

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCH 'A' JAIPUR

श्री विजय पाल राव, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI VIJAY PAL RAO, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No. 992/JP/2018
निर्धारण वर्ष/Assessment Year :2014-15

M/s Jaipur Stock Securities Ltd., Stock Exchange Building, Jawahar Lal Nehru Marg, Malviya Nagar, Jaipur	बनाम Vs.	The ACIT, Circle-06, Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AABCJ0362L		
अपीलार्थी /Appellant		प्रत्यर्थी /Respondent

निर्धारिती की ओर से / Assessee by : Shri Manish Agarwal (CA)
राजस्व की ओर से / Revenue by : Shri J. C. Kulhari (JCIT)

सुनवाई की तारीख / Date of Hearing : 08/08/2019
उदघोषणा की तारीख / Date of Pronouncement: 19/08/2019

आदेश / ORDER

PER: VIKRAM SINGH YADAV, A.M.

This is an appeal filed by the assessee against the order of Id. CIT(A)-2, Jaipur dated 25.06.2018 for Assessment Year 2014-15.

2. In ground No. 1, the assessee has challenged the confirmation of addition of Rs. 51,618/- towards interest on bank fixed deposits. In this regard, the Id. AR submitted that during the year, there were premature withdrawals of fixed deposits maintained with banks. In this regard, the banks had initially credited interest on accrual basis and deducted TDS thereon, however, when the payment was made, the assessee had actually received lower interest on such deposits. The assessee has credited interest on FDRs as actual received after deduction of premature charges and therefore, it is not the case that assessee has earned higher income and has not offered the entire amount

whereas claimed TDS on the same. It was submitted that whatever interest has been received by the assessee, the same has been offered to tax. It was further submitted that since TDS has already happened at the time of accrual by the bank, the assessee had no option but to claim the whole of the TDS.

3. Per contra, the Id. DR submitted that during the course of assessment as well as appellate proceedings, the assessee has failed to produce any evidence to prove that the FDRs were encashed prematurely, therefore, in absence of any evidence on record or confirmation from the bank, the contention of the assessee that due to premature encashment of FDRs, the assessee has received lower interest income as against the interest so reflected in Form No. 26AS cannot be accepted.

4. We have heard the rival contentions and perused the material available on record. In the instant case, it is so claimed by the assessee that the interest though initially accrued at the regular intervals by the bank and corresponding TDS has been done which got reflected in Form 26AS, however, given that there was premature withdrawals of fixed deposits, the assessee bank has actually received lower interest than what has been reflected in Form 26AS and therefore, the interest actually received was rightly offered to tax and the remaining interest so reflected in Form 26AS since not received at first place has not been offered to tax and thus, the action of the Assessing officer is not correct. Conceptually, we agree that mere reflection of certain transaction in Form 26AS is not determinative of holding such transaction as taxable transaction in the hands of the assessee. However, given that the transaction has been reflected in Form 26AS, the onus is on the assessee to demonstrate that such transaction doesn't represent real income in its hands. In the instant case, we find that the assessee has failed to adduce any evidence in support of its contention that it has received lower interest income than what has been

reflected in Form 26AS. Further, nothing has been brought on record to suggest that the Form 26AS has been subsequently modified/amended to reflect the actual interest payment to the assessee. In the result, the ground so taken is dismissed.

5. In Ground No. 2, assessee has challenged the confirmation of disallowance of ESI/EPF contributions of Rs. 115,849/- u/s 36(1)(va) of the Act. In this regard, undisputed facts are that these contributions were deposited before the due date of filing of the return of income u/s 139(1) of the Act. Recently, we have dealt with the issue in case of M/s K.S.Automobiles Ltd. Vs. DCIT (ITA No. 1184/JP/18 and 1185/JP/18 dated 08.03.2019) and the relevant finding is as under:-

