

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'A', NEW DELHI**

Before Ms. Suchitra Kamble, Judicial Member

Dr. B. R. R. Kumar, Accountant Member

(Through Video Conferencing)

ITA No. 3974/Del/2019 : Asstt. Year : 2014-15

M/s Modern Autotronix, B-11, Diwan Shree Apartment, 30, Firozshah Road, New Delhi-110001	Vs	JCIT, Range-18, New Delhi-110002
(APPELLANT)		(RESPONDENT)
PAN No. AARFM8678B		

Assessee by : Sh. A. K. Srivastava, CA
Revenue by : Sh. Birender Singh, Sr. DR

Date of Hearing: 29.09.2021

Date of Pronouncement: 29.12.2021

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

Heard the arguments of both the parties and perused the material available on record.

2. The captioned appeal was filed on 03.05.2019 against the order by the Learned CIT(Appeals) 36, New Delhi, who vide order dated 12.02.2019 had confirmed an addition of Rs.3,14,01,786/- on account of Notional Interest, which is the only ground appeal.

3. The undisputed facts of the case are that the assessee filed return of income declaring an income of Rs.26,01,876/-. During the year under consideration, the assessee firm has

earned interest income on unsecured loans advanced to M/s Impel Automotive Pvt. Ltd. The Appellant, a partnership firm was constituted vide partnership deed dated 07.04.2010.

4. An addendum to partnership deed was executed on 16.04.2010 by inclusion of following Additional Main Object:

Additional Main Objects:

5. That the firm shall work and associate with M/s Impel Automotive Private Limited who have got all India distribution / dealership right of JVC Car Audios / Accessories by providing them funds toward their working capital requirements. The funds to be so provided to them would be un-secured and interest shall be charged on the funds so provided on mutually agreed terms from time to time. The rate of chargeable interest would vary depending upon the profits of the borrower, which may even be NIL in case of inadequate Profits /Losses of the borrower company. Accordingly, the firm started providing funds to M/s Impel Automotive Pvt. Ltd. from previous year ending 31.03.2011.

6. Interest income was provided in the books of assessee firm for F.Y. 2010-11, 2011-12 and 2012-13, relevant to A Y 2011-12, 2012-13 and 2013 - 14 and was duly declared in the return of income by the firm.

7. The borrower company namely, M/s Impel Automotive Pvt. Ltd. suffered losses during F.Y. 2012-13 i.e. A.Y. 2013-14 and its business of sole dealership of JVC Car Audios had come to closure and they had no other business.

8. The terms of interest were revisited during F.Y. 2013-14 i.e. A.Y. 2014-15 and vide communication / agreement dated 20.01.2014, the borrower submitted that in view of the prevailing situation, they were in no capacity to pay interest on loan w.e.f. 01.04.2013. It was also stated that on account of TDS, an amount of Rs.34,89,286/- was deposited and that interest to that extent only could be paid by the borrower .

9. The accounting entries made by the borrower in its books of account upto October 2013 were reversed and the provision already made, in excess of the revised terms was reversed by the borrower. Form 26 AS was duly amended.

10. The accounting entries in books of borrower for interest appeared as under:

Interest initially provided as payable		
		Rs.
Interest payable for April to October, 2013		3,48,90,872/-
Less: Provision reversed pursuant to mutual settlement dated 20.01.2014		3,14,01,786/-
Net interest provided as payable for F.Y. 2013-14		34,89,086/-

11. That following entries appeared in Borrower's books of account in F.Y.2013-14.

Entry - made upto October 2013		
		Rs.
a) Interest Expense	Dr.	3,48,92,872/-
TDS Payable	Cr.	34,89,086/-
Interest Payable	Cr.	3,14,01,786/-
b) Reversal Entry		
Interest Payable (Reversed)	Dr.	3,14,01,786/-
Interest Expense (Reversed)	Cr.	3,14,01,786/-

c) Net Effect - of entries in (a) & (b)		
Interest Expense	Dr.	34,89,086/-
TDS paid	Cr.	34,89,086/-
Accordingly following entries		
a) Original entry		
Interest Expense		3,48,92,872/-
TDS Paid		34,89,086/-
b) Pursuant to reversal of part of interest expense entry in 26AS stood rectified / revised as below		
Interest Expense		34,89,860/-
TDS Paid		34,89,860/-

12. Copy of account of the assessee in the books of the borrower for the period 01.04.2014 to 31.03.2016, was submitted vide letter dated 31.08.2016, which shows that no interest was provided even during that period. The following accounting entry was passed in the books of the assessee for the year ending 31.03.2014 A.Y. 2014-15.

