

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "E": DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI O.P. KANT, ACCOUNTANT MEMBER

ITA.No.2471/Del./2017
Assessment Year 2007-2008

M/s. National Textile Corporation Ltd., Core-4, Scope Complex-7, Lodhi Road, New Delhi- 110 003. PAN AAACN2847D	vs.,	The Addl. CIT, Special Range-6, Room No.352, C.R. Building, New Delhi.
(Appellant)		(Respondent)

For Assessee :	Shri Manoj Kumar Anand, C.A.
For Revenue :	Shri K. Hauthang, Sr. D.R.

Date of Hearing :	25.09.2019
Date of Pronouncement :	01.10.2019

ORDER

PER BHAVNESH SAINI, J.M.

This appeal by Assessee has been directed against the Order of the Ld. CIT(A)-38, New Delhi, Dated 27.01.2017 for the A.Y. 2007-2008 on the following ground:

"That the disallowance Rs.1,94,68,000/- on account of Guarantee Fee on Bonds is incorrect in law and on the facts of the case & prayed for

deletion. It is wrongly written as guarantee fees & in fact it is Interest on FDR made out of un-utilised funds provided by COP & CCS (Govt Organization)”.

2. Briefly the facts of the case are that the above addition pertains to Guarantee Fees of Rs 1,94,68,000/- on NTC bonds. In the Assessment Order, the AO stated that assessee has earned interest on FDR's made out of un-utilised funds provided by Commissioner of Payment (COP) and CCS (Controller of Cloth Subsidy Funds) and taxable u/s 56(1) of the I.T. Act, 1961. The findings of the A.O. are reproduced in the appellate order which reads as under :

“The submissions of the assessee are considered but not accepted because the interest income earned on the unutilized subsidy as given by the Ministry of Textile to the assessee is the income of the assessee. On this point reliance may be placed on the judgment of the Hon’ble Supreme Court in the case of CTT vs. Tuticorion Alkali & Chemicals Fertilizers Ltd. Wherein

it is held that if a person borrows money for business purposes, but utilizes that money to earn interest, however, temporarily, the interest so generated will be his income. This interest income may be utilized in any way he likes. Merely because he utilized the same to repay the interest on the loan taken, will not make the interest income as capital receipt.

Also the interest earned by any person on the amount deposited with the Bank is income of the income of the person, and falls under the definition of the words "all income" of Section 5 of the IT Act. There is no binding decision of any authority on this issue that the interest income is exempted from income tax.

I.T. Act in its Section 56(1) clearly says that

"Income of every kind which is not to be excluded from the total income under this act shall be chargeable to income tax under the head "income from other sources . If it is not chargeable to

income tax under any of the heads specified in section 14, items A to E”.

No clause or provision of I.T. Act has exempted the interest income from tax.

Moreover, section 2(24) of the I.T. Act which inclusive and not exclusive. In the case of Ganga Saran Narain Singh vs CIT (1935) 3ITR 237 (PC), it is held that anything which can be properly described as income is taxable under the Act, unless expressly exempted. Also in the case of Commissioner of Corporation & Taxation vs Filcon 38 NE 2d 693, 700, it is held that though there are different concepts of "income for the purpose of taxation, income is broadly defined as the true increase in the amount of wealth which comes to a person during the stated period of time."*

2.1. The A.O, accordingly, made the addition of Rs.1,94,68,000/-.

3. The assessee submitted before the Ld. CIT(A) that there was no guarantee fees paid by NTC during the year

and addition on this ground be declared null and void. However without prejudice to above it was submitted that interest of the above amount was earned against FDR's held for and on behalf of Commissioner of Payment & Controller Cloth Subsidy Funds. Assessee has also submitted that the Government of India provided certain funds to NTC which were to be paid to Mills Nationalized as on 01.04.1974 or to be returned back to Government of India if not utilized. Certain Funds remained unutilized and consequently FDR was made and interest accrued against it were duly shown as payable to Government of India (Ministry of Textile) along with interest. In other words interest income doesn't belong to NTC because this interest is earned on the unutilized subsidy as given by the Ministry of Textile to NTC which is returnable along with interest if not utilised. NTC is simply acting as trustee of the funds on behalf of Ministry of Textile. This has been the consistent policy of NTC since its inception i.e. from the F.Y. 1968-69 onwards and duly accepted by the Income Tax Department also in all scrutiny orders i.e., latest for the A.Ys. 2008-09, 2009-10, 2011-12.

