

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES "A", BANGALORE**

Before Shri George George K, JM & Ms.Padmavathy S, AM

ITA No.905/Bang/2017 : Asst.Year 2012-2013

ITA No.691/Bang/2019 : Asst.Year 2013-2014

ITA No.692/Bang/2019 : Asst.Year 2014-2015

Sri.Thyagarajan Rajkumar # 343, F-1, Daiwik, Gokul 14 th Cross, 7 th Main, 2 nd Block Jayanagar, Bengaluru – 560 011. PAN : AGHPR5807M.	v.	The Deputy Commissioner of Income-tax, Circle 1(1)(1) Bengaluru.
(Appellant)		(Respondent)

ITA No.904/Bang/2017 : Asst.Year 2012-2013

Sri.Thyagarajan Arunkumar # 715, 10 th A Main, 4 th Block Jayanagar, Bengaluru – 560 041. PAN : AFPPA8318B.	v.	The Deputy Commissioner of Income-tax, Circle 1(1)(1) Bengaluru.
(Appellant)		(Respondent)

Appellants by : Sri.B.T.Shetty, CA

Respondent by : Sri.Sankar Ganesh K, JCIT -DR

Date of Hearing : 13.06.2022	Date of Pronouncement : 15.06.2022
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ORDER

Per George George K, JM :

These four appeals at the instance of two assesseees are directed against four separate orders of the CIT(A). The relevant assessment years are 2012-2013 to 2014-2015. Common issues are involved in these appeals, hence, they were heard together and are being disposed of by this consolidated order.

2. The common issue involved in all the appeals is whether the interest credited in the Escrow Account would be taxable

in the relevant assessment years. Apart from the above common issue, only other issue raised is in the ITA No.692/Bang/2019. The second issue in ITA No.692/Bang/2019 is addition of Rs.17,73,900 towards unexplained cash deposits. We shall first adjudicate the common issue concerning all the appeal.

Interest credited in Escrow Account

3. We shall consider the facts pertaining to ITA No.904/Bang/2017 and our decision rendered therein would apply *mutatis mutandis* to the other appeals as well.

4. The brief facts in relation to the above issue are as follow:

For the assessment year 2012-2013, the assessee has filed his return of income on 31.03.2013 declaring a total income of Rs.2,65,018. The case was selected for scrutiny and notice u/s 143(2) of the I.T.Act and later notice u/s 142(1) of the I.T.Act was issued. During the course of assessment proceedings, it was noticed that as per 26AS a sum of Rs.71,97,569 was credited in the assessee's PAN but the same was not declared in the return of income filed by the assessee. The assessee's explanation for the said omission was called for. The assessee in his reply dated 04.12.2014 explained that during the financial year 2010-2011 the assessee along with his wife Smt.A.B.Devi and brother Mr.T.Rajkumar have transferred their shares in M/s.Leadage Alloys India Limited for a total consideration agreed to at Rs.20,63,88,000 and out of the said total consideration the

assessee's share was Rs.9,95,71,500. It was submitted that as per clause 5 of the Share Purchase Agreement (SPA), the assessee along with other two vendors were liable for any claims, demand and expenses in relation to the notice dated 15th July, 2010 received by the company M/s.Leadage Alloys India Limited issued by the Assistant Commissioner of Commercial Taxes (Enforcement)-8, Sough Zone, Bangalore, demanding a total sum of Rs.28,04,64,753 (i.e. tax liability of Rs.16,28,24,240, interest demand of Rs.10,13,58,089 and penalty demand of Rs.1,62,82,424) which far exceed the total consideration for the shares transferred fixed in the SPA between the parties. In view of this commitment on the part of the vendors it was also agreed between the parties, in the same agreement at clause 10, that the entire agreed consideration of Rs.20,63,88,000 was to be kept deposited by the Purchaser in an Escrow Account in respect of which either the assessee or the other two shareholders, who have sold their shares to the purchaser, have any right to either withdraw the said deposit amount or to utilize it for their needs. It was stated that the said deposit account is therefore a blocked account till the company's tax and commitments in pursuance to the notice issued by the Commercial Tax Department is finally settled. It was submitted that in the said Escrow Account an amount of Rs.71,97,569 was credited as interest against which neither the assessee nor the other two vendors of the shares have any right, as such, as on the close of the relevant assessment years. It was further stated that the company has not been successful in its appeal against the tax demand before the lower appellate authorities and the

said demand has not become final as the liability to said tax has been further contested by the company and the issue is pending before the Central Sales Tax Appellate Authority, New Delhi and also before KAT in Bangalore. Under these circumstances, it has been the claim of the assessee that on a fair, reasonable and equitable reading of both the clauses 5 and 10 of the SPA, the assessee had not earned any right in respect of the sale consideration nor the interest credited in the Escrow Account.

5. The Assessing Officer, however, rejected the explanation of the assessee and brought to tax the interest credited under the Escrow Account in the relevant assessment year. The finding of the A.O. reads as follows:-

“3.5 The assessee’s submission has been carefully examined. The assessee has, by own submission, admitted that during the Financial Year 2010-11, the share of M/s.Leadage Alloys India Ltd were transferred to M/s.Exide Industries Limited for a total consideration of Rs.20,63,88,000/- out of which the assessee’s share was Rs.9,40,12,200. So, the undisputed fact is that there is a transfer of asset .i.e., shares of M/s Leadage Alloys India Ltd for a valuable consideration. However, due to tax demand raised by the Commercial tax department on M/s Leadage Alloys India Ltd., the entire sale consideration has been deposited on an Escrow account by the purchaser.

3.6 This being the case, the assessee's contention that he has no right to receive any consideration towards share transfer or interest credited to the deposit in Escrow account is not acceptable. The company M/s Leadage Alloys India Ltd., whose shares were transferred, is disputing the demand raised by the Commercial Tax department. The assessee has a definite share in the sale consideration. Because of the tax demand, the sale consideration has been kept in Escrow account and the assessee has not received his share. However, this nowhere implies that assessee has no right to receive the sale consideration. The interest has been accrued on the deposits in the name of the assessee and the assessee

is the legal owner of such interest income. As such, as per the provisions of the I T Act, 1961, the assessee ought to have included the same in his total income for the relevant assessment year.

3.7 Further, the commercial tax liability is in the hands of the company M/s Leadage Alloys India Ltd, whereas the assessee has received sale consideration on sale of his shares and capital gains on this account in the capacity of individual. Thus both the transactions are different and the assessee's right over the share and any interest accrued thereon cannot be declined.

3.8 It is also noticed that assessee has nowhere forfeited his right over the share. Hence the assessee's claim that assessee has not acquired any right over his share and hence no right over the interest accrued on the same is not maintainable.”

6. Aggrieved by the interest addition, which was credited in the Escrow Account, the assessee preferred an appeal before the first appellate authority. The CIT(A) rejected the claim of the assessee. The relevant finding of the CIT(A) reads as follows:-

“5.2 The applicant has kept their sale consideration in Escrow Account which is interest bearing and accordingly the taxability on the interest has to be borne by the applicant along with two other vendors and the proportion of the sale of shares belonging to them before the transfer of share to M/s.Exide India Limited. The amount is also reflected in the 26AS statement of the Appellant as interest earned by the Appellant. In view of the above the interest of Rs.71,97,569/- accrued to the appellant on the amount of deposit in Escrow Account has been rightly included in the total income of the appellant by the AO. Accordingly, grounds raised on this issue are dismissed.”

7. Aggrieved, the assessee has filed this appeal before the Tribunal. The assessee has filed a paper book comprising of 59 pages *inter alia* enclosing therein copy of the share purchase agreement, copy of Escrow Account, copy of the computation of income for assessment year 2018-2019, proof

for withdrawal of the appeal on payment of sales tax liability, the case laws relied on, etc. The learned AR contended that the assessee has no right to receive the interest in the impugned year and mere credit of the interest in the Escrow Account would not result in accrual until there is a right to receive the same. It was submitted that on identical facts in the case of Sri.H.Shivanna, S/o Late Mallelingappa v. ACIT (2015) (10) TMI 953 (Karnataka High Court), it was held by the Hon'ble High Court that the interest that was credited in Canara Bank account, the assessee in that case was not entitled to receive the same, and therefore, not taxable. It was further contended that the assessee is following cash system of accounting and interest was offered to tax when the amount was received in the assessment year 2018-2019. The learned AR also placed on record copy of the assessment order in the case of both the assesseees for assessment year 2018-2019 (wherein interest credited in Escrow Account over a period of time was declared in assessment year 2018-2019 and accepted in assessment completed u/s 143(3) of the I.T.Act).

