

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : SMC : NEW DELHI

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER

ITA No.3642/Del/2019
Assessment Year: 2012-13

Western Drilling Contractors Pvt. Ltd., Plot No.1A, Institutional Area, Sector-16A, Noida, Uttar Pradesh.	Vs	ITO, Ward-3(5), Noida.
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PAN: AAAFW5961A

(Appellant)

(Respondent)

Assessee by	:	Shri K.M. Gupta, Advocate
Revenue by	:	Shri S.L. Anuragi, Sr. DR

Date of Hearing	:	31.07.2019
Date of Pronouncement	:	25.09.2019

ORDER

This appeal filed by the assessee is directed against the order dated 29.11.2018 of the CIT(A)-1, Noida, relating to assessment year 2012-13.

2. Grounds of appeal 1, 2 and 3 which are corelated are as under:-

“1. On the facts, in law and in circumstances of the case, the Ld. Commissioner of Income Tax (Appeals) [CIT(A)] erred in confirming the assessment of interest of Rs.27,82,217/- earned on fixed deposits placed as margin money with Bank for issuance of Bank Guarantee for Oil Blocks, a "income from other sources" on the ground that margin money placed with the bank for issuance of guarantees is not a pre-condition for set up of business of the Appellant.

2. On the facts, in law and in circumstances of the case, the Ld. CIT(A) erred in holding that fixed deposits placed as margin money with Bank for

issuance of bank guarantee could not be held to be intrinsically connected with the business of the Appellant.

3. Without prejudice, on the facts, in law and in circumstances of the case, the Ld. CIT(A) erred in not allowing deduction of proportionate interest expense of Rs.49,07,818/- incurred directly and exclusively towards earning aforesaid interest income.”

3. Facts of the case, in brief, are that the assessee is a company and is having oil blocks in Yemen which are capital work-in-progress. During the year, no business was carried out by the assessee company. It filed its return of income on 28th September, 2012 declaring net loss of Rs.29,032/-. During the assessment proceedings, the Assessing Officer noted that as per 26AS, the assessee has earned interest income of Rs.27,82,217/- from the fixed deposits maintained with Axis Bank Ltd. amounting to Rs.3,26,27,896/-. On being questioned by the Assessing Officer as to why the said interest income should not be treated as ‘Income from other sources’, the assessee submitted that the assessee company has received interest from Axis Bank in respect of the FD of Rs.2.36 crores which was placed with the bank as margin money against bank guarantee issued by Axis Bank in respect of oil block which has not started commercial production and carried forward in audited financials as capital work-in-progress. It was submitted that the assessee company has share capital of Rs.2,15,000/- which has been used up much before the issue of bank guarantee by Axis Bank which was issued in June, 2008. It was submitted that for placing the fixed deposit with Axis Bank as margin money against the issue of bank guarantee, the assessee company had borrowed funds as it did not have its own funds. However, the Assessing Officer was not

satisfied with the explanation given by the assessee and treated the interest income of Rs.27,82,217/- as 'Income from other sources' and, accordingly, determined the taxable income of the assessee at Rs.27,53,185/-, after deducting the loss declared by the assessee from such interest income.

4. In appeal, the Id.CIT(A) upheld the action of the Assessing Officer. While doing so, he noted that the interest income has not been received by the assessee in the process of utilization of its assets. According to him, the assessee was required to provide bank guarantee to the Government of the Republic of Yemen as sureties to set up its business of oil exploration for which it had borrowed money from lenders and for which, in turn, it had to provide margin money in the shape of FDs. Therefore, while the incidence of providing margin money was in connection with the setting up of the business of the assessee, it was not out of utilization of the assets. The margin money was not an asset of the business, but, a mere condition for borrowing money and, therefore, the facts of the case of the assessee are entirely different from those in the case of *Bokaro Steel Ltd. vs. CIT*, reported in 236 ITR 315 (SC). Distinguishing the various decisions cited before him the Id.CIT(A) observed that the commercial business of the assessee was not yet commenced and the margin money was required by the bankers to lend money to the assessee to provide necessary guarantee was not a necessary pre-condition for setting up of the business of the assessee and that the assessee could have provided such guarantees from other sources or by raising share capital from shareholders.

5. Aggrieved with such order of the CIT(A), the assessee is in appeal before the Tribunal.

6. The ld. counsel for the assessee, referring to the decision of the Hon'ble Supreme Court in the case of *CIT vs. Karnal Co-operative Sugar Mills Ltd.*, reported in 118 Taxman 489, submitted that where the assessee earned interest on deposits made to open a letter of credit for purchase of machinery required for setting up its plant, such deposit of money was directly linked with purchase of plant & machinery and, therefore, any income earned from such deposit was incidental to acquisition of assets for setting up plant and machinery. Such interest was held to be capital receipt which would go to reduce the cost of the asset. Referring to the decision of the Hon'ble Delhi High Court in the case of *PCIT vs. Factor Power Ltd.* (2016) 66 taxmann.com 178 (Delhi), he submitted that the Hon'ble High Court in the said decision has held that where the assessee engaged in generating electric power, kept margin money in form of fixed deposits for procurement of various capital goods for setting up of power project, interest earned on said deposits would be in nature of capital receipt not liable to tax. Referring to the decision of Ahmedabad Bench of the Tribunal in the case of *Adani Power Ltd. vs. ACIT* (2015) 61 taxmann.com 355, he submitted that the Tribunal, in the said decision, has held that where the assessee, engaged in the business of developing, operating and maintenance of power projects, received certain interest on surplus funds, that were deposited in Government securities, prior to implementation of its projects, amount so received was to be treated as capital

receipt. Referring to the decision of the coordinate Bench of the Tribunal in the case of *Sugam Vanijya Holding P. Ltd., vide ITA No.6722/Del/2017, order dated 26th July, 2019 for assessment year 2013-14*, he submitted that under identical circumstances, the Tribunal held that the income earned on temporary parking of the funds being capital in nature will go to reduce the capital work-in-progress. He accordingly submitted that such interest income earned on fixed deposits kept as margin money for obtaining bank guarantee under any circumstances cannot be treated as revenue receipts. In his alternate contention, he submitted that since the assessee has borrowed money for making the fixed deposits as margin money for obtaining bank guarantee, proportionate interest paid on such borrowed capital should be deducted from such interest income. He accordingly submitted that the grounds raised by the assessee should be allowed.

