

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "ए", चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH "A", CHANDIGARH

श्री संजय गर्ग, न्यायिक सदस्य एवं डा. बी.आर.आर, कुमार, लेखा सदस्य
BEFORE: Sh.SANJAY GARG, JM & DR. B.R.R. KUMAR, AM

आयकर अपील सं./ ITA No. 727/Chd/2018
निर्धारण वर्ष / Assessment Year : 2012-13

M/s Harbhajan Singh & Co. H.O. Singla Enclave, Club Road, Sangrur	बनाम	The DCIT, Circle Sangrur
स्थायी लेखा सं./PAN No: AADFH9441H		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारित की ओर से/Assessee by : Shri. Sanket Singla
राजस्व की ओर से/ Revenue by : Smt. Chandrakanta

सुनवाई की तारीख/Date of Hearing: 26/11/2018
उद्घोषणा की तारीख/Date of Pronouncement : 29/11/2018

आदेश/Order

PER DR. B.R.R. KUMAR, A.M:

The present appeal has been filed by the Assessee against the order of the Ld. CIT(A), Patiala dt. 28/03/2018.

2. In the present appeal Assessee has raised the following grounds:

1. The order of the Worthy Commissioner of Income Tax (Appeals), Patiala is against the law, facts, circumstances, natural justice, equity, bad in law and all other known principles of law.

2. The Worthy Commissioner of Income Tax (Appeals), Patiala is not justified in sustaining the addition of Rs. 3,91,497/- made on account of Interest on Income Tax Refund under the head "Income from other Sources" as the assessment has been framed by applying a net profit @ 7% on the Gross receipt of the assessee.

3. The brief facts taken from the order of the Ld. CIT(A) is that the assessee is a partnership firm and filed its return declaring Income of Rs. 48,90,510/- The case was selected was scrutiny and assessed u/s 143 (3) by applying the flat rate of @ 7% and the Assessing Officer also made an addition of Rs. 6,45,921/- on account of Interest from FDR, Rs. 3,91,497/- on account of Interest from Income Tax Refund and Rs. 1621/- on account of rebate and discount separately under

the head Income from other source by ignoring the facts and past history in the assessee's own case.

4. The Ld. CIT(A) deleted the interest received from FDRs based on the stand taken by the Revenue consistently. The relevant part of order of the Revenue is reproduced hereunder for the sake of reference

" In Snam Progetti S. P. A. v. Addl. CTT[1981] 132 TTR 70/[1982] 10 Taxman 86 (Delhi), it was held that nexus with the activities cannot be overlooked more so where the income is attributable to or derived from the targeted activity.

12. In Tuticorin Alkali Chemicals & Fertilizers Ltd. (*supra*), a three-judge Bench of the apex court was dealing with the issue where the company had surplus funds in its hands and in order to earn income out of the surplus funds, it invested the amount for the purpose of earning interest. The company had borrowed funds, which was not immediately required by the company and the same was kept invested in short-term deposit with banks. In that context, the apex court held as follows (page 183) :

"It is difficult to follow this reasoning. If a person borrows money for business purposes but utilises that money to earn interest, however temporarily, the interest so generated will be his income. This income can be utilised by the assessee whichever way he likes. He may or may not discharge his liability to pay interest with this income. Merely because it was utilised to repay the interest on the loan taken by the assessee, it did not cease to be his income. The interest earned by the assessee could have been used for many other purposes. If the assessee purchased a house or distributed dividend or paid salary to its employees with the money received as interest, will the interest amount be treated as not his income ? This is not a case of diversion of income by overriding title. The assessee was entirely at liberty to deal with the interest amount as he liked. The application of the income for payment of interest could not affect its taxability in any way."

14. In CIT v. Bokaro Steel Ltd.[1999] 236ITR 315/ 102 Taxman 94 (SC), the apex court was dealing with the situation wherein a Government company, during the period of construction of plant, had advanced monies to contractors on which it was earning interest and received charges from quarters let out to the employees. It also received hire charges on plant let out to the contractors and received royalty on stones removed from its land. In that factual backdrop, their Lordships referred to the decision in Tuticorin Alkali Chemicals & Fertilizers Ltd. (*supra*) and analysed the facts and came to opine thus (page 322) :

"That case dealt with the question whether investment of borrowed funds prior to commencement of business, resulting in earning of interest by the assessee would amount to the assessee earning any income. This court held that if a person borrows money for business purposes, but utilises that money to earn interest, however temporarily, the interest so generated will be his income. This income can be utilised by the assessee whichever way he likes. Merely because he utilised it to repay the interest on the loan taken, will not make the interest income as a capital receipt. The Department relied upon the observations made in that judgment (at page 179) to the effect that "if the company, even before it commences business, invests 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 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 . . . The company may also, as in that case, keep the surplus funds in short-term deposits in order to earn interest. Such interest will be chargeable under section 56 of the Income-tax Act'. This court also emphasised the fact that the company was not bound to utilise the interest so earned to adjust it against the interest paid on borrowed capital. The company was free to use this income in any manner it liked. However, while interest earned by investing borrowed capital in short-term deposits is an independent source of income not connected with the construction activities or business activities of the assessee, the same cannot be said in the present case where the utilisation of various assets of the company and the payments received for such utilisation are directly linked with the activity of setting up the steel plant of the assessee. These receipts are inextricably linked with the setting up of the capital structure of the assessee-company. They must, therefore, be viewed as capital receipts going to reduce the cost of construction."

15. In this context, we may refer with profit to *CIT v. Karnal Co-operative Sugar Mills Ltd.*[2000] 243 ITR 2/[2001] 118 Taxman 489 (SC) wherein the assessee had deposited money to open a letter of credit for the purchase of the machinery required for setting up its plant in terms of the assessee's agreement with the supplier. It was on the money so deposited that some interest had been earned. In that factual backdrop, the apex court ruled thus:

"This is, therefore, not a case where any surplus share capital money which is lying idle has been deposited in the bank for the purpose of earning interest. The deposit of money in the present case is directly linked with the purchase of plant and machinery. Hence, any income earned on such deposit is incidental to the acquisition of assets for the setting up of the plant and machinery. In this view of the matter the ratio laid down by this court in *Tuticorin Alkali Chemicals and Fertilizers Ltd. v. CIT*(1997)1227ITR 172 (SC) will not be attracted. The more appropriate decision in the factual situation in the present case is in *CIT v. Bokaro Steel Ltd.* 119991236 ITR 315 (SO)."

16. In *Bongaigaon Refinery & Petrochemicals Ltd. v. CIT*[2001] 251 ITR 329/119 Taxman 488 (SC), the question that arose for consideration was whether the Tribunal was justified in holding that the items of income derived by the assessee during the formation period for the main business were not taxable income but were to be adjusted against the project cost for the oil refinery and petrochemicals, the main business for which the company was set up. It is worth noting that the High Court had answered the issue in negative relying on the decision in *Tuticorin Alkali Chemicals & Fertilizers Ltd.* (supra). In that context, their Lordships opined thus (page 330):

"That was a case in which the question related to interest earned by a company during its formative period by investments. This court has held in *CIT v. Bokaro Steel Ltd.* 119991236 ITR 315 (SC) that it is so confined and did not apply where the receipts were directly connected with or were incidental to the work of construction of the assessee's plant. The decision in *CIT v. Bokaro Steel Ltd.* 119991236 ITR 315 (SC) has been followed by a two-judge Bench of this court in *CIT v. Karnal Co-operative Sugar Mills Ltd.* 20001 243 ITR 2 (SC) and by a three-judge Bench in *CIT v. Karnataka Power Corporation* 20011247ITR 268 (SC). In fact, in the latter case, it was not disputed by the Revenue that the question that related to hire charges paid by contractors had to be answered in the light of the judgment in *Bokaro Steel Ltd.* 's case (1999)1236 ITR 315 (SC). It is, therefore, not possible now to take any view different from that taken in *Bokaro Steel Ltd.* 's case (1999)1236 ITR 315 (SC)."

17. In *CIT v. Koshika Telecom Ltd.*[2006] 287 ITR 479 (Delhi), the factual matrix was that the assessee was engaged in the business of operating cellular mobile telephone services. In terms of a licence awarded in its favour for operation of the said services in the States of Uttar Pradesh, Bihar, Orissa and West Bengal, the assessee was required to provide finance and performance

bank guarantees to the Department of Telecommunications. The assessee arranged the said bank guarantees from the institutions which, in connection with the furnishing of the guarantees, required deposit of margin money from which he earned the income. The Tribunal treated it as assessable as business income. While dismissing the appeal of the Revenue, this court expressed the following view (page 481) :

"The finding of fact recorded by the Commissioner of Income-tax (Appeals) and affirmed by the Tribunal is to the effect that the deposit of the margin money by the assessee with the banks was inextricably linked to the furnishing of the bank guarantees by the assessee to the Department of Telecommunications for obtaining a licence. That finding in our view concludes the controversy inasmuch as if the deposits were indeed inextricably linked to the business of the assessee, the question whether the income accruing on the said deposits would constitute business income stands answered by the decisions of the Supreme Court in *Bokaro Steel Ltd.* [1999] 236 TTR 315 (SO and *Kama/ Co-operative Sugar Mills Ltd* [2000] 243 TTR 2 (SO). Both these decisions are in our view sufficient authority for the proposition that where the income in the nature of interest flows from deposits made by the assessee which deposits are in turn inextricably linked to the business of the assessee, the income derived on such deposits cannot be treated as income from other sources."

18. In *International Marketing Ltd. v. TTO* [2007] 292 TTR 504/ 159 Taxman 24 (Delhi), following the law in *Tuticorin Alkali Chemicals & Fertilizers Ltd.* (supra), it was held that where the authorities below concurrently took the view that the assessee had not carried on any business during the relevant assessment year and that the interest earned by the assessee on surplus funds deposited with different companies was taxable as income from other sources, the view taken could not be faulted with.

19. In *Indian Oil Pan/pat Power Consortium Ltd. v. TTO* [2009] 315 TTR 255/ 181 Taxman 249 (Delhi), this court had posed the question regarding the treatment which was to be accorded to the interest earned on monies received as share capital by the assessee which were temporarily put in a fixed deposit awaiting acquisition of land which had run into legal entanglements on account of title. The Assessing Officer and the Commissioner of Income-tax (Appeals) had treated that the interest was in the nature of capital receipt which was liable to be set off against pre-operative expenses. The Tribunal, relying on *Tuticorin Alkali Chemicals and Fertilizers Ltd.* (supra), dislodged the finding recorded by the first appellate authority. While dealing with the appeal of the assessee, the Bench referred to the decision in *Bokaro Steel Ltd.* (supra) holding thus (page 260) :

"It is clear upon a perusal of the facts as found by the authorities below that the funds in the form of share capital were infused for a specific purpose of acquiring land and the development of infrastructure. Therefore, the interest earned on funds primarily brought for infusion in the business could not have been classified as income from other sources. Since the income was earned in a period prior to commencement of business it was in the nature of capital receipt and hence was required to be set off against pre-operative expenses. In the case of *Tuticorin Alkali Chemicals and Fertilizers Ltd* [1997] 227 TTR 172 (SO) it was found by the authorities that the funds available with the assessee in that case were 'surplus' and, therefore, the Supreme Court held that the interest earned on surplus funds would have to be treated as 'Income from other sources'. On the other hand in *Bokaro Steel Ltd.* [1999] 236 TTR 315 (SO) where the assessee had earned interest on advance paid to contractors during pre-commencement period was found to be 'inextricably United' to the setting up of the plant of the assessee and hence was held to be a capital receipt which was permitted to be set off against pre-operative expenses."

20. Recently, in *CTI v. Producin (P.) Ltd.* [2010] 322 TTR 270/ 191 Taxman 79 (SC), the apex court was dealing with the issue whether the interest income received by the assessee on short-term fixed deposit constituted

part of the total turnover of the assessee's business and also whether it formed a part of the total business income of the assessee. In that case, there was no dispute that the amount received by the assessee was from the amount he had invested in the FDR but there was no actual data whether the said amount was in terms of the agreement or contract of export, whether it was a part of the advance or whether it was part of the surplus at the hands of the assessee-company. In that factual backdrop, the apex court held thus (page 271) :

"At page 88 of the paper book the Tribunal holds that the interest income was generated by way of keeping the 'advances' received by the assessee in the course of its regular business activity. We do not know on what basis this observation has been made. It is not clear whether the contract between the parties was examined or not. The High Court while disposing of the matter has also not examined the factual basis. According to the Department, it was the case of surplus being invested in FDR whereas according to the assessee it was the case of advance having been received from the exporter which was invested in FDR for short duration.

In view of the absence of factual matrix we are of the view that to decide the question as to whether the receipt fell under section 28 or under section 56 the matter needs to be remitted to the Tribunal for fresh consideration in accordance with law."

21. Keeping in view the aforesaid pronouncements in the field, the present controversy is to be adjudged. As is noticeable from the stipulations in the agreement, the performance guarantee by way of bank guarantee was required for faithful performance of its obligations. The non-submission of the guarantee would have entailed termination of the agreement and NHA1 would have been at liberty to appropriate the bid security. That apart, the release of such performance security depended upon certain conditions. Thus, it is clearly evincible that the bank guarantee was furnished as a condition precedent to entering into the contract and further it was to be kept alive to fulfil the obligations. Quite apart from the above, the release of the same was dependent on the satisfaction of certain conditions. Thus, the present case is not one where the assessee had made the deposit of surplus money lying idle with it in order to earn interest; on the contrary, the amount of interest was earned from fixed deposits which were kept in the bank for furnishing the bank guarantee. It had an inextricable nexus with securing the contract. Therefore, we are disposed to think that the factual matrix is covered by the decisions rendered in *Bokaro Steel Ltd.* (supra), *Kama/ Co-operative Sugar Mills Ltd.* (supra) and *Koshika Telecom Ltd.* (supra) and, accordingly, we hold that the view expressed by the Tribunal cannot be found fault with.

22. Resultantly, we do not find any substantial question of law being involved in the present appeal and, accordingly, the same stands dismissed without any order as to costs."

And further relying on the judgment of the Hon'ble High Court of Delhi in the case of *CIT vs Jaypee DSC Ventures*, UA 357201 dated 11.03.2011 the addition of Interest on FDRs of Rs. 6,45,921/- was deleted while upholding the interest received from the income tax refund of Rs. 3,91,497/- on the grounds that the FDR interest and the interest on income tax refund cannot be equated on the same grounds.

5. Before us the Ld. AR argued that the income tax refund arise out of the excess TDS deducted. The TDS was akin to the FDRs made out of business

compulsions and out of business account and hence the interest was treated as business income rightly by the Revenue. It was argued that, similarly the TDS was also deducted out of business payments and the refund arised is out of the excess deduction. The amounts received on which the TDS deducted was on account of business receipts only, hence the interest received on excess TDS partakes the character of business receipts.

6. Ld. DR relied on the order of the Ld. CIT(A).

7. We find that the interest earned was earned due to the fact that excess tax deducted. The Hon'ble high court of Delhi vide order dt. 27.07.2012 in ITA 1208/2011 Commissioner of Income Tax-I V vs. M/s Delhi State Industrial & Infrastructure Development Corporation Ltd. (Del) dealing with the similar issue has held that interest received on income tax refund is a statutory interest received and hence has to be subject to tax under the head income from other sources. In the instant case the assessee has received interest from the income tax dept on the excess TDS deducted and hence the interest is liable to be assessed as "Income from other Sources" and not under the head "Profits and gains of business or profession"

8. As a result appeal of the Assessee is dismissed.

Order pronounced in the open Court.

Sd/-
संजय गर्ग / (SANJAY GARG)
 न्यायिक सदस्य/ Judicial Member

Sd/-
डा. बी.आर.आर, कुमार / (DR. B.R.R. KUMAR, AM)
 लेखा सदस्य/ Accountant Member

Date: 29/11/2018
AG

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File