8. The learned Departmental Representative, on the other hand, submitted that the judgment of the Hon'ble jurisdictional High Court relied on by the assessee is distinguishable on facts, since there was a dispute as regards the ownership of the land. The learned DR relied on the order of the Chennai Bench of the Tribunal in the case of DCIT v. Seshasayee Paper and Boards Limited reported in (2010) 125 ITD 111 (Chennai).

9. We have heard rival submissions and perused the material on record. The assessee along with two others had transferred shares of M/s.Leadage Alloys India Limited to M/s.Exide Industries Limited for a total consideration of Rs.20,63,88,000. The sale consideration for the shares of the assessee comes to Rs.9,40,12,200 and this amount is not in dispute. The assessee had entered into a SPA on 12.08.2010. As per the SPA, the assessee along with other sellers were liable for any claim, demand, expenses in relation to notice dated 15.07.2010 received by the company M/s.Leadage Alloys India Limited issued by the Sales Tax Department demanding the total sum of Rs.28,04,64,753 (i.e., tax liability of Rs.16,28,24,240, interest demand of Rs.10,13,58,089 and penalty demand of Rs.1,62,82,424), which far exceeded the total consideration of the shares transferred fixed in the SPA between the parties. It is also agreed between the parties in the SPA at clause 10 that the entire agreed consideration of Rs.20,63,88,000 was to be kept deposited by the purchaser in the Escrow Account. Accordingly, the Escrow agreement was made on the same day, i.e., on 12.08.2010 and the entire amount of Rs.20,63,88,000 was deposited by the purchaser in the Escrow Account opened with HDFC Bank Limited, Kolkata. The relevant clauses of the SPA, namely, clauses 5 and 10, read as follows:-

“5. The Vendors shall be liable for any claims, demands and expenses in relation to the Notice dated 15th July, 2010 received by the Company from the Assistant Commissioner, Commercial Taxes (Enforcement)-8, South Zone, Bangalore. It is also mutually agreed that the Management of the Company will extend all assistance and provide access to the necessary

documents to enable Mr.T.Arun Kumar to deal diligently with the matters relating to the said Notice dated 15th July, 2010.”

“10. On transfer of the shares of the Vendors in favour of the Purchaser, the Purchaser shall pay a consideration of Rs.20,63,88,000 (Rupees Twenty crores sixty three lacs eighty eight Thousand only) for purchase of the shares in the following manner.

The entire amount of Rs.20,63,88,000 (Rupees Twenty crores Sixty three lacs Eighty eight Thousand only) would be kept deposited by the Purchaser in an Escrow Account to be operated with HDFC Bank Limited, Kolkata. The amount so deposited can be withdrawn from the Escrow Account only after it is conclusively established that there are no claims or demands pending against the Company for periods prior to 1st April, 2008 in relation to the Notice dated 15th July, 2010 received from the Assistant Commissioner, Commercial Taxes (Enforcement)-8, South Zone, Bangalore. The parties shall execute a separate Escrow Agreement with HDFC Bank Limited, Kolkata to give effect to the above.”

9.1 The relevant clause 5 in Escrow Agreement made on the same day states as follows:-

“5.1 The Escrow Bank shall continue to hold such Share Purchase Consideration Amount lying in the credit of the Special Bank Account / Fixed Deposit Accounts for the Company and shall not permit any withdrawals / adjustments from the said Accounts except for the payment of legal or other expenses incurred by Leadage in connection with the demand notice dated 15th July 2010 issued to Leadage by the Assistant Commissioner, Commercial Taxes (Enforcement)-8, South Zone, Bangalore. Legal expenses and other expenditure incurred by Leadage in connection with the said demand notice, if any, will be reimbursed from the maturity proceeds of Fixed Deposit Account of which Mr.T.Arun Kumar, the party of the Second Part is the beneficiary. Instructions for such reimbursement shall be in terms of the procedure laid down hereunder.”

9.2 The Sales Tax liability later was settled under Karasamadhan Scheme, 2017 and the appeal pending before the Hon'ble jurisdictional High Court and before the CSTAA, New Delhi was withdrawn. The details of the payment of the

withdrawal of the appeal and payments made for settling the sales-tax liability are placed on record at page 40 to 51 of the paper book. The assessee has also placed on record the assessment orders in the case of both the assessees for assessment year 2018-2019. The assessee has disclosed the entire interest credited over a period of time in the Escrow Account in the return of income filed for assessment year 2018-2019. The assessments were completed u/s 143(3) of the I.T.Act by disallowing the claim of set off of certain expenditure against the interest income that was disclosed amounting to Rs.6,63,39,548 in the case of Sri.Thyagarajan Rajkumar and Rs.6,95,34,412 in the case of Sri.Thyagarajan Arunkumar. Therefore, the admitted facts are that the entire interest income that accrued over a period of time has been assessed in its entirety for assessment year 2018-2019 in the case of both the assessees.

9.3 Viewed from the above backgrounds, we have to examine whether the interest has accrued in the relevant assessment years and can be brought to tax. It is also mentioned that the assessee being individual, followed cash system of accounting. On identical facts, the Hon'ble jurisdictional High Court in the case of Sri.H.Shivanna, S/o Late Mallelingappa v. ACIT (supra) had decided the issue in favour of the assessee. In the case considered by the Hon'ble jurisdictional High Court, the assessee along with his brother inherited certain agricultural land, which were acquired by the Karnataka Industrial Area Development Board (for short "Board") vide Notification dated 17.07.2019. The total

compensation for acquisition of the land was fixed at Rs.4,10,56,235. Since the cousins of the assessee had filed Civil Suit claiming share of the property, which was being acquired, the Board required the assessee to furnish adequate security to protect its interest in case the Civil Suit filed by the cousins are decided in their favour. Consequently, a tripartite agreement was executed between the assessee (including his brother), Vysya Bank and the Board, which provided for fixed deposits of the amount credited in the account of assessee and his brother to be kept with the Bank as security on behalf of the Board, and would be payable either to the assessee (and his brother) or the cousins who had filed the Suit, after dispute was resolved by the Civil Court. On 09.03.2021, in exchange of Bank Guarantee, an Indemnity Bond was executed by the assessee in favour of the Board, according to which also the amount of compensation so deposited in the Bank, along with interest, was to remain as security in favour of the Board, till the Suit / appeal was finally decided. The Suit was finally decided in favour of the assessee and his brother on 23.07.2008. In the interregnum period, interest was credited in the Vysya Bank account and the question arose whether interest could be brought to tax during the relevant assessment years. The Assessing Officer, the CIT(A) and the Tribunal decided the issue against the assessee by holding that interest amount would be taxable in the year in which it was credited in the bank account of the assessee as well as his brother. On further appeal by the assessee u/s 260A of the I.T.Act, the Hon'ble Hon'ble High Court, the High Court formulated substantial question of law,

which reads as follows:-

“(1) Whether, in the facts and circumstances of the case, the Tribunal is right in law in holding that interest on fixed deposits representing compensation, pledged against bank guarantee given to KIADB pending resolution of dispute over title of land, is taxable in the respective years when such interest was credited by bank in its books?”

9.4 In deciding the above question of law, the Hon'ble High Court held as follows:-

“16. Admittedly, the assessee does not maintain any books of accounts. He is an agriculturist, who had never filed any returns of income prior to the acquisition of the land, and until the search operations were conducted in his premises on 2-2-2001, whereafter also the return was filed in response to the notice issued by the Department and then too, in the said returns, he had disclosed his taxable income as NIL, as by then the Regular Second Appeal had not been decided and he had not acquired full and complete light over the compensation amount, as well as the interest, which was acquired only after the decision in the Regular Second Appeal on 23-07-2008, and that income of the assessee became taxable only in the assessment year 2009-10.

17. In the absence of the assessee maintaining any books of accounts, and in the circumstances of the 'case, the accounting method which could be adopted in the case of the assessee would be nothing but cash system of accounting. In such a case, even as per Section 5 of the Act, it would be income subjected to tax only when received or deemed to be received by the assessee. There can be tax imposed only on an income which is real, or in the hands of the assessee. In a case, where the assessee might have received some money in his account, but with certain impediment because of which the same cannot be used by the assessee till such impediment is overcome, which in the present case is of the decision in the suit/appeal filed by the cousins of the assessee, the same cannot be said to be actual receipt of money in the hands of or in favour of the assessee. If a right over certain money is dependent on contingency, condition or restriction, because of which the assessee cannot enjoy the money, though in his name in the bank, then the income will be in the hands of the assessee only when such condition, contingency or restriction is overcome. It is thus the real income of the assessee which could be taxed, and in a situation like the present, prior to the contingency, condition or restriction having been removed or

overcome, the same could only be presumed income, and not real income.

18. The submission of the learned counsel for the respondent, that since the interest income had been received or accrued in the name of the assessee, the same would become taxable, is not worthy of acceptance. The interest income, in the present case, though may be in the name of the assessee, but was never in the hands of the assessee because of the pendency of the case and the furnishing of Bank 'Guarantee/Indemnity Bond by the assessee, due to which, neither capital nor interest could be withdrawn by the assessee. In whose favour such interest amount would actually go, was to depend on the outcome of the suit or appeal. It was only after the case was finalized, and the title of the assessee over the acquired property was confirmed on 23-07-2008, that the amount of compensation, along with interest, was finally found payable to the assessee, without any impediment. It was only then that amount (including interest) could be said to be real income of the assessee, and the same would then alone become liable for payment of tax.”

9.5 The Hon'ble High Court, after considering the judicial pronouncements on the issue, concluded that if the amount is received by the assessee on a certain condition or by imposing of any restriction, such as furnishing of security, the assessee does not become the real owner of the money, though received in his name, or the interest accrued, which could not be chargeable to tax till such dispute is resolved and the condition, or restriction, so imposed is removed or resolved. The conclusion of the Hon'ble High Court at para 22 and 23 reads as follows:-

“22. In our view, it is thus clear, that if an amount is received by the assessee on certain conditions or by imposing any restrictions, such as of furnishing security, the assessee does not become the real owner of the money, though received in his name, or the interest that accrues thereon would not be chargeable to tax, till such dispute is resolved and the condition, or restriction, so imposed is removed or resolved.

23. For the foregoing reasons, we decide the first question of law in favour of the assessee and against the Revenue.”

9.6 In the instant case, the condition was imposed for withdrawal of the money as per clause 10 of the SPA entered by the assessee and others with M/s.Exide Industries Limited. As per clause 5.1 of the Escrow Agreement, the assessee did not have any right to receive the interest credited in the Escrow Account unless and until the Sales Tax liability was cleared. The total sales tax liability in the instant case was far exceeding the consideration which was deposited in the Escrow Account by the purchaser. Moreover, the assessee's had disclosed for assessment, the entire interest income that was credited over a period of time and received by the assessee during the financial year relevant to the assessment year 2018-2019. In the light of the above said factual situation, we deem it appropriate to delete the addition made by the A.O. and sustained by the CIT(A) with reference to the interest income that is credited in the relevant assessment year.

10. The issue of addition of interest credited in Escrow Account is common for all appeals, our decision rendered in para 9 to para 9.6 (supra) will apply for other appeals, as well.

Cash Deposit of Rs.17,73,900 (Second issue in ITA No.692/Bang/2019)

11. The A.O. had made addition of Rs.17,73,900 being cash deposits made in Axis Bank, by observing as under:-

“It is seen that the assessee has made cash deposit of Rs.17,73,900/- in Axis Bank. The assessee was asked to explain the source for the same vide letter dated 19.10.2016. In response to the same, the assessee has submitted that that

“the cash deposits is made out of the withdrawals made during the year”. The assessee’s reply cannot be accepted for the following reasons:

(i) The assessee did not explain the source for funds available in the bank account.

(ii) The assessee did not furnish explanation regarding why cash was deposited again after withdrawing the same multiple times.

(iii) The assessee failed to demonstrate the cash deposits were out of withdrawals.

Hence, Rs.17,73,900/- is added to the total income for the above mentioned reasons.”

12. The assessee preferred an appeal before the first appellate authority. Since there was no appearance before the first appellate authority, the appeal of the assessee was dismissed, without adjudicating on merits.