The A.O. has Picked-up this figure against Audit Party observations based on statutory auditor's report. In fact statutory auditor during past never made any such observation so as to warrant addition on this account except in the current year which in itself is an exception. The assessee relied upon decision of Hon'ble Delhi High Court in the case of Commissioner of Income-tax v. Delhi State Industrial Development Corporation [2007] 162 TAXMAN 275 and Judgment of Hon'ble Karnataka High Court in the case of CIT vs Karnataka Urban Infrastructure Development and Finance Corporation [2006] 155 Taxman 228). The Ld. CIT(A), however, did not accept contention of assessee and noted that in the case of assessee credit of interest was not reversed on the advise of Comptroller & Auditor General of India. Hence, the case Law relied upon by assessee are distinguishable. Appeal of assessee was accordingly dismissed.

4. We have heard the Learned Representative of both the parties and perused the material available on record.

5. Learned Counsel for the Assessee reiterated the submissions made before the authorities below. However, he has admitted that certain funds are remain un-utilised and consequently FDRs were made, on which, interest was accrued against it. It is also a fact that in the case of assessee, the credit of the interest was not reversed on the advise of Comptroller & Auditor General of India as noted by the Ld. CIT(A). Learned Counsel for the Assessee, therefore, fairly referred to Page No.128 of the paper book which is reply filed before the Ld. CIT(A) to show that the amount of interest [wrongly mentioned as guarantee fees] of Rs.194.68 lakhs was offered for taxation in A.Y. 2013-2014. Learned Counsel for the Assessee, therefore, submitted that since the impugned amount have been offered for taxation in A.Y. 2013-2014, therefore, the similar addition may be deleted in assessment year under appeal. We do not subscribe to the view of the Learned Counsel for the Assessee. It is well settled Law that addition shall have to be made in assessment year to which it pertain. May be assessee has wrongly offered the impugned amount for

taxation in subsequent A.Y. 2013-2014 would not absolve the assessee from its liability to pay tax in assessment year under appeal. Considering the facts of the case, it is clear that assessee earned interest of the impugned amount against the FDRs which were made out of the funds which remain un-utilised. Therefore, the principal amount remain with the assessee which is to be utilised by the assessee of its own. If interest is earned on the same and certified by the Statutory Auditor that it is income of the assessee, it has to be shown as income in assessment year under appeal only. Merely because assessee has shown the impugned amount as taxable in A.Y. 2013-2014 would be of no consequence. In this view of the matter, we do not find any justification to interfere with the Orders of the authorities below. Further, during the course of arguments, Learned Counsel for the Assessee was directed to produce the policy of the Government of India through which the amount have been given to assessee and the conditions stipulated therein to refund back the amount along with interest so as to clarify the position taken by the assessee

before the authorities below. However, Learned Counsel for the Assessee has shown his inability to produce any such policy or circular for consideration of the Bench. In these circumstances, it is clear that interest earned on FDRs was income of the assessee from other sources as is held by the authorities below, which was ultimately agreed by the assessee to be surrendered for taxation though in subsequent year. In these circumstances, no interference is called for in the matter. We, accordingly, dismiss the appeal of assessee.

6. In the result, appeal of Assessee dismissed.

Order pronounced in the open Court.

Sd/-
(O.P. KANT)
ACCOUNTANT MEMBER

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Delhi, Dated 01st October, 2019

VBP/-

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2.	The respondent
3.	CIT(A) concerned
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// BY Order //

Asst. Registrar : ITAT Delhi Benches :
Delhi.