

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "B" 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. 322 & 323/JP/2018
निर्धारण वर्ष / Assessment Years : 2011-12 & 2014-15

Shri Ajay Bakliwal C-9, Vallabh Bari, Kota.	बनाम Vs.	The ACIT, Circle-1, Kota.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ABZPB 7775 P		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Nikhilesh Kataria (C.A.)
राजस्व की ओर से / Revenue by : Smt. Roonipal (JCIT)

सुनवाई की तारीख / Date of Hearing : 11/12/2019
उदघोषणा की तारीख / Date of Pronouncement : 07/02/2020

आदेश / ORDER

PER: VIKRAM SINGH YADAV, A.M.

These are two appeals filed by the assessee against the respective orders of Id. CIT(A), Kota dated 29.12.2017 for the assessment years 2011-12 & 2014-15 respectively. Since common issues are involved, both the appeals were heard together and are disposed off by this consolidated order.

2. For the purpose of present discussions, the case of the assessee in ITA No. 323/JP/2018 was taken lead case with the consent of both

the parties, wherein the assessee has taken following grounds of appeal:-

- "1. The assessment order passed u/s 143(2) is bad in law as well as on facts and hence, the same may please be quashed.*
- 2. Rs. 1,00,000/- The Id. AO erred in law as well as on the facts of the present case in making ad-hoc addition after rejecting the books of account of the assessee and the Id. CIT(A) erred in sustaining the same.*
- 3. Rs. 1878448/- The Id. AO erred in law as well as on the facts of the present case in making addition of interest on FDR separately under the head 'Income from other source' and the Id. CIT(A) erred in sustaining the same. The same is prayed to be deleted.*

3. At the outset, the Id. AR submitted that the assessee does not want to press ground nos. 1 and 2 of its appeal. Hence, these two grounds are dismissed as not pressed.

4. Regarding ground no. 3, briefly the facts of the case are that during the year under consideration, the assessee was engaged in civil construction business for government and semi-government Departments and also for private concerns. During the course of assessment proceedings, the Assessing Officer observed that the assessee has shown interest income of Rs. 16,16,898/- in M/s Navbharat Nirman Company and Rs. 2,61,550/- in M/s Ajay Bakliwal & Associates which are two proprietorship concerns of the assessee and a show cause was issued to the assessee as to why the interest income may not be assessed under the head "income from other sources".

5. In response, the assessee submitted that in the past assessment years where the matter was scrutinized by the Assessing Officer, the interest income on FDR was not considered U/s 56 of the Act and the interest expenditure on OD/cash credit was set off against interest income. Even in the assessment year 2013-14, the interest income was considered as business income and interest expenditure was set off against income and balance was either debited or credited to profit and loss account. It was further submitted that the assessee being civil contractor, the FDRs were made to furnish bank guarantee to the awarders of the contract and thus, fixed deposits were inextricably linked and intrinsically connected with the execution of the contract being awarded to the assessee and hence, the interest so received on such FDRs was only incidental to the very execution of the contract. It was submitted that furnishing of bank guarantee was the sine qua non for initiation of the project and only on furnishing the bank guarantee, could the assessee enter into the contract for the construction of the project. It was submitted that it is not a case where surplus funds have been deployed to earn the interest income rather the activity of depositing money was incidental to the business of the assessee. It was accordingly submitted that the interest received/accrued on these deposits is not a separate income which is de hors the main business of the assessee and same should be considered as income from business only. The reply so filed by the assessee was considered however, not found acceptable as the Assessing Officer was of the view that the FDRs are investment and interest earned thereon are not business income as assessee is a contractor and therefore, the interest received by the

assessee was brought to tax under the head "income from other source" U/s 56 of the Act.

6. Being aggrieved, the assessee carried the matter in appeal before the Id. CIT(A) and the Id. CIT(A) has sustained the addition holding that it has never been held by the higher authority that the interest income is business income in the assessee case. It has also not been proved by the assessee that the deposits were intrinsically linked to earning the contract income. Against the said findings, the assessee is in appeal before us.

7. During the course of hearing, referring to the assessment years passed for A.Ys. 2010-11 to 2013-14, the Id. AR submitted that since last many years, the interest received by the assessee has been treated as part of its trading results and interest has never been assessed as income from other sources. It was submitted that the department has never assessed the interest income as income from other sources and given that there is no change in the business of the assessee and as such, there is no reason to deviate from the past settled position which has been accepted by the Department. It was further submitted that the observation of the Id. CIT(A) that the assessee has not proved that the deposits were intrinsically linked to earning of contract income is not correct as the Department is consistently making assessment while treating interest income as business income of the assessee and further, the detailed written submissions were filed before the Id. CIT(A) which have not been properly appreciated. It was further submitted that the matter is squarely covered by the decision of the Hon'ble

Rajasthan High Court in case of M/s Choudhary and Brothers vs. DCIT (*DB. ITA No. 355/2017 dated 31.08.2018*). It was further submitted that the Coordinate Benches are also taking a consistent view that where the interest on FDR is inextricably linked with the business of the assessee, the same is to be treated as part of business income and not income from other sources and in support, reliance was placed on the decision of Coordinate Bench in case of M/s Mohd Construction Company vs. ACIT (*ITA No. 389/JP/2012*). It was further submitted that the bank guarantee is of a certain percentage of the contract value which is to be submitted to the awarder of contract and such Bank Guarantee are mostly given as performance security without which the contract cannot be awarded to the assessee. It is also notable that in case of contract business, this is a very regular feature whereby Bank Guarantees are made and released after sometime. It is notable that these Bank Guarantees are issued by the Bank on the basis of pledging of FDRs by the assessee and therefore, for this purpose only, the FDRs are made which works as lien for the issuance of Bank Guarantees by the Bank and in support, various letters issued by the awarder of the contract for submission of performance security was placed on record. Further, our reference was drawn to the certificate issued by the Punjab National Bank certifying that FDRs have been kept under lien for the period from 01.04.2013 to 31.03.2014 which is placed in the assessee's paper book. It was accordingly submitted that the addition so made by the Assessing Officer may be directed to be deleted.

8. The Id. DR is heard who has relied on the findings of the lower authorities. It was submitted that each year is a separate assessment year and the principles of res judicata doesn't apply in the income tax proceedings. It was further submitted that the assessee has earned interest on FDR receipts and interest so received has been rightly brought to tax under the head "Income from other sources".

9. We have heard the rival contentions and perused the material available on record. We find that the matter is covered in favour of the assessee by the decision of **Hon'ble Rajasthan High Court** in case of **M/s Choudhary and Brothers vs. DCIT** (supra) wherein the Hon'ble High Court has held as under:-

"In the present case also, on the facts of the present case, we find that appellant being a civil contractor was required to provide a performance guarantee to the various works departments for obtaining contracts of civil construction. He has to keep such performance guarantee alive by way of utilizing the bank overdraft limit against which he had to furnish FDRs/NSC for execution of the contracts. His failure to submit the performance guarantee or inability to keep them alive would have resulted in termination of the contract awarded to him and in that event, the concerned departments/employer could encash the security. Release of such performance guarantee is dependent on fulfillment of certain conditions. It is not that the appellant had invested surplus money lying idle with him only in FDRs/NSCs with a view to earning interest. Obtaining of FDRs/NSCs and furnishing of the same against the performance guarantee by the appellant, therefore, had an inextricable nexus with his business of securing civil contracts and integral to his working as civil contractor. The income of interest earned from the interest such

FDRs/NSCs by the appellant therefore, in our considered view, cannot be treated as income from other sources and would rather be an income earned from business.

In view of above discussion, the question of law extracted above is answered in the terms that "in the facts and circumstances of the case, the interest income from FDRs and NSCs of the petitioner has to be treated as income from business and not income from other sources as the income is part of the total receipts and not from other sources."

In the instant case, we find that FDR's were placed with PNB under its lien for providing necessary margins for the purposes of obtaining the bank guarantees which were required to be placed with the awardee of the contracts to the assessee and issued by the PNB. There thus exist a direct nexus between pledging of FDRs with bank and seeking bank guarantee for the purposes of assessee's business. Further, some of the FDRs were directly placed with Chief Engineer, PWD, Jaipur by way of security towards performance of contract obligations. Following the ratio laid down by the Hon'ble Rajasthan High Court in case of M/s Choudhary & Brothers (supra), obtaining and pledging the FDR for the purposes of obtaining bank guarantee for the purposes of its business, the assessee has thus established the necessary nexus with his business and interest earned from such FDRs cannot be treated as income from other sources and would rather be treated an income earned from business. We therefore, agree with the contentions so advanced by the Id AR and the ground of appeal is allowed.

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

ITA No. 322/JP/2018

11. In ITA No. 322/JP/2018 for A.Y 2011-12, both the parties fairly submitted that facts and circumstances of the case are exactly identical and thus, similar contentions have been advanced by them. Therefore, following our findings and directions in ITA No. 323/JP/2018, interest earned from such FDRs cannot be treated as income from other sources and would rather be treated an income earned from business and ground no. 2 of assessee's appeal is allowed.

12. In ground No. 1, the assessee has challenged the reopening of the proceedings by issuance of notice U/s 148 of the Act. In view of our findings on merit, the said ground has become academic and the same is therefore, dismissed as infructuous.

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

Order pronounced in the open Court on 07/02/2020.

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:- 07/02/2020.

*Santosh

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

1. अपीलार्थी / The Appellant- Shri Ajay Bakliwal, Kota.
2. प्रत्यर्थी / The Respondent- ACIT, Circle-1, Kota.
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. 322 & 323/JP/2018 }

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar.