**In the Income-Tax Appellate Tribunal,**
**Agra Bench, Agra**

**Before : Shri Laliet Kumar, Judicial Member And**
**Dr. Mitha Lal Meena, Accountant Member**

**ITA No. 332/Agr/2017**
**Assessment Year - 2010-11**

| M/s. Rameshtha Construction<br>Post – Parichha<br>Distt. – Jhansi (U.P.)<br>**PAN : AAGFR7383B**<br>**(Appellant)** | V.S. | D.C.I.T. Circle – 26<br>Jhansi<br><br>**(Respondent)** |
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| **Appellant by** | None |
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| **Respondent by** | Jyotsana Devi, Sr. D.R. |

| **Date of Hearing** | 24.02.2021 |
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| **Date of Pronouncement** | 02.03.2021 |

**ORDER**

**Per Laliet Kumar, J.M.**

The assessee has filed the present appeal feeling aggrieved by the order passed by the Commissioner of Income-tax (Appeals) for the assessment year 2010 -2011 on the following grounds:

**Grounds of Appeal**

1. That reopening of assessment completed u/s 143(3) invoking the provision of sec. 147 is illegal.
2. That powers u/s 147 used by the A.O. to review his own order completed u/s 143(3) is illegal and without jurisdiction.

3. That the addition of Rs. 197809/- being the interest on FDR to secure the contract and extricably linked to business of contract was business income and C.I.T. (A) order treating it to be the income from other sources is illegal and arbitrary.
4. That the income from insurance claim at Rs. 210973/- was already included in profit and loss account and subjected to assessment u/s 143(3) already and again to tax it as income from other sources is a double addition and the C.I.T. (A)'s order sustaining it to be added separately is illegal and arbitrary,
5. The appellant craves to add or alter any other ground of appeal as may be warranted.

2. The assessee has received interest from banks on the FDR's deposited by the assessee with various government department. These FDRs were deposited by the assessee with the government department as a condition for exhibiting the work and also for ensuring the performance of contract. The assessing officer was not convinced with the submission made by the assessee and had taxed the interest income under the had income from other sources . The total addition made by the assessing officer was ₹ 1, 97, 809/-.

3. Feeling aggrieved by the order passed by the assessing officer, the assessee preferred an appeal before the Commissioner (appeals) but the Commissioner (appeals) was not convinced with the submission made by the assessee in this regard and confirmed the addition made by the assessing officer.

4. During the course of hearing none appeared on behalf of the assessee. The earlier authorised representative, representing the assessee has since expired and the assessee has not replaced him with another authorised representative, in the

light of the above we have no other option but to proceed and decide the matter on the basis of the record availble with us.

5. The Ld. DR for the revenue had relied upon the order passed by the lower authorities and submitted that the income earned by the assessee on FDRs are required to be taxed as income from other sources.

6. We have considered the submissions of the ld. DR and perused the material available on record, including the judgments cited at bar during the course of hearing.

7. Admittedly the assessee is a contractor working for the various government department and for the purpose of getting the contract from them it is essential for the assessee to give bank guarantee and the bank guarantee are issued by the banks on the deposit of like amount in the form of fixed deposit. The assessee in the submissions before the lower authority had categorically mentioned that due to shortage of funds, the assessee has to submit B/G in favour of various departments and as per norms of the bank, the assessee has to provide 25% cash margin in the shape of FDRS. Hence, FDRs have been prepared as per terms of contract and terms of bank guarantee and these are not investment, but are in the shape of security deposit as per terms and condition of the contract. The assessee accordingly credited investment on FDRs in their books of account as business income. The above receipts are part of contract receipt.

8. In our view the deposit of fixed deposit receipts with the government are essential for providing the contract in favour of the assessee. In the absence of

fixed deposits, the assessee would not be able to fulfill the conditions of the contract and the contract could not be awarded to the assessee. In view of the terms of contract, the fixed deposit and earning of interest on such fixed deposit was intricately connected with the business of the assessee and there is a direct and clear nexus with the business of the assessee and the interest earned on fixed deposits, in our considered opinion, is required to be considered as business income. For the above said proposition we may rely upon the decision of Delhi High Court in the matter of Nectar life Science Ltd.[2011] 15 taxmann.com 361 (Delhi), wherein it was held as under :

> 11. After examining the said provision and several judgments, the Division Bench in Shri Ram Honda Power Equip (supra), in conclusions (v) to (ix) has held as under:-
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> "(v) Interest earned on fixed deposits for the purposes of availing of credit facilities from the bank, does not have an immediate nexus with the export business and therefore has to necessarily be treated as income from other sources and not business income.
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> (vi) Once business income has been determined by applying accounting standards as well as the provisions contained in the Act, the assessee would be permitted to, in terms of section 37 of the Act, claim as deduction, expenditure laid out for the purposes of earning such business income.
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> (vii) In the second stage, the Assessing Officer will deduct from the profits of the business computed under the head "Profits and gains of business or profession" the following sums in order to arrive at the "profits of the business" for the purposes of section 80HHC(3) :
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> (a) 90 per cent of any sum referred to in clauses (iiia), (iiib) and (iiic ) of section 28 i.e., export incentives ;

(b) 90 per cent of any receipts by way of brokerage, commission, interest, rent, charges or any other receipt of a similar nature included in such profits ; and

(c) profits of any branch, office, warehouse or any other establishment of the assessee situate outside India.

(viii) The word "interest" in clause (baa) of the Explanation connotes "net interest" and not "gross interest". Therefore, in deducting such interest, the Assessing Officer will take into account the net interest i.e., gross interest as reduced by expenditure incurred for earning such interest. The decision of the Special Bench of the Income-tax Appellate Tribunal in Lalsons [2004] 89 ITD 25 (Delhi) to this effect is affirmed. In holding as above, we differ from the judgments of the Punjab and Haryana High Court in Rani Paliwal [2004] 268 ITR 220 and the Madras High Court in Chinnapandi [2006] 282 ITR 389 and affirm the ruling of the Special Bench of the Income-tax Appellate Tribunal in Lalsons [2004] 89 ITD 25 (Delhi).

(ix) Where, as a result of the computation of profits and gains of business and profession, the Assessing Officer treats the interest receipt as business income, then deduction should be permissible, in terms of Explanation (baa) of the net interest, i.e., the gross interest less the expenditure incurred for the purposes of earning such interest. The nexus between obtaining the loan and paying interest thereon (laying out the expenditure by way of interest) for the purpose of earning the interest on the fixed deposit, to draw an analogy from section 37, will require to be shown by the assessee for application of the netting principle."

12. Referring to the aforesaid conclusions, another Division Bench of this Court in CIT v. Shahi Export House [2010] 195 Taxman 163 (Delhi) has held as under:-

"7. A conjoint reading of conclusion Nos.1,4, 5 and 6 and particularly No.5 would clearly demonstrate that only in those cases where interest earned on fixed deposits have an immediate nexus with the export business would be treated as income from business and interest earned on fixed deposits

> which does not have an immediate nexus with the export business, it would be treated as income from other sources. The court opined that when the interest was earned on the fixed deposits for the purposes of availing of credit facilities from the bank, it did not have such a nexus with the export business and therefore, had to be necessarily treated as income from other sources and not the business income.
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> 8. Thus, insofar as earning of interest on fixed deposit is concerned, the determinative test is as to whether such interest has "immediate nexus" with the export business."
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> 13. In the present case we are concerned with the situation where the Assessing Officer himself has treated interest earned on the FDRs, which were given to the bank as security to avail of the credit facility, as business income and exports. The Assessing Officer has himself held that the FDRs were used to avail the working capital limits. In the assessment order it is not stated or even alleged that the said credit facilities from the bank had no nexus with the export business. On the other hand, it is stated that they had nexus with the letter of credit and the Assessing Officer has held that they had direct nexus with manufacturing and export business. A similar view has been taken by Delhi High Court in CIT v. Punjab Stainless Steel Ind. [2007] 162 Taxman 9 (Delhi) and CIT v. Anand Kumar [2007] 164 Taxman 330 (Delhi).

9. We may also Draw support from the decisions of the Hon'ble High Court in the case of *CIT* v. *Indo Swiss Jewels Ltd.* [2006] 284 ITR 389 (Bom.) and *CIT* v. *Lok Holdings* [2009] 308 ITR 356/[2010] 189 Taxman 452 (Bom.) and also another decision of the Jurisdictional High Court in the case of CIT v. Paramount Premises (P.) Ltd. [1991] 190 ITR 259 (Bom.) in the light of the above the ground pertaining to chargebility of interest income is allowed.

10. Ground No. 5 of the appeal pertains to the income from insurance claim at Rs. 210973/- , which was already included in profit and loss account and subjected to assessment u/s 143(3) already. On this aspect there was no argument before the ld. CIT(A) and as such there was no occasion for the Commissioner (Appeal) to examine the submission of the assessee. As recorded above none appeared on behalf of the assessee during the course of appellate proceedings before us, as the authorised representative had passed away. In view of the above we are of the opinion that the ground No. 5, raised in the present appeal is required to be remanded back to the file of the Commissioner (appeals) for fresh adjudication. The Commissioner (appeals) is directed to decide the issue after issuing notice to the assessee and granting the opportunity of hearing to the assessee in accordance with law.

11. We have not decided the other grounds raised before us as we have decided the grounds on merits of additions.

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

Order pronounced in the open court on 02/03/2021.

| Sd/- | Sd/- |
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| **(Dr. Mitha Lal Meena)** | **(Laliet Kumar)** |
| **Accountant Member** | **Judicial member** |

Dated: 02 /03/2021