"3. We have heard the Id. AR as well as Id. DR and considered the relevant material on record. At the outset, we note that this issue is covered in favour of the assessee by the various decisions of the Hon'ble jurisdictional High Court including the decision in case of CIT vs. State Bank of Bikaner & Jaipur 99 DTR 131 as well as decision in case of CIT vs. Jaipur Vidyut Vitran Nigam Ltd. 363 ITR 307 and in case of CIT vs. Udaipur Dugdh Utpadak Sahakari Sangh Ltd. 366 ITR 163. We further note that the Id. CIT(A) though has not disputed the various decisions of Hon'ble High Court however, disallowance made by the AO are sustained as he misunderstood the decision of Hon'ble Jurisdictional High Court in case of PCIT vs. M/s Rajasthan Renewable Energy Corporation Limited in DB ITA No. 10,11 & 12/2018 dated 13.03.2018. In the case of PCIT vs. M/s Rajasthan Renewable Energy Corporation Limited (supra) the Hon'ble High Court has considered this issue in para 4 to 6 as under:-

"4. So far as question No. 1 is concerned, the same is now covered by the decisions of this Court in Principal Commissioner of Income-Tax V/s

Rajasthan state seed Corporation Ltd. [2016] 386 ITR 267 (Raj) wherein it has been held as under:-

"In so far as the expenditure incurred on State Renewal Fund is concerned, the said expenditure also goes to show that the renewal fund was set up by the State Government and was created with the object of providing a safety net for the workers likely to be effected by restricting in the State Public Enterprise and that a finding of fact has been recorded that the contribution made to the State Renewal fund is solely for the purposes of the welfare and benefit of the employees. In our view, it is for the assessee to decide whether any expenditure should be incurred in the course of business and expenditure of this nature being for business expediency is certainly allowable deduction under section 37(1) of the Act. In our view any normal expenditure for the welfare and benefit of the employees is allowable expenditure under section 37(1), the Tribunal has come to a finding of fact that it was a legal obligation of the respondent-assessee towards contribution of the said amount to the State Renewal Fund and there being a legal obligation as well in our view the Tribunal has come to a correct conclusion."

In view of the above, question No. 1 is answered in favour of the assessee and against the department.

6. With regard to issue No. 2 and 3 the controversy is pending before the Supreme Court in C.I.T., Jaipur Vs/ Ms State Bank of Bikaner and Jaipur in SLP© No. 16249/2014, therefore, subject to decision of SLP, for the present, these issues are decided on in favour of the department and against the assessee. It will be open for the department to recover the amount if the decision is in their favour."

Thus, it is clear that the Hon'ble jurisdictional High Court has followed the earlier decisions in case of PCIT vs. Rajasthan State Seed Corporation Limited 386 ITR 267 as well as decision in case of CIT vs. State Bank of Bikaner & Jaipur (supra). All these decisions which were allowed by the Hon'ble jurisdictional High Court are in favour of the assessee however, in the conclusion in para 6 there is a typographical mistake wherein it is stated "these issues decided in favour of the Department and against the assessee". The whole decision of the Hon'ble High Court has to be considered in the contest of the decision followed and the subsequent line which says "it will be opened for the Department to recover the amount" if the decision in their favour which means that in case of further appeal before Hon'ble Supreme Court if decision is delivered in favour of the department it can recover the amount. Therefore, even the decision which is relied upon the Id. CIT(A) the same is in favour of the assessee though due to typographical mistake it was misunderstood by the Id. CIT(A) as in favour of the Revenue. Accordingly, in view of a series of decisions of the Hon'ble Jurisdictional High Court in favour of the assessee and further Hon'ble Supreme Court in case of PCIT vs. Rajasthan State Beverages Corporation Ltd. 250 taxmann 16 has dismissed the SLP filed by the Department this issue is decided in favour of the assessee and against the Revenue. Hence, disallowances/additions made by the AO on account of employees contribution to PF & ESI are deleted."

6. Therefore, respectfully following the decisions of the Hon'ble Jurisdictional High Court, the matter is decided in favour of the assessee and against the Revenue. In the result, the ground of appeal is allowed.

In the result, appeal of the assessee is partly allowed.

Order pronounced in the Open Court on 19/08/2019.

Sd/-
(विजय पाल राव)
(Vijay Pal Rao)
न्यायिक सदस्य / Judicial Member

Sd/-
(विक्रम सिंह यादव)
(Vikram Singh Yadav)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 19/08/2019

*Ganesh Kr.

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

1. अपीलार्थी / The Appellant- M/s Jaipur Stock Securities Ltd., Jaipur
2. प्रत्यर्थी / The Respondent- ACIT, Circle-6, Jaipur
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File {ITA No. 992/JP/2018}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar

