

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "F", MUMBAI
BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER AND
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER

ITA No. 1420/Mum/2021 (A.Y. 2012-13)

ITA No. 1421/Mum/2021 (A.Y. 2013-14)

ACIT, Circle-14(1) (2),
Room No. 455, 4th Floor,
Aayakar Bhavan, M.K. Road,
Mumbai-400020

..... Appellant

Vs.

M/s Urjankur Shree Tatyasaheb
Kore Warna Power Co. Ltd., C-22,
G-Block, the IL&FS Financial Centre,
Bandra-Kurla Complex, Bandra (E),
Mumbai- 400051.

PAN: AABCU0254A

..... Respondent

Appellant by : Sh. S.N. Kabra, Sr. DR
Respondent by : None
Date of hearing : 31/03/2022
Date of pronouncement : 08/04/2022

ORDER

PER GAGAN GOYAL, A.M.:

These appeals by the Revenue are directed against the order of Commissioner of Income Tax (Appeals)-34, Mumbai [hereinafter referred to as 'the CIT (A)'] vide common order dated 13.02.2020 for the Assessment Years (AY) 2012-13 & 2013-14. The Revenue has raised the common grounds in both the AYs. The Revenue has raised the following grounds of appeal:

"1) "Whether the Id. CIT(A) was right in not considering the fact that funds were surplus in the hands of the assessee. The surplus funds have been invested in the

form of fixed deposits and the same has earned interest income which is therefore to be taxed as income from other sources?"

2) "Whether the Id. CIT (A) was right in holding that the money placed in fixed deposits were inextricably linked with the setting up power plant of the assessee company?"

3) The Appellant prays that the order of the CIT (A) on the above ground be set-aside and that of the AO be restored."

2. Facts and grounds being identical we take appeal no. ITA No. 1420 / Mum / 2021 (A.Y. 2012-13) as lead case and ratio will be applied for both the years.

3. Brief facts of the case are that the assessee is engaged in construction of power plant and power generation, e-filed its return of income on 24.09.2012 & 25.09.2013 for the assessment years (AYs) 2012-13 and 2013-14 declaring loss of Rs. 8,58,845/- and 55,41,17,756/- respectively.

4. The assessee company is engaged in the business of manufacture of electricity from Bagasse, Coal and other fuels. During the year, the Assessee Company is in the process of implementation 44 MW Bagasse based cogeneration power project adjacent to the sugar factory of Shree Tatyasaheb Kore Warna Sahkari Sakhar Karkhana Ltd., in Kolhapur district on BOT basis. During the year, the cogeneration power plant of the company is under capitalization state and it has not commenced business and all the expense have been shown under capital work in progress. Further, the assessee company not offered any income but debited Rs. 39,05,234/- to the P. & L A/c. On account of Administrative expenses and in the computation after disallowing the expenditure of Rs. 30,46,090/- shown loss of Rs. 8,58,845/-.

5. During the assessment proceeding, the AO has observed as under:

"5.1 On perusal of 26AS it is seen that during the year Bank of Baroda credited interest on time deposits of Rs. 3,07,73,207/- to the account of the assessee

Company. However, on perusal of the Return of income it is seen that the assessee Company not offered the same for taxation but reduced the same from its Capital work in Progress.

5.2 As per Section 14 of the I.T. Act, 1961, the income of the person is to be computed under the heads Salary, Income from House Property, Profits & gains from business/profession, Capital gains and income from other sources. In this respect the Hon'ble Supreme Court in the case of Karanpura Development Co. Ltd. vs. CIT 44 ITR 362 (SC) held that the several heads into which income is divided under the Act do not make different kinds of taxes. Tax is always one, but it may arise under different heads to which the different rules of computation have to be applied. These heads are in a sense exclusively to one another and income which falls within one head cannot be assigned to or taxed under another head.

5.3 In view of the aforesaid discussion the interest income on fixed deposits from Banks is falls under the head 'Income from other sources' as per the Provisions of Section 56(1) of the I.T. Act, 1961. Accordingly, during the course of scrutiny proceedings the Representative was asked to explain as why the sum of Rs. 3, 07, 73,207/- being interest earned on fixed deposit which is reduced from Capital work in progress should not be taxed under the head income from other sources as per the Provisions of the I.T. Act, 1961."

6. In response to the above, assessee made following submissions as under:

During the A.Y. 2012-13 the Assessee has earned Interest income amounting to Rs. 3,07,73,207/- (Three Crore Seven Lakh Seventy-Three Thousand Two Hundred and Seven Only) on the idle funds invested as fixed deposit. The said interest has been reduced (Credited) from the Capital Work in Progress in the same AY.

Further, the Assessee has paid Interest amounting to Rs. 22,32,56,447/- (Twenty-Two Crore Thirty Two Lakh Fifty -Six Thousand Four Hundred and Forty- Seven only) which is debited to Capital Work in Progress in the same A.Y.

During the course of assessment, Learned Assessing Officer wrongly made addition in income amounting to Rs. 3,07,73,207/- (Three Crore Seven Lakhs Seventy-Three Seven only) is brought to tax assessee's interest income under the head 'Income from other sources' without giving and deduction u/s 57(iii) of the Income Tax Act, 1961.

On the basis of above background, it is very clear that interest income on idle fund is reduced from Capital Work in Progress by assessee on the basis of following grounds.

A. The similar fact and circumstance have been decided by The Hon'ble Income Tax Appellate Tribunal - "F" Bench Mumbai [I.T.A/1816 (MUM/2017)] in assessment year 2011-12 in Assessee case only where Hon'ble ITAT held that deposits made by assessee which are in turn inextricably linked to business of assessee, income derived on such deposits cannot be treated as "Income from Other Sources". The relevant extract of Hon'ble ITAT order has been reproduced below for your ready reference.

"Considering the fact that the loan was inextricably linked with the commissioning of the power project-as evidenced from the agreement-we are of the opinion that the income earned by the assessee cannot be taxed under the head income from other sources and that it has to be set off against the WIP. In other words, we hold that the money placed in the fixed deposit was inextricably linked with the setting up of the power plant and that the revenue generated on account of interest on the said fixed deposits would be in the nature of a capital receipt and not a revenue receipt. Reversing the order of the FAA, we decide the first ground of appeal in favour of the assessee."

Based on the analysis of above Judicial Pronouncements and discussion, Company has correctly treated interest income under the heads of "income from Business and Profession" by reducing interest income from the Capital Work in Progress in the same AY.

B. Even if Assessee assume that Intention of Learned Assessing Officer during the course assessment proceeding correct by treating said interest income is to be taxed under the head of "income from Other Sources", then the assessee should be allowed the deduction of interest paid on the borrowing u/s 57(iii) of Income Tax Act, 1967. The assessee is in a position to identify the sources of the funds which are utilized for making short term investments and there is direct link between the borrowings and the investments. The interest paid on the borrowings which are utilized for making short term investments can be claimed as deduction u/s 57 (iii) of Income Tax Act, 1961. The assessee claimed before the Learned Assessing Officer that interest payment of amounting to Rs. 22, 32, 56,447/- (Twenty-Two Crore Thirty-Two Lakh Fifty-Six Thousand Four Hundred and Forty-Seven only) be allowed as a deduction against the interest income.

Further, the said contentions are also supported by below mentioned Judicial Pronouncements whereby it is held that deposits made by assessee which

deposits are in turn inextricably linked to business of assessee, income derived on such deposits cannot be treated as income from other sources.

The Hon'ble Supreme Court in the case of "Bokaro Steels Limited vs. Commissioner of Income Tax [1999] 102 taxman 94 (SC)" has held that interest from advances made to contractors for purpose of facilitating work of construction, and royalty for excavation and use of stones lying on assessee's land for construction work these receipts had been adjusted against charges payable to contractors and, thus, had gone to reduce cost of construction. Interest receipts being intrinsically connected with construction of assessee's plant, would be capital receipt and not income of assessee from any independent source.

Further the assessee would also like to draw your kind attention on the following judgement through tabular presentation in which it is specifically held that income derived on fixed deposits cannot be treated under the head "Income from other sources" if deposits are in turn inextricably linked to business of assessee.

Sr. No.	Name of Case Law	Applied	Citation
1	Koshika Telecom Limited	Income in nature of interests flows from deposits made by assessee which deposits are in turn inextricably linked to business of assessee, Income derived on such deposits cannot be treated as income from other sources	High Court of Delhi 287 ITR 489 (Delhi) 203 CTR 99 (Delhi)
2	Jaypee DSC Ventures Ltd.	Assessee furnished a performance guarantee to get a contract awarded and to procure said guarantee, it had kept amount in fixed deposit, and interest received on said deposit was to be treated as business income against which project expenses could be set off.	High Court Delhi (2012) 17 taxmann.com 257 (Delhi)

7. In support of his contentions, Id. AO has relied on following authorities of Hon'ble Supreme Court and various High Courts as under:

- (i) Tuticorin Alkali Chemicals & Fertilizers Ltd. vs. CIT 227 ITR 172 (SC).
- (ii) Whistling Woods International Ltd. (16 Taxmann 242 (Mum.) (2011)
- (iii) DY.CIT vs. Allied Construction 106 TTJ 595 (Del.) SB).

- (iv) A.C. Nielson Research Services (P.) Ltd. vs. Addl.CIT 120 TTJ (Mum) 918 (Mum).
- (v) Dy.CIT vs. Times Guarantee Ltd. - 131 TTJ (Mum) 257.
- (vi) Traco Cable Co. Ltd. vs. CIT (Ker) 72 ITR 603
- (vii) Madhya Pradesh Stale Industries Corpn. Ltd. Vs. CIT (MP) 69 ITR 824 (MP)
- (viii) CIT vs. Assam Plantation Crops Dev. Corpn Ltd. (Gau) 221 ITR 392
- (ix) South India Shipping Corporation Ltd. Vs. DY.CIT-240 ITR 24 (Mad)
- (x) CIT vs. Kisan Sahakari Chini Mills Ltd. – 280 ITR 617 (AH.)
- (xi) Shree Krishna Polyesters Ltd. vs. DY. CIT-274 ITR 21 (Bom.)

8. We have pursued the order of Id. AO, Id. CIT (A) and the submissions made by the assessee. The assessee has taken loan for the development, construction and operation of a power generation project and had entered into an agreement with a contortion of financial institutions for the financing of this project and availed a loan of Rs. 198 Cr. As provided in the terms of the loan agreement, an escrow account had to be opened by the assessee with designated scheduled banks and all the receivables from the consortium had to be deposited in the said escrow account.

9. It is not the wish or discretion of the assessee to deposit the funds received in the form of FDR in the designated scheduled banks. It's a binding covenant provided in the loan agreement, hence, same is inextricably linked with a funding of the power project and it's commissioning. We also observed that the coordinating bench of ITAT, Mumbai vide its order in ITA No. 1816/Mum/2017 dated 23.08.2017 in the case of the assessee for AY 2011-12 has already decided this issue in favour of the appellant, the facts in both the years being the same and also in view of the discussion above and respectfully following the decision of ITAT, Mumbai (supra). The action of the AO to tax this amount of Rs. 3, 07,

73,207/- as Income from other sources, as against Income from Business & Profession claimed by the assessee is deleted.

10. In the result, ground nos. 1, 2 and 3 are rejected and appeals of the Revenue for both the A.Y. 2012-13 and 2013-14 are dismissed.

Order pronounced in the open court on 8th day of April, 2022.

Sd/-
(VIJAY PAL RAO)
JUDICIAL MEMBER

Sd/-
(GAGAN GOYAL)
ACCOUNTANT MEMBER

Mumbai, दिनांक / Dated: 08/04/2022

SK, Sr.PS

Copy of the Order forwarded to:

1. अपीलार्थी / The Appellant ,
2. प्रतिवादी / The Respondent.
3. आयकर आयुक्त (अ) / The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि. , मुंबई / DR, ITAT, Mumbai
6. गार्ड फाइल / Guard file.

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BY ORDER,

(Dy. /Asstt. Registrar)
ITAT, Mumbai