It is true that the company will have to pay interest on the money borrowed by it. But that cannot be a ground for exemption of interest earned by the company by utilizing the borrowed funds as its income. It was rightly pointed out in the case of KedarNarain Singh v. CIT [1938] [6 ITR 157](#) (All) that "anything which can properly be described as income is taxable under the Act unless expressly exempted". The interest earned by the assessee is clearly its income and unless it can be shown that any provision like section 10 has exempted it from tax, it will be taxable."

On question of adjustment of interest payable the Hon'ble Supreme Court held as under:

"The question of adjustment of interest payable by the company against the interest earned by it will depend upon the provisions of the Act. The expenditure would have been deductible as incurred for the purpose of business if the assessee's business had commenced. But that is not the case here. The assessee may be entitled to capitalise the interest payable by it. But what the assessee cannot claim is adjustment of this expenditure against interest assessable under section 56. Section 57 of the Act sets out in its clauses (i) to (iii) the expenditures which are allowable as deduction from income assessable under section 56. It is not the case

of the assessee that the interest payable by it on term loans is allowable as deduction under section 57 of the Act.

If that be so, under which other provision of law can the assessee claim deduction or set-off of his income from other sources against interest payable on the borrowed funds ?

There are specific provisions in the Income-tax Act for setting off loss from one source against income from another source under the same head of income (section 70), as well as setting off loss from one head against income from another (section 71). In the facts of this case the company cannot claim any relief under either of these two sections, since its business had not started and there could not be any computation of business income or loss incurred by the assessee in the relevant accounting year. In such a situation, the expenditure incurred by the assessee for the purpose of setting up its business cannot be allowed as deduction, nor can it be adjusted against any other income under any other head. Similarly, any income from a non-business source cannot be set off against the liability to pay interest on funds borrowed for the purpose of purchase of plant and machinery even before commencement of the business of the assessee.

It has been argued that the source from which the company has earned interest is borrowed capital. The company has to pay interest to its creditors on the same borrowed capital. Having regard to the identity of the fund on which interest is earned and interest is payable, the company should be allowed to set off its income against interest payable by it on the same fund. We are of the view that no adjustment can be allowed except in accordance with the provisions of the Income-tax Act. However desirable it may be from the point of view of equity, this adjustment cannot be made unless the law specifically permits such adjustment."

8. In the light of the decision of Hon'ble Supreme Court as above, I find infirmity in the action of the Assessing Officer in treating the interest income from short term deposits in hand as 'income from other sources'. The deductibility of expenses is governed by the provisions of section 57 of the Act. The appellant company has disclosed the following expenditure prior to set up:

- 1. Deposit & Amortization expenses Rs. 13,40,133*
- 2. Other expenses Rs. 2,42,33,701*

These expenses are relating to the setting up of business and manufacturing operation of the appellant in the pre commencement phase. Hence, these expenses are clearly not deductible from the interest income chargeable under the head 'other sources'. Therefore, the addition made by the AG stands confirmed, and the grounds of appeal fail."

6. Thus, after examining the facts, the Ld. CIT(A) applying the Apex Court decision in Tuticorin Chemicals (supra), has held, inter alia, that the assessee had untrammelled freedom to utilize the funds the way it wanted. The fact that it chose to park its surplus funds during the commencement period in short term deposits to earn interest income was a voluntary decision, and not a forced one. If a company has not commenced business, there cannot be any question of assessment of its profits and gains of business. That does not mean that until and unless the company commences its business, its income from any other source will not be taxed. If the company, even before it commences business, keeps the surplus funds in short-term deposits in order to earn interest, as in this case, such interest will be chargeable under section 56 of the Act. Section 57 of the Act

sets out in its clauses (i) to (iii) the expenditures which are allowable as deduction from income assessable under section 56. Thus, the assessee cannot claim adjustment of the impugned expenditures against interest assessable under section 56. There are specific provisions in the Income-tax Act for setting off loss from one source against income from another source under the same head of income (section 70), as well as setting off loss from one head against income from another (section 71). In the facts of this case, the company cannot claim any relief under either of these two sections, since its business had not started and there could not be any computation of business income or loss incurred by the assessee in the relevant accounting year. In such a situation, the expenditure incurred by the assessee for the purpose of setting up its business cannot be allowed as deduction, nor can it be adjusted against any other income under any other head etc. The assessee could not challenge any of these findings and the corresponding application of law. Therefore, the assessee's appeal is dismissed.

7. There is one more aspect. It appears that the assessee has not understood the scope of the decision of the Apex court in the case of Tuticorin Alkali Chemicals vs CIT, 227 ITR 172 . The relevant portion of the order from Supreme Court decision is extracted as under (page 177 of 227 ITR) :

"The view taken by the Madras High Court in the case of CIT v. Seshasayee Paper and Boards Ltd. [1985] [156 ITR 542](#) was that the interest earned by the assessee on investment of share capital in call deposits even before production commenced could be assessed separately under the head "Other sources". The Andhra Pradesh High Court took a contrary view in the case of CIT v. Nagarjuna Steels Ltd. [1988] [171 ITR 663](#) where it was held that interest received on short-term deposits by a company prior to the commencement of production could not be treated as revenue receipt. In view of the aforesaid conflict of decisions between the Madras and Andhra Pradesh High Courts, the Tribunal has referred the following question of law to this court for decision:"

7.1 After laying various principles in the above decision, the Supreme Court concluded as under (Page 186 of 227 ITR) :

"In the premises, we are of the view that the Madras High Court came to the correct decision in the case of CIT v. Seshasayee Paper and Boards Ltd. [1985] [156 ITR 542](#). The contrary views expressed in the cases of CIT v. Nagarjuna Steels Ltd. [1988] [171 ITR 663](#) (AP); CIT v. Electrochem Orissa Ltd. [1995] [211 ITR 552](#) (Orissa) and CIT v. Maharashtra Electros melt Ltd. [1995] [214 ITR 489](#) (Bom) are erroneous."

Thus, the Apex court very clearly confirmed that the interest earned by an assessee on the investment of share capital in call deposits before the commencement of its production could be assessed separately under the head "Other sources". Further, the relevant portion of the order of the Supreme Court in the case of CIT vs Bokaro Steel Ltd in 236 ITR 315 extracted as under : (page 321 of 236 ITR):

"During these assessment years, the respondent-assessee had invested the amounts borrowed by it for the construction work which were not immediately required, in short-term deposits and earned interest. It has been held in these proceedings that the receipt of interest amounts to income of the assessee from other sources. The assessee has not filed any appeal from this finding which is given against it. In any case, this question is now concluded by a decision of this court in Tuticorin Alkali Chemicals and Fertilizers Ltd. v. CIT [1997] [227 ITR 172](#). Hence, we are not called upon to examine that issue."

8. Thus, the Apex Court in its subsequent decision also reaffirmed the principles laid in the case of Tuticorin Alkali Chemicals vs CIT, supra. Therefore, we do not find any reason to interfere with the order of the Ld. CIT(A). Thus, the assessee's appeal is dismissed.

9. In the result, the assessee's appeal is dismissed.

Order pronounced in the open court on 27th November, 2018 at Chennai.

Sd/-
(जॉर्जमाथन)
(GEORGE MATHAN)
न्यायिकसदस्य/Judicial Member

Sd/-
(एसजयरामन)
(S. JAYARAMAN)
लेखासदस्य/Accountant Member

चेन्नई/Chennai,

दिनांक/Dated: 27th November, 2018

JPV

आदेशकीप्रतिलिपिअग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त) अपील(/CIT(A)
4. आयकरआयुक्त/CIT
5. विभागीयप्रतिनिधि/DR
6. गार्डफाईल/GF