

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL, 'A' BENCH, CHENNAI
श्री जॉर्ज माथन, न्यायिक सदस्य एवं श्री एस जयरामन, लेखा सदस्य के समक्ष
**BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER AND
SHRI S. JAYARAMAN, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A.No.2538/CHNY/2017
(निर्धारण वर्ष / Assessment Year: 2013-14)

M/s. Nagarjuna Oil Corporation Vs **The Income Tax Officer,**
Ltd., Corporate Ward – 4(2),
MD Chambers, New No.53, Chennai – 34.
Dr.R.K. Salai, Mylapore,
Chennai – 600 004.
PAN: AAACN 9369E

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Shri Saroj Kumar Parida, Advocate

प्रत्यर्थी की ओर से/Respondent by : Shri S. Bharath, CIT

सुनवाई की तारीख/Date of hearing : 28.08.2019

घोषणा की तारीख /Date of Pronouncement : 08.11.2019

आदेश / ORDER

Per S.JAYARAMAN, AM:

The assessee filed this appeal against the order of the Commissioner of Income Tax (Appeals)-8, Chennai in ITA No.235/15-16 dated 17.08.2017 for the assessment year 2013-14.

2. M/s. Nagarjuna Oil Corporation Ltd., is a public limited company engaged in setting up of refinery for refining petroleum oil and other

related productions. While making the assessment for the assessment year 2013-14, the AO added Rs.10,44,34,042/- interest income earned by the assessee on the margin money kept in deposits against the letter of credit for supply of equipment, scrap sales, etc., U/s.56. The Assessing Officer has also noted that the assessee is still in the stage of setting up of its manufacturing unit. The assessee relied on the decisions of the Hon'ble Supreme Court in the cases of CIT vs. M/s. Bokaro Steel Ltd, 236 ITR 315 and M/s. Karnal Cooperative Sugar Mills Ltd., 234 ITR 2. However the Assessing Officer relied on the Hon'ble Supreme Court decisions in the cases of CIT vs. Autokast Ltd., 248 ITR 110 and Tutikorin Alkali Chemicals and Fertilizers Ltd., 227 ITR 172 and assessed the income U/s.56. Aggrieved, the assessee filed an appeal before the CIT(A). The Id.CIT(A) dismissed the appeal, holding that the AO has countered the decisions relied on by the assessee, which have binding nature. Aggrieved against that order, the assessee filed this appeal with the following grounds of appeal:-

- 1. The order of the Commissioner of Income Tax (Appeals) is contrary to law, facts and circumstances of the case.*
- 2. The CIT(A) erred in holding that the interest on short term deposits made from borrowings, interest on deposits placed as margin money*

for letter of credit and bank guarantee issued by bankers was assessable under the head income from other sources.

2.1 The CIT(A) ought to have appreciated that these borrowings was intended for specific purpose of acquisition of machinery and till such time they were utilized in purchasing the assets, the funds were temporarily kept in short term deposits.

2.2 The Appellant submits that the interest was received from deployment of funds specifically for setting up of the Industry during preoperative period and is to be reduced from interest expenditure as this transaction is inextricably connected with the setting up of the business.

2.3 The CIT(A) ought to have found that the interest earned on the deposits made from borrowings was inextricably linked with the acquisition of plant and machinery and equipments which is in the nature of capital receipt and hence not taxable.

2.4 The CIT(A) ought to have appreciated that with the introduction of Provisio to Section 36(1)i(ii) interest payable on borrowals of acquisition for plant and machinery should be capitalized and in such cases only the gross interest payable as reduced by interest income receivable on such borrowings should be capitalized.

2.5 The Appellant relies on the decision in Indian Oil Panipet Power Consortium Ltd 315 ITR 255 wherein the Court held that Interest which accrued on funds deployed with the bank during pre-operative period could not be taxed as income from other sources but constituted capital receipt liable to be set off against pre-operative expenses as the said funds were specifically earmarked for purchase of land development of infrastructure.

2.6 The Appellant relies on the following decisions:

i) CIT v VGR Foundation 298 ITR 392 (Mad)

ii) Pr CIT v Facor Power Ltd ITA No.1 011/2015 dt 07.01.2016 (Del)

- iii) NTPC SAIL Power Company Pvt. Ltd. Vs. CIT 210 Taxman 358 (Delhi)*
- iv) CIT Vs Jaypee DSC Ventures Ltd. 335 ITR 132*
- v) CIT Vs UK Bose J B Roy 2012-TIOL-1010*
- vi) POSCO-India Pvt Ltd. Vs DCIT 2013-TIOL-225-ITAT-CUTTACK*
- vii) Adani Power Ltd Vs ACIT 2015-TIOL-1327-ITAT-AHM*
- viii) Shapoorji Pallonji Power Co Ltd Vs ITO 2009-TIOL-528-ITAT-MUM*

3. Without prejudice to the above claim, the CIT(A), in any event, should have found that the interest paid on borrowings should be deducted as an expenditure under Section 57 from the interest income as it was incurred wholly for earning such interest income

4. The Appellant craves leave to adduce additional grounds at the time of hearing.

3. The Id.AR presented the case on the lines of grounds of appeal. Per contra, the Id.DR supported the orders of the lower authorities.

4. We heard the rival submissions and gone through the relevant material. In the case of Autokast Ltd., supra, it was observed that the interest income on money borrowed for purchase of plant and machinery and placed in short term deposit in bank till payment was made and used in bill discounting was taxable as 'income from other sources'. In the case of Tuticorin Alkali Chemicals and Fertilizers Ltd., supra, the Hon'ble Supreme Court observed that

“the argument based on accountancy practice has little merit if such practice cannot be justified by any provision of statute or in contrary to it.

.....
The accountants may have taken some other view but accountancy practice is not necessarily good law.

.....
It is true that this court has very often referred to accounting practice for ascertainment of profit made by a company or value of assets of a company. But when the question is whether a receipt of money is taxable or not or whether certain deductions from that receipt are permissible in law or not, the question has to be decided according to the principals of law and not accordance with accountancy practice. Accounting practice cannot override Sec.56 or any other provision.

.....
The Income-tax law does not march step by step in the footprints of the accountancy profession.”

Therefore, we do not find any merit in the submissions of the assessee upto ground No.2. However, the assessee's plea in Ground No.3 viz., that the interest paid on borrowings should be deducted as an expenditure U/s.57 from the interest income as it was incurred wholly for earning such interest income, merits. Therefore, we remit his issue back to the Assessing Officer to verify and assess the net interest income. The assessee shall lay all materials in support of its contention before the Assessing Officer and comply with the requirements of the Assessing Officer in accordance with law. The Assessing Officer is free to conduct appropriate enquiry as deemed fit, however, he shall furnish due opportunity to the

assessee on the materials etc., to be used against the assessee and on due consideration of the assessee's clarification / explanation shall pass the order in accordance with law.

5. In the result, the appeal of the assessee is treated as partly allowed for statistical purpose.

Order pronounced in the court on 8th November, 2019 at Chennai.

Sd/-

(जॉर्ज माथन)
(George Mathan)
न्यायिक सदस्य/Judicial Member

Sd/-

(एस जयरामन)
(S. Jayaraman)
लेखा सदस्य /Accountant Member

चेन्नई/Chennai,

दिनांक/Dated 8th November, 2019

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|------------------------|--------------------------|------------------------------|
| 1. अपीलार्थी/Appellant | 2. प्रत्यर्थी/Respondent | 3. आयकर आयुक्त (अपील)/CIT(A) |
| 4. आयकर आयुक्त/CIT | 5. विभागीय प्रतिनिधि/DR | 6. गार्ड फाईल/GF |