

INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "A": NEW DELHI
BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
(Through Video Conferencing)

ITA No. 842/Del/2016
(Assessment Year: 2012-13)

Aakriti Hotels Pvt. Ltd, 2 nd Floor, 30, Community Centre, Saket, New Delhi PAN: AABCA0250D	Vs.	ACIT, Central Circle-19, New Delhi
(Appellant)		(Respondent)

ITA No. 5682/Del/2017
(Assessment Year: 2013-14)

DCIT, Circle-1(1), New Delhi	Vs.	Aakriti Hotels Pvt. Ltd, 2 nd Floor, 30, Community Centre, Saket, New Delhi PAN: AABCA0250D
(Appellant)		(Respondent)

Assessee by :	Shri Rakesh Tashi, CA
Revenue by:	Ms. Rinku Singh, Sr. DR
Date of Hearing	11/08/2021
Date of pronouncement	11/08/2021

ORDER

PER PRASHANT MAHARISHI, A. M.

1. These are the two appeals filed in case of the same assessee for Assessment Year 2012-13 and 2013-14 on the similar issue and therefore, both appeals are heard together and disposed off by this common order.
2. First we take the appeal of the assessee for Assessment Year 2012-13 in ITA No. 842/Del/2016 filed against the order passed by the Id C(IT(A)-33, New Delhi dated 29.09.2014, wherein, the solitary issue involved is that the amount of interest earned by the assessee of Rs. 1,30,58,182/- taxed by the Id AO as income from other source whereas, the assessee capitalized the same and adjusted/reduced against carrying cost of the work in progress as the assessee claimed that fixed deposit receipts placed as a matter of business compulsion for obtaining letter of credit and bank guarantees issued to various parties engaged in construction of hotels and therefore, the bank interest earned by the assessee is not an independent income earning activity. Therefore, the assessee did not offer the above sum as income from other sources and reduced it from the capital work in progress. The learned assessing officer rejected the contention of the assessee and held that such income of the bank fixed deposit receipt interest is chargeable to tax at that they had income from other sources. On appeal, The Id CIT(A)

agreed that the Id AO has correctly held held that a sum of bank interest receipts by the assessee is chargeable to tax as income from other sources following the decision of the Hon'ble Supreme Court in Tuticorin Alkali Chemicals and Fertilizers Ltd.'s case (227 ITR 172).

3. The assessee is aggrieved with that order and has preferred this appeal as following grounds:-

- "1. *The order passed by CIT (A) -XXXIII is bad in law and void ab-initio.*
2. *The CIT (A) -XXXIII has erred in confirming the addition of Rs. 1,30,58,182/- as made by the respondent in the assessment completed u/s 143(3) of the Income Tax Act, 1961, without considering the facts and circumstances of the case.*
3. *The CIT (A) -XXXIII has erred in confirming the addition of Rs. 1,30,58,182/- as income from other sources, when the interest accrued on the FDRs was rightly capitalized and adjusted against the Work-in-Progress, as the FDRs had to be made as a matter of business compulsion for obtaining letters of credit and bank guarantees to various parties engaged for construction of hotel, on their demand and it was not an independent income earning activity of the assessee company. Further, it was not a case of putting to fruitful use the use the idle funds of the assessee.*
4. *Whereas the CIT(A) erred in law as well as on the facts and circumstances of the case to confirm the addition by taking the wrong basis of volume of outstanding liabilities as on 31.03.2012, which basis was totally irrelevant for the decision of the issue involved since the bank guarantees and letters of credit were furnished to the parties concerned on their demand to secure their bills amounts and for their mental satisfaction and such furnishing of LCs/bank guarantees had nothing to do with the actual balances to be paid to them as on 31.03.2012,' which small balances simply showed the assessee's promptness to pay what was due to others."*

4. For assessment year 2013 – 14 the situation is reverse. ITA No. 5682/Del/2017 is filed by the Id DCIT, Circle-1(1), New Delhi against the order of the Id CIT(A)-1, New Delhi dated 01.06.2017 for Assessment Year 2013-14, wherein, the Id AO held that the bank interest earned by the assessee of Rs. 2,00,62,234/- is chargeable to tax as income from other sources, whereas the assessee reduced the above sum from the capital work in progress.

5. The Id CIT(A) in his order held that the interest receipt from fixed deposit given to the bank for obtaining letter of credit and bank guarantees to the builders is inextricably linked with the construction of the hotel and therefore, such interest received are held to be capital in nature and are eligible to be set off against the carrying cost of capital work in progress.