13. Aggrieved, the assessee is in appeal before us. The limited submission of the learned AR is that cash deposits made in Axis Bank were out of withdrawals made on various dates. The learned AR has filed a cash flow summary and cash book along with bank statements for our perusal.

14. The learned DR supported the orders of the Income Tax Authorities.

15. We have heard rival submissions and perused the material on record. The assessee has furnished a copy of cash flow summary and the cash book along with the bank statement, wherein it is seen that there are cash withdrawals to the tune of Rs.36 lakh. The cash book summary are as follows:-

“Cash Book Summary:

1st April 2013 to 31st March, 2014

Date	Particulars	Gross Total (Cr)	Cash (Dr)	Dhanalakshmi Bank - 1224 (Dr)	Axis Bank SB A/c 0309 (Dr)
01 April 2013	Opening balance	410773	--	--	--
22 May 2013	Axis Bank SB A/c 0309	50000	50000	--	--
29 May 2013	Axis Bank SB A/c 0309	50000	50000	--	--
01 Jun 2013	Axis Bank SB A/c 0309	25000	25000	--	--
11 Jun 2013	Axis Bank SB A/c 0309	60000	60000	--	--
29 Jul 2013	Axis Bank SB A/c 0309	1100000	1100000	--	--
06 Aug 2013	Axis Bank SB A/c 0309	40000	40000	--	--
12 Aug 2013	Axis Bank SB A/c 0309	50000	50000		
07 Sep 2013	Axis Bank SB A/c 0309	30000	30000	--	--
11 Sep 2013	Axis Bank SB A/c 0309	600000	600000	--	--
14 Sep 2013	Axis Bank SB A/c 0309	600000	600000	--	--
30 Sep 2013	Axis Bank SB A/c 0309	30000	30000	--	--
15 Oct 2013	Axis Bank SB A/c 0309	40000	40000	--	--
22 Oct 2013	Axis Bank SB A/c 0309	300000	300000	--	--
31 Oct 2013	Axis Bank SB A/c 0309	200000	200000	--	--
13 Nov 2013	Axis Bank SB A/c 0309	100000	100000	--	--
13 Dec 2013	Axis Bank SB A/c 0309	50000	50000	--	--
11 Feb 2014	Axis Bank SB A/c 0309	10000	10000	--	--
06 Mar 2014	Cash	500		500	
07 Mar 2014	Cash	100000		100000	
12 Mar 2014	Cash	600000		600000	
12 Mar 2014	Cash	900000			900000
12 Mar 2014	Cash	585000			585000
17 Mar 2014	Cash	250000		250000	--
21 Mar 2014	Cash	100000			100000
21 Mar 2014	Cash	70000		70000	
21 Mar 2014	Dhanalakshmi Bank 1224	70000	70000	--	--
22 Mar 2014	Dhanalakshmi Bank 1224	65000	65000		
24 Mar 2014	Cash	100000			100000
24 Mar 2014	Axis Bank SB 0309	80000	80000		

24 Mar 2014	Cash	89920		89920	
26 Mar 2014	Cash	87400			87400
26 Mar 2014	Cash	1000			1000
26 Mar 2014	Cash	500			500
26 Mar 2014	Axis Bank SB 0309	50000	50000		
31.03.2014	Closing cash balance	1126453	3600000	1110420	1773900

15.1 In the interest of justice and equity, we restore the issue to the files of the A.O. The A.O. is directed to examine the cash flow summary and the cash book along with the bank statement and decide the matter afresh in accordance with law. Needless to state, the assessee shall be heard before a decision is taken in the matter. It is ordered accordingly.

16. In the result, appeals in (i) ITA No.691/Bang/2019 (A.Y.2013-2014), (ii) ITA No.904/Bang/2017 (A.Y.2012-2013), (iii) ITA No.905/Bang/2017 (A.Y.2012-2013) are allowed and (iv) ITA No.692/Bang/2019 (A.Y. 2014-2015) is partly allowed.

Order pronounced on this 15th day of June, 2022.

Sd/-
(Padmavathy S)
ACCOUNTANT MEMBER

Sd/-
(George George K)
JUDICIAL MEMBER

Bangalore; Dated : 15th June, 2022.
Devadas G*

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5. The DR, ITAT, Bengaluru.
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