7. The Id. DR, on the other hand, heavily relied on the order of the CIT(A). He submitted that the commercial business of the assessee has not yet commenced and the margin money which was required by the bankers to lend money to the assessee for providing necessary guarantee was not a necessary precondition for setting up the business of the assessee. He submitted that the assessee should have made such fixed deposits by raising share capital from the shareholders and it is not a pre-condition to provide the necessary guarantee out of the borrowed funds. He submitted that the Id.CIT(A), relying on various decisions has held such receipts to be revenue in nature, therefore, the same should be upheld.

8. I have considered the rival arguments made by both the sides; perused the orders of the Assessing Officer and CIT(A); and the paper book filed on behalf of the assessee. I have also considered the various decisions cited before me. I find the Assessing Officer taxed the interest income of Rs.27,82,217/- earned by the assessee on fixed deposits with Axis Bank kept as margin money for obtaining bank guarantee. I find the Id.CIT(A) upheld the action of the Assessing Officer on the ground that while the incidence of providing margin money was in connection with the setting up of the business of the assessee, it was not out of the utilization of the assets. According to him, the margin money was not an asset of the business, but, a mere condition for borrowing money. According to him, the assessee could have raised the share capital from its shareholders since the commercial business of the assessee has not yet commenced and the margin money which was required by the bankers to lend money for providing necessary bank guarantee was not a necessary pre-condition for setting up the business. It is the submission of the Id. counsel for the assessee that in view of the various decisions relied on by him, such interest income is a capital receipt and cannot be brought to tax as revenue receipt.

9. The Hon'ble Supreme Court in the case of *Karnal Co-operative Sugar Mills Ltd. (supra)*, after considering various decisions including the decision in the case of *Bokaro Steel Ltd. 236 ITR 315* and *Tuticorin alkali Chemicals & Fertilizers, 227 ITR 172*, has held that where the assessee earned interest on deposit made to open a

letter of credit for purchase of machinery required for setting up its plant, such deposit of money was directly linked with purchase of plant & machinery and, therefore, any income earned from such deposit was incidental to acquisition of assets for setting up plant and machinery and, therefore, such interest was a capital receipt which would go to reduce the cost of the asset. The relevant observation of the Hon'ble Supreme Court reads as under:-

“1. Leave granted.

2. In the present case, 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 has been earned. 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 & Fertilizers Ltd. vs. CIT* (1997) 141 CTR (SC) 387 : (1997) 227 ITR 172 (SC) : TC S38.3460, will not be attracted. The more appropriate decision in the factual situation in the present case is in *CIT vs. Bokaro Steel Ltd.* (1999) 151 CTR (SC) 276 : (1999) 236 ITR 315 (SC). The appeal is dismissed. There will be no order as to costs.”

10. Similar view has been taken by the Hon'ble Delhi High Court in the case of *PCIT vs. Factor Power Ltd.* (*supra*). I, therefore, hold that the interest earned by the assessee from fixed deposits kept as margin money for obtaining bank guarantee would be a capital receipt which would go to reduce the cost of asset and cannot be treated as revenue in nature. The grounds raised by the assessee are accordingly allowed in the terms indicated above.

11. Ground No.4 by the assessee reads as under:-

“4. On the facts, in law and in circumstances of the case, the Ld. CIT(A) erred in not allowing Tax deducted at Source (TDS) Credit of Rs.5,56,444/- duly reflected in Form 26AS for the year under consideration while computing tax liability of the Appellant.”

12. Facts of the case, in brief, are that the assessee before the CIT(A) had taken a ground that the Assessing Officer has not granted TDS credit for Rs.5,56,444/-. Since the issue raised before him was not germane to the material brought on record, the CIT(A) held that the same cannot be adjudicated by him. He, however, held that the assessee has liberty to seek the remedy as per law. Aggrieved with such order of the CIT(A), the assessee is in appeal before the Tribunal.

13. After hearing both the sides, I deem it proper to restore the issue to the file of the Assessing Officer with a direction to grant due credit of TDS after affording reasonable opportunity of being heard to the assessee and decide the issue as per fact and law. This ground raised by the assessee is accordingly allowed for statistical purposes.

14. Ground No.5 reads as under:-

“5. On the facts, in law and in circumstances of the case, Ld. CIT(A) erred in confirming the interest of Rs. 2,00,308/- charged under section 234B of the Act.”

15. Here also, this issue was not decided by the CIT(A) on the ground that this issue is not germane to the material brought on record.

16. After hearing both the sides, I deem it proper to restore the issue to the file of the Assessing Officer with a direction to recompute the interest as per law, after affording reasonable opportunity of being heard to the assessee. We hold and direct accordingly. This ground raised by the assessee is accordingly allowed for statistical purposes.

17. In the result, the appeal filed by the assessee is allowed for statistical purposes.

The decision was pronounced in the open court on 25.09.2019.

Sd/-

(R.K. PANDA)
ACCOUNTANT MEMBER

Dated: 25th September, 2019

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Copy forwarded to :

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

Asstt. Registrar, ITAT, New Delhi