

**IN THE INCOME TAX APPELLATE TRIBUNAL
PATNA 'DB' BENCH AT KOLKATA**

[Virtual Court]

Before

SRI RAJPAL YADAV, VICE PRESIDENT

