

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'C', NEW DELHI
BEFORE SH. H.S. SIDHU, JUDICIAL MEMBER
AND
SHRI L.P. SAHU, ACCOUNTANT MEMBER

ITA Nos. 5827 & 5828/Del/2015
Assessment Years: 2011-12 & 2012-13

DCIT, CIRCLE 4(2), ROOM NO. 398D, C.R. BUILDING, NEW DELHI	Vs.	BHARTIYA SAMRUDDHI FINANCE LTD. F-5, Ground Floor, Kailash Colony, G.K. Enclave Part-I, New Delhi – 110 048 (PAN : AAACB5337Q)
(Appellant)		(Respondent)

Department by	Sh. Amit Katoch, Sr. DR
Assessee by	Smt. Rajni Goel, Adv.

ORDER

PER H.S. SIDHU, JM

These appeals are filed by the Revenue against the respective Orders passed by the Ld. CIT(A)-2, New Delhi relating to assessment years 2011-12 & 2012-13. Since the issues involved in these appeals are common, except the difference in figures, hence, the appeals were heard together and are being disposed of by this common order for the sake of

convenience, by dealing with ITA No. 5827/Del/2015 (AY 2011-12) and the result thereof will apply *mutatis mutandis* to other appeal for the assessment year 2012-13.

2. The grounds raised in ITA No. 5827/Del/2015 (AY 2011-12) read as under:-

1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the disallowance of Rs. 2,39,93,102/- on account of derecognized interest.

2. The appellant craves leave for reserving the right to amend, modify, alter, add or forego any ground(s) of appeal at any time before or during the hearing of this appeal.

3. The brief facts of the case are that assessee filed its return of income declaring at Rs. 33,16,15,762/- under the normal provisions of the I.T. Act, 1961 and book profit of Rs. 34,01,92,241/- under MAT provisions of the Income Tax Act, 1961 (In short "Act") filed on 29.9.2011. The return of income was processed u/s. 143(1) of the Act. The case was selected

for scrutiny. Notice u/s. 143(2) of the Act was issued on 9.8.2012 and was served on the assessee. Subsequently, notice u/s. 142(1) of the Act alongwith questionnaire was issued on 17.7.2013. In compliance thereof, the AR of the assessee attended the assessment proceedings from time to time and filed necessary details as called for. During the course of assessment proceedings, the AR of the assessee company was asked to submit the details in respect of de-recognition of interest income. Therefore, the AO asked the assessee why the same should not be disallowed and added back to the income of the assessee company by taking note of the fact that the same disallowance made in the previous year also. In response to the same, the AR for the assessee submitted its reply and after consideration of the same, the AO observed that the said disallowance was discussed in detail while passing the assessment orders for the AYs 2004-05, 2005-06, 2006-07, 2007-08, 2008-9, 2009-10 and 2010-11 and the Department is contesting this issue before the Hon'ble High Court against the decision of the ITAT, appeal allowing the same. AO further observed that the assessee company has been regularly maintaining its accounts on the

mercantile system and was bound to offer interest derecognized on the accrual basis on NPA as income of the year as per the provision of section 145 of the I.T. Act, 1961. Further AO placed reliance upon the decision of the Hon'ble Supreme Court, in the matter of Southern Technologies Ltd., even on the de-recognition of interest is in favour of the department. AO further observed that as the facts remain the same in the assessee's case, the de-recognised interest amounting to Rs. 2,39,93,102/- was treated as income of the assessee and added to its total income. Accordingly, the AO assessed the income of the assessee at Rs. 35,58,25,770/- under the normal provisions of the Act and at book profit of Rs. 34,04,09,150/- u/s. 115JB of the Act vide order dated 17.2.2014 passed u/s. 143(3) of the Act. Against the assessment order, assessee appealed before the Ld. CIT(A), who vide his impugned order dated 23.7.2015 has partly allowed the appeal of the assessee and deleted the addition of Rs. 2,39,93,102/- on account of derecognized interest. Aggrieved with the impugned order, Revenue is in appeal before the Tribunal.

4. On the other hand, Ld. DR relied upon the order of the Assessing Officer.

5. Ld. counsel for the assessee relied upon the order of the Ld. CIT(A) and stated that the issue is squarely covered by the decision dated 19.5.2014 of the Hon'ble High Court in ITA Nos. 207/2014, 208/2014 and 209/2014 wherein the issue regarding the derecognition of interest on accrual basis on Non Performing Assets has been decided in favour of the Assessee. In this behalf, he filed the copies of the aforesaid decision before us.

6. We have heard both the parties and perused the records especially the impugned order. We find that Ld. CIT(A) has elaborately discussed the issues in dispute vide para no. 3.2 at page no. 6 & 7 of the impugned order. For the sake of clarity, we are reproducing the relevant finding of the Ld. CIT(A) as under:-

"3.2 I have gone through the findings in the assessment order and the submission of the appellant's AR. As per order dated May 19, 2014 of Hon'ble High Court of Delhi in

ITA Nos. 207/2014, 208/2014 and 209/2014, the issue regarding the derecognition of interest on accrual basis on Non Performing Assets has been decided in favour of the appellant as follows:-

"As far as the first issue goes, the question of law is covered against the Revenue by two decision, i.e. CIT vs. Vasisth Chay Vyapar Ltd. and Anr. 330 ITR 440 (Del.) and DIT vs. Brahamputra Capital Finance Ltd. 335 ITR 182. As far as the second aspect goes, we notice that the Revenue had succeeded before the ITAT in light of the judgment of the Supreme Court in Southern Technologies Ltd. vs. JCIT 320 ITR 577 (SC). The Revenue is not in appeal in respect of that question.

Following the decision in Vasisth Chay Vyapar Ltd. (Supra) and Brahamputra Capital Finance Ltd. (Supra), the question of law urged by the Revenue is answered against it and in favour of the assessee.”

Since the issue has been decided in earlier years in favour of the appellant in its own case by the Hon’ble High Court, the addition to income on this account made in the impugned order is also deleted. This ground of appeal is allowed.”

6.1 After perusing the aforesaid order dated 19.5.2014 of the Hon’ble High Court of Delhi in ITA Nos. 207/2014, 208/2014 and 209/2014, we note that the issue in dispute has been decided in favour of the assessee and therefore, Ld. CIT(A) has observed that since the issue has been decided in earlier years in favour of the assessee in its own case by the Hon’ble High Court, the addition to income on this account made in the impugned order was rightly deleted. Hence, in our considered

opinion there is no illegality or infirmity in the finding of the Ld. CIT(A) on the issues in dispute, therefore, we uphold the action of the Ld. CIT(A) on the issues in dispute and reject the grounds raised by the Revenue.

7. In the result, both the Appeals of the Revenue are dismissed.

Order pronounced on 08-04-2019.

Sd/-

**[L.P. SAHU]
ACCOUNTANT MEMBER**

Sd/-

**[H.S. SIDHU]
JUDICIAL MEMBER**

Date:08/04/2019

SRBhatnagar

Copy forwarded to: -

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

TRUE COPY

By Order,

Assistant Registrar, ITAT, Delhi Benches