		Rs.
TDS paid	Dr.	34,89,860/-
Interest income	Cr.	34,89,860/-

13. The AO did not agree with the assessee and treated the interest originally stated in Form 26AS, as interest income of the assessee, ignoring the reversal of entries therein.

14. The assessee explained the facts in appeal before Id. CIT(A) and contended that only real income could be taxed and for this purpose and also relied upon the various judgments by

the Hon'ble High Courts as well as by the Hon'ble Supreme Court.

15. The Id. CIT(A) did not accept the assessee's contention that revised figures appearing in Form 26AS should be accepted and confirmed the addition of Notional interest.

16. The borrower claimed interest of only Rs.34,89,860/- as expense for A.Y. 2014-15 and was duly allowed in assessment u/s 143(3). Copy of order was supplied during the hearing. We find that the assessee's case is squarely covered by the judgments of Hon'ble Supreme Court / Hon'ble jurisdictional High Court and orders of ITAT.

- E.D. Sasson & Co. Ltd. & Others vs. CIT (1954) 26 ITR 0027 (SC)

It was held that right to receive commission would arise and income would accrue only at the end of the calendar year. Income accrues when assessee acquires right to receive income on creation of debt in his favour. It was further held thatA debt must have come into existence and he must have acquired a right to receive the payment. Unless and until his contribution and parenthood is effective in bringing into existence a debt or a right to receive the payment or in other words a debitum in præsenti solvendum in futuro it cannot be said that any income has accrued to him. The mere expression "earned" in the sense of rendering the services etc. by itself is of no avail.

- CIT vs. Prafulla Kumar Malik AIR 1969 Orrisa 187

It was held that it is an elementary principle of income tax law that a man is taxed only on the profits he actually receives and not on profits he might have, but has not received.

- Highways Construction Co. P. Ltd. vs. CIT (1993) 199 ITR 0702(Gauhati)

It was held that in absence of any finding that interest was actually received / collected, income cannot be included on notional basis.

- CIT vs. Shiv Prakash Janak Raj & Co. (P) Ltd. (1996) 222 ITR 0583 (SC)

It was held that the Interest did not accrue for a financial year to the extent interest income is waived off in the relevant accounting year.

- CIT vs. Excel Industries Ltd. (2013) 358 ITR 0295 (SC)

It was held that income accrues when it becomes due but it must also be accompanied by corresponding liabilities of the other party to pay, only then can it be said that income was not hypothetical and it really accrued.

- Red Fort Shahjahan Properties Pvt. Ltd. vs. ACIT - ITA No. 742/Del/2020 - Order dated 20.08.2020 -

When realisation of even the principal amount was in jeopardy therefore, there cannot be any real accrual of income by way of interest.

- DCIT vs. M/s Jubilant Enpro Pvt. Ltd. -ITA No. 828/Del./2016 - Order dated 11. 08.2020 - Right to

receive is a pre-condition even where accounts are maintained on accrual basis.

➤ CIT vs. Shoorji Vallabhdas & Co. (1962) 46 ITR 144 (SC)

"Income-tax is a levy on income. No doubt, the IT Act takes into account two points of time at which the liability to tax is attracted, viz., the accrual of the income or its receipt; but the substance of the matter is the income. If income does not result at all, there cannot be a tax, even though in book-keeping, an entry is made about a "hypothetical income", which does not materialize. Therefore no income results at all, if there is neither accrual nor receipt of income, even though an entry to that effect might, in certain circumstances, have been made in the books of account.

17. The core point in this case is that the assessee lent monies to a company which duly paid interest for three years. The interest received was duly offered by the assessee to taxation. In the subsequent year, owing to the shutdown of business, the receiver of the monies did not pay the interest to the assessee. The assessee is still to receive a major part of the loan extended even today. Hence, we hold that the interest which was not received by the assessee cannot be deemed to have been received on notional basis and brought to taxation on real terms.

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

Order Pronounced in the Open Court on 29/12/2021.

Sd/-

(Suchitra Kamble)
Judicial Member

Dated: 29/12/2021

Subodh

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

ASSISTANT REGISTRAR