6. Therefore for this year, the revenue is aggrieved with that order and has preferred this appeal raising the following grounds of appeal:-

- "1 *On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in deleting the addition of Rs. 2,00,62,234/- made by AO being interest income.*
- 2 *The Ld. CIT(A) has erred on facts and in law in holding that interest income is capital in nature whereas the same had been held to be revenue in nature in earlier A.Y. 2012-13."*

7. The above appeals are filed by rival parties before us on identical issue having same set of circumstances and facts, where for Assessment Year 2012-13 the Id CIT(A) dismissed the claim of the assessee and for Assessment Year 2013-14 the Id CIT(A) allowed the claim of the assessee.
8. The facts of the case for Assessment Year 2012-13 are culled out shows that the assessee filed its return of income on 28.09.2012 declaring income of Rs. 1,27,25,359/-. The Id AO during the course of assessment proceedings noted that the assessee in the computation of total income has shown gross interest of Rs. 2,60,40,152/-, however has offered only a sum of Rs. 1,29,81,970/- for the taxation. He further noted that the assessee has not started its business operation and all expenses are capitalized. However, according to him the whole interest income of FDR is required to be taxed as income from other sources in view of the decision of the Hon'ble Supreme Court in case of Tuticorn Alkali Ltd 227 ITR 172 and therefore, he made an addition amount of interest income of Rs. 1,30,58,182/- to the total income of the assessee and assessed at Rs. 2,60,40,150/- by order dated 28.03.2014 passed u/s 143(3) of the Act.
9. Assessee preferred an appeal before the Id CIT(A) stating that the assessee is engaged in the business of construction and running a hotel. The hotel premises are under construction. Therefore, the assessee had to execute various bank guarantees and letters of credit in favour of the other parties and for this reason the assessee is compelled to put money into fixed deposits so that bank guarantees and letters of credit can be issued to the creditors. The income is earned on such fixed deposits. Such income on the fixed deposits has been reduced from the carrying cost of capital work in progress. The assessee also referred to the note mentioned in the computation of the total income and submitted that the Id AO has factually misstated the fact that the assessee has not offered any explanation for reducing the interest income from capital work in progress. The Id CIT(A) considered the balance sheet of the assessee and noted that the assessee has hardly any liability on account of construction expenditure to be paid by the assessee and therefore, the arguments of the assessee is not convincing. He held that there is no reason to believe that the above interest income is inextricably linked with the activity of the construction work in progress for construction of hotel . Thus, he confirmed the order of the Id AO. The fact for Assessment Year 2013-14 as identical addition of Rs. 2,00,62,234/- made by the Id AO. On appeal before the Id CIT(A) on the similar arguments he held that the interest received from fixed deposits of inextricably linked to the construction of the hotel and therefore, such interest income is eligible for deduction from the work in progress expenditure incurred by the assessee. Therefore, moot question in both the appeals is whether bank interest received by the assessee on fixed deposit receipts placed with the bankers for obtaining bank guarantee and letter of credits in favour of the creditors is inextricably linked with construction of the hotel of the assessee or not. If it is so, then the assessee is eligible for claiming such

interest expenditure as deduction from the capital work in progress and, if it is not so , then the same is required to be taxed under the head 'income from other sources'.

10. Both the parties are heard.
 11. We have carefully considered the rival contentions and perused the orders of the lower authorities. On looking at the balance sheet of the assessee company for the year ended on 31.03.2012, it shows that the assessee has shown capital work in progress of 190,62,30,776/-. It has also incurred pre-operative expenditure of Rs. 10,89,79,447/- up to 31.03.2012. In note NO. 19 the assessee has shown the contingent liabilities wherein, the guarantee given by the company's banker was Rs. 18.87 crores and outstanding guarantees in respect of letter of credit was to the tune of Rs. 2.12 crores. The estimated amount of contracts remaining to be executed on capital account with respect to Three C Universal Developers Pvt Ltd was of Rs. 68.30 crore and to Deshmash Promoters and Developers was to be tune of Rs. 9.91 crores. The assessee has also earned the bank interest. The assessee has also placed the fixed deposits against margin money to the extent of Rs. 2.60 crores which is evident from note 10 to the balance sheet. In the computation of total income the assessee has shown gross interest of Rs. 2,60,40,152/- and reduced there from a sum of Rs. 2,15,30,564/- stating that these interest earned on fixed deposits receipts is for purchase of bank guarantee and letter of credit for the capital goods for hotel project being in the nature of capital receipt and liable to be reduced from the capital work in progress relying on the decision of the Hon'ble Supreme Court in 116 Taxmann.com 489 of CIT Vs. Karnal Cooperative Sugar Mills. The similar fact exists for Assessment Year 2013-14 also. The assessee has also borrowed unsecured loan in the form of optionally convertible debentures. In view of the above facts, it is evident that the assessee has the interest income from the bank interest deposit receipts which are placed for obtaining bank guarantee and letter of credit for its hotel construction activity. Therefore, we are of the view that the decision of the Id CIT(A) for Assessment Year 2013-14 has correctly appreciated the facts in holding that interest earned by the assessee on such fixed deposit with the bank which are used for margin money issue of letter of credit and bank guarantee for hotel project business are inextricably linked with the construction activity of hotel and is required to be reduced from the work in progress. Further, it is not in dispute that the business of the assessee has not commenced yet.
 12. Accordingly, we uphold the order of the Id CIT(A) for Assessment Year 2013-14 and reverse the order of the Id CIT(A) for Assessment Year 2012-13.
 13. Accordingly, appeal of the assessee for Assessment Year 2012-13 is allowed and appeal of the Id AO for Assessment Year 2013-14 is dismissed.
- Order pronounced in the open court on 11/08/2021.

-Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

-Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated: 11/08/2021
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi