

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“A” BENCH: BANGALORE**

**BEFORE SHRI N. V. VASUDEVAN, VICE PRESIDENT AND  
SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER**

<b>ITA No. and Assessment Year</b>	<b>Appellant</b>	<b>Respondent</b>
3347/Bang/2018 2010-11  3348/Bang/2018 2012-13	Income Tax Officer, Ward – 3(1)(3), Bangalore – 560 032.	M/s. HMT (International) Ltd., No.59, HMT Bhavan, Bellary Road, Ganga Nagar, Bangalore – 560 032. <b>PAN No. AAACH 8197 C</b>
2325/Bang/2019 2011-12	-do-	-do-
2289/Bang/2019 2011-12	-do-	-do-
2859/Bang/2017 2009-10	Income Tax Officer, Ward – 3(1)(2), Bangalore.	-do-
1099/Bang/2016 2011-12	M/s. HMT (International) Ltd., Bangalore – 560 032. <b>PAN No. AAACH 8197 C</b>	Pr. Commissioner of Income Tax, Bangalore-3, Bangalore.

<b>Assessee by</b>	:	Smt. Tanmajee Rajkumar, Advocate
<b>Revenue by</b>	:	Ms. Neera Malhotra, D.R.

<b>Date of Hearing</b>	:	26.11.2020
<b>Date of Pronouncement</b>	:	02.12.2020

**ORDER**

**PER CHANDRA POOJARI, ACCOUNTANT MEMBER:**

**1. ITA No.1099/Bang/2016**

This appeal is by the assessee directed against the order of Pr.CIT passed under section 263 of the Income Tax Act, 1961 (hereafter called ‘the Act’), dated 28.03.2016.

**2. ITA Nos.3347 and 3348/Bang/2018, 2859/Bang/2017 and 2289/Bang/2019.**

These four appeals are with regard to quantum additions for the Assessment Years 2010-11, 2012-13, 2009-10, 2011-12 respectively.

**3. ITA No.2325/2019** is with regard to levy of penalty under section 271(1)(c) of the Act for Assessment Year 2011-12.

4. Since the issue involved in all these appeals are common in nature, these appeals are heard and disposed off together for the sake of convenience.

5. The facts are that the appellant had signed a contract dt 22.06.1989 with M/s Engineering Industry Commission (EIC), Ministry of Defence, Government of Ethiopia, for supply of machine and equipment and rendering technical services for a total value of Rs.1911 lakhs. EIC was required to pay 75% of the value of contract in 12 equal half yearly instalments, along with 7% interest and 2.5 % penal interest per annum for overdue [ payments. However, the appellant received only 25% of the value of supplies and EIC did not make the balance payment of 75%, which became due from 20.02.1991 onwards. The appellant followed up the matter of recovery of outstanding dues, however it was not able to recover any amount. Finally, the appellant decided to write off the debts in its books of account and the same was done in FY 2002-03 and FY 2003-04. As regards interest the same was accounted for in the books of account and offered to tax till FY 1996-97. Thereafter, the appellant stopped offering the same as income, considering the fact that there was uncertainty surrounding its recovery. However, since the appellant was still pursuing the matter of recovery with Government of Ethiopia through Government of India, in its annual report, it kept on reflecting outstanding interest due from the EIC in the form of 'Notes forming parts of account', indicating that the amount relates to overdue interest due from February 1991, which has not been accounted for in the books of account. Such overdue interest for the year under consideration works out to Rs.14,46,80,000/-, which is under dispute in the appeal under consideration.

6. Even in the succeeding Assessment Year also no interest received by the assessee and the position remained the same until the Finance Year 2012-13, when the debt settlement was agreed and the assessee received 7% of the outstanding amount as the final settlement of debt and same has been offered to tax by the assessee. There was uncertainty with regard to recovery of interest concerned as a result of precarious position of EIC. Accordingly, the CIT(A) placed reliance on the judgment of Delhi High Court in the case of CIT(A) Vs. Vasisth Chay Vyapar Ltd., 330 ITR 440 (Delhi) and he allowed the appeal of the assessee. Again, the Revenue is in appeal in all these Assessment Years. The learned DR submitted that the judgment relied on by CIT(A) in the case of Vasisth Chay Vyapar Ltd., (supra) cannot be applied to the facts of the present case which was delivered in a different set of facts and has no relevance to the present facts of the assessee's case. She drew our attention to the para 17 of that judgment which reads as follows:

*“15. In this scenario, we have to examine the strength in the submission of learned counsel for the Revenue that whether it can still be held that income in the form of interest though not received had still accrued to the assessee under the provisions of Income-tax Act and was, therefore, exigible to tax. Our answer is in the negative and we give the following reasons in support :—*

*(1) First of all we would discuss the matter in the light of the provisions of Income-tax Act and to examine as to whether in the given circumstances, interest income has accrued to the assessee. It is stated at the cost of repetition that admitted position is that the assessee had not received any interest on the said ICD placed with Shaw Wallace since the assessment year 1996-97 as it had become NPAs in accordance with the prudential norms which was entered in the books of account as well. The assessee has further successfully demonstrated that even in the succeeding assessment years, no interest was received and the position remained the same until the assessment year 2006-07. Reason was adverse financial circumstances and the financial crunch faced by Shaw Wallace. So much so, it was facing winding up petitions which were filed by many creditors. These circumstances, led to an uncertainty insofar as recovery of interest was concerned, as a result of the aforesaid precarious financial position of Shaw Wallace. What to talk of interest, even the principal amount itself had become doubtful to recover. In this scenario it was legitimate move*

*to infer that interest income thereupon has not "accrued". We are in agreement with the submission of Mr. Vohra on this count, supported by various decisions of different High Courts including this court which has already been referred to above.*

*(2) In the instant case, the assessee company being NBFC is governed by the provisions of RBI Act. In such a case, interest income cannot be said to have accrued to the assessee having regard to the provisions of section 45Q of the RBI and Prudential Norms issued by the RBI in exercise of its statutory powers. As per these norms, the ICD had become NPA and on such NPA where the interest was not received and possibility of recovery was almost nil, it could not be treated to have been accrued in favour of the assessee."*

7. She submitted that in view of the above findings of the observation of the High Court, it is applicable only to NBFC. Further, she drew our attention to para 40 of the said judgment which reads as follows and submitted that CIT(A) wrongly placed reliance on said judgment and on the basis of mercantile system of accounting accrued interest should be offered by the assessee for taxation. Para 40 of the above judgment reads as follows:

*"40. Applicability of section 145.—At the outset, we may state that in essence RBI Directions 1998 are Prudential/Provisioning Norms issued by RBI under Chapter IIIB of the RBI Act, 1934. These Norms deal essentially with Income Recognition. They force the NBFCs to disclose the amount of NPA in their financial accounts. They force the NBFCs to reflect "true and correct" profits. By virtue of section 45Q, an overriding effect is given to the Directions 1998 vis-a-vis "income recognition" principles in the Companies Act, 1956. These Directions constitute a code by itself. However, these Directions 1998 and the Income-tax Act operate in different areas. These Directions 1998 have nothing to do with computation of taxable income. These Directions cannot overrule the "permissible deductions" or "their exclusion" under the Income-tax Act. The inconsistency between these Directions and Companies Act is only in the matter of Income Recognition and presentation of Financial Statements. The Accounting Policies adopted by an NBFC cannot determine the taxable income. It is well settled that the Accounting Policies followed by a company can be changed unless the Assessing Officer comes to the conclusion that such change would result in understatement of profits. However, here is the case where the Assessing Officer has to follow the RBI Directions 1998 in view of section 45Q of the RBI Act. Hence, as far as Income Recognition is concerned, section 145 of*

*the Income-tax Act has no role to play in the present dispute." (Emphasis supplied)"*

8. On the other hand, learned AR submitted that CIT(A) deleted the addition not only on the basis of judgment of Delhi High Court in the case of Vasisth Chay Vyapar Ltd., (supra), but also he considered the AS 9 which was also duly considered by the Delhi High Court which is evident from the para 16 of the said judgment. According to her, only the income which is really accrued or received by assessee is to be taxed. In the present case, the said overdue interest income is not accrued by the assessee or received by the assessee from the Financial Year 2002-03 and the position remained to be the same. She relied on the order of the CIT(A).

9. In the present case, the overdue interest is not recovered by the assessee from February 1991 and the assessee stopped recovering of overdue interest from the Financial Year 1996-97 and stopped accounting from the Financial Year 1996-97. There is uncertainty in the collection of this overdue interest. When the overdue interest partakes the character of uncertain income, it cannot be brought within the purview of taxable income, unless and until it comes to the hands of the assessee. Hon'ble Supreme Court in the case of Southern Technologies Limited Vs. JCIT 320 ITR 577 (SC) while dealing with the concept of real income theory, observed as follows:

*"The income-tax is a tax on "real income", i.e., the profits arrived at on commercial principles subject to the provisions of the Act. Therefore, if by the Explanation to section 36(1)(vii) a provision for doubtful debt is kept out of the ambit of bad debt which is written off, then one has to take into account the Explanation in computing the total income under the Income-tax Act failing which one cannot ascertain the real profits. The provision for non-performing assets debited in the profit and loss account under the Reserve Bank Directions of 1998 is only a notional expense and, therefore, there would be add back to that extent in the computation of total income under the Income-tax Act."*

10. A plain reading the above para reveals that it is a case of Bad Debt. The facts in that case is that the assessee made provision for NPA for the Financial Year ending 31.03.1998 under the direction of RBI and claimed deduction. Accordingly, Profit and Loss account is debited and corresponding amount was shown in the Balance Sheet. The AO disallowed the same and deducted the taxable income. On appeal, the Tribunal held that the assessee was admissible to deduction under section 36(i)(vii) of the Act. In this decision, the Hon'ble Supreme Court held that the amount has to be written off as per the provisions of Income Tax Act not by application of real income theory. In the present case, the assessee has not recognized the overdue interest as income for the purpose of Income Tax until it is received but section 145 of the Act provides that income has to be computed either on cash system or on mercantile system. Whatever is termed as income will certainly fall within mercantile system. It is important to note that collectable is different from accrual. Under mercantile system, interest income accrues with the time. In such cases, interest charged and debited to account as income as recognized under the accrual system but in cash system it is not so. In the present case, it is an overdue interest and it is not collectable from the Financial Year 1996-97 and as a prudent businessman, following AS 9 issued by ICAI the assessee has not recognized the said income. In the present case, there is no question of claiming as a Bad Debt because it is not accountable as there was uncertainty of collection. The same cannot be recognized as income accrued till it is realized by the assessee. It is not correct to say the judgment of Delhi High Court in the case of Vasisth Chai Vyapara is not applicable. In this judgment, it considered the AS 9 along with other provisions of the Act while deleting the addition. We find no merit in the argument of DR that that judgment is not applicable. Accordingly, we do not find any infirmity in the order of CIT(A) in allowing the appeal of the assessee on this issue. Accordingly, we uphold the orders of CIT(A) in ITA No.2859/Bang/2017, 3347, 3348/Bang/2018, 2289/Bang/2019.

**11. ITA No.2325/Bang/2019**

This appeal is with regard to deletion of penalty levied by AO under section 271(1)(c) of the Act deleted by CIT(A). Since we have upheld the deletion of addition by CIT(A) in the relevant Assessment Year 2011-12 in ITA No.2289/Bang/2019, there is no necessity of adjudicating this appeal. Accordingly, this appeal is dismissed.

**12. ITA No.1099/Bang/2016**

This appeal is by assessee against the order passed under section 265 of the Act with regard to direction of CIT(A) to consider the taxability of overdue interest. In this appeal, the assessee pressed only ground relating to the direction of CIT(A) with regard to chargeability of overdue interest from EIC. No other grounds were pressed. Since we have decided the issue in consequential Assessment Order in favour of the assessee by dismissing the appeal of the Revenue on the issue of chargeability of overdue interest from EIC in ITA No.2289/Bang/2019, there is no necessity of adjudication of the issue relating to the chargeability of overdue interest from EIC. Accordingly, this ground of assessee is dismissed as infructuous. Accordingly, ITA No.1099/Bang/2016 is partly allowed.

13. In the result, appeal of the assessee is partly allowed for statistical purposes.

*Pronounced in the open court on the date mentioned on the caption page.*

Sd/-

**(N. V. VASUDEVAN)**  
**Vice President**

Sd/-

**(CHANDRA POOJARI)**  
**Accountant Member**

Bangalore,  
Dated : 02.12.2020.  
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Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

**Asst. Registrar,  
ITAT, Bangalore.**