

**IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'A' BENCH,
NEW DELHI**

**BEFORE SHRI H. S. SIDHU, JUDICIAL MEMBER
AND
SH. N. K. BILLAIYA, ACCOUNTANT MEMBER**

**ITA No.4791/DEL/2012
[A.Y 2008-09]**

ITO
Ward - 3 (1)
New Delhi

Vs.

Brahmaputra Capital &
Financial Services Ltd.
28, Najafgarh Road,
New Delhi
PAN AABCB8626K

[Appellant]

[Respondent]

**ITA No.4792/DEL/2012
[A.Y 2009-10]**

TO
Ward - 3 (1)
New Delhi

Vs.

Brahmaputra Capital &
Financial Services Ltd.
28, Najafgarh Road,
New Delhi
PAN AABCB8626K

**Date of Hearing : 19.02.2019
Date of Pronouncement : 20.02.2019**

Revenue by : Shri Janasdan Das, Sr. DR

Assessee by : Smt. Tejasvi Jain, CA

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER

ITA No.4791 / Del/2012 and 4792/Del/2012 are two separate appeals by the revenue preferred against two separate orders of the CIT (A)-6, New Delhi dated 01.06.2012.

2. Since common grievance is involved in both these appeals they were heard together and are disposed of by this common order for the sake of convenience and gravity.

3. The common grievance relates to the deletion of the addition made on account of non recognition of interest income amounting to Rs.21553470/- in A. Y. 2008-09 and Rs.21539222/- in A. Y. 2009-10.

4. During the course of the scrutiny assessment proceedings the Assessing Officer noticed that the assessee has given loans to following parties:-

S. No.	Particulars	Amount (Rs.)
1.	Jindal Equipment Leasing & Consultancy Services Ltd., 37, Najafgarh Road, New Delhi-110015	7,32,72,000

2.	Mansarover investments Ltd. Shakti Apartment, 86, SFS DDA Flats, Ashok Vihar, Phase-III, Delhi -110052	5,10,17,630/-
3.	Goswamis Credits & Investments Ltd., Shakti Apartment, 86, SFSDDA Flats, Ashok Vihar, Phase-III, Delhi -110052	1,14,97,427/-
4.	Everplus Securities & Finance Ltd., 28 Najafgarh Road, New Delhi -110015	18,78,00,000
5.	Manjula Finances Ltd. Shakti Apartment, 86, SFS DDA Flats, Ashok Vihar, Phase-III, Delhi-110052	39,93,307
6.	Renuka Financial Services Ltd. Shakti Apartment, 86, SFS DDA Flats, Ashok Vihar, Phase-III, Delhi-110052	1,33,60,050
7.	Everplus Securities & Finance Ltd. 28- Najafgarh Road, New Delhi-110015.	41,84,012
	Total	34,51,24,426

5. The Assessing Officer found that the assessee has not declared any interest income on any of the aforesaid loan in its return of income. The assessee was asked to explain as to why the interest from the aforesaid companies was not credited to the profit and loss

account. The assessee explained that the aforementioned companies were making losses and did not have sufficient funds and have continuously defaulted in the payment of interest. Finding continuous default in payment of interest board of directors decided that no interest in respect of these loans be recognised / charged. The contention of the assessee did not find any favour with the Assessing Officer who was of the firm believe that the assessee ought to have charged interest from these parties and accordingly the added Rs.21553466/- in A. Y. 2008-09 and Rs.21539222/- in A. Y. 2009-10.

6. The assessee carried the matter before the CIT(A) and reiterated its contention it was brought to the notice of the CIT(A) that similar additions were made in A. Y. 2007-08 and the Tribunal has deleted the additions. After considering the facts and the submission the CIT(A) followed the findings of the Tribunal in A. Y. 2007-08 and deleted the additions.

7. Before us the Ld. DR strongly supported the findings of the Assessing Officer.

8. Per contra the counsel for the assessee brought to our notice the decisions of the Hon'ble Delhi High Court and the Hon'ble Supreme Court which have confirmed the deletion in assessee's own case.

9. We have given a thoughtful consideration to the orders of the authorities below. We find force in the contention of the Ld. Counsel identical additions were made in A. Y. 2003-04 to 2006-07 and the matter travelled up to the Hon'ble Delhi High Court and the Hon'ble Delhi High Court framed the following question of law proposed by revenue.

10. "Whether Income Tax Appellate Tribunal was correct in law in deleting the additions of Rs.21553466/- made by the Assessing Officer on account of interest accrued to the assessee as per Mercantile System of accounting?"

11. The Hon'ble High Court observed as under :-

5. Identical issue came up before this Court in batch of appeals leading case being CIT v. Vasisth Chay Vyapar Ltd. [2011] 196 Taxman 169/ 8 taxmann.com 145. this theory of "real income" was discussed in detail. That was also a case of NBFC where loan/advance given by the said assessee had become NPA and keeping in view the guidelines of RBI interest was not treated as accrued. After taking note of various judgments on the subject, the question was answered in favour of the assessee and against the Revenue. The legal position is summarized in para 17 of the said judgment which reads as under :- "In this scenario, we have to examine the strength in the submission of learned counsel for the Revenue that whether it can still be held that income in the form of interest though not received had still accrued to the assessee under the provisions of Income-tax Act and was, therefore, exigible to tax. Our answer is in the negative and we give the following

reasons in support:—

(1) *First of all we would discuss the matter in the light of the provisions of Income-tax Act and to examine as to whether in the given circumstances, interest income has accrued to the assessee. It is stated at the cost of repetition that admitted position is that the assessee had not received any interest on the said ICD placed with Shaw Wallae since the assessment year 1996-97 as it had become NPAs in accordance with the Prudential norms which was entered in the books of account as well. The assessee has further successfully demonstrated that even in the succeeding assessment years, no interest was received and the position remained the same until the assessment year 2006-07. Reason was adverse financial circumstances and the financial crunch faced by Shaw Wallace. So much so, it was facing winding up petitions which were filed by many creditors. These circumstances, led to an uncertainty insofar as recovery of interest was concerned, as a result of the aforesaid precarious financial position of Shaw Wallace. What to talk of interest, even the principal amount itself had become doubtful to recover. In this scenario it was legitimate move to infer that interest income thereupon has not "accrued". We are in agreement with the submission of Mr. Vohra on this count, supported by various decisions of different High Courts including this court which has already been referred to above.*

(2) *In the instant case, the assessee company being NBFC is governed by the provisions of RBI Act. In such a case, interest income cannot be said to have accrued to the assessee having regard to the provisions of section 45Q of the RBI and Prudential Norms issued by the RBI in exercise of its statutory powers. As per these norms, the ICD had become NPA and on such NPA where the interest was not received and possibility of recovery was almost nil, it could not be treated to have been accrued in favour of the assessee."*

6. The aforesaid judgment clearly applies to the present case as well. Following that judgment, we are of the view that no substantial question of law arises in these appeals and are accordingly dismissed.

12. Similarly in A. Y. 2007-08 the matter travelled up to the Hon'ble High Court the relevant findings of the Hon'ble High Court read : -

ITA 107/2012

Admit.

The following question of law arises for consideration :

“Did the Income Tax Appellate Tribunal (ITAT) fall into error in holding that the sum of Rs.2,53,15,466/- brought to tax on account of notional interest was not justified.”

Issue notice. Mr. Sanjay Kumar, Jr. Standing Counsel accepts notice.

List on 26th April, 2018.

The Court is of the opinion that facially the appeal is covered against the Revenue by the decision of the Division Bench of this Court reported as Commissioner of Income Tax Vs. Vasisth Chay Vyapar Ltd, (2011) 196 Taxman 169 (Delhi) : 330 ITR 440 (Delhi).”

13. Respectfully following the decision of the Hon'ble Jurisdictional High Court in assesses own case we decline to interfere with the finding with the finding of the CIT (A).

14. Both the appeals filed by the assessee are dismissed.

The order is pronounced in the open court on 20.02.2019.

Sd/-
[H. S. SIDHU]
JUDICIAL MEMBER

Sd/-
[N.K. BILLAIYA]
ACCOUNTANT MEMBER

Dated: 20.02.2019

Neha

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi

Date of dictation	19.02.2019
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for Pronouncement	
Date on which the fair order comes back to the Sr. PS/ PS	
Date on which the final order is uploaded on the website of ITAT	20.02.2019
Date on which the file goes to the Bench Clerk	
Date on which file goes to the Head Clerk.	
The date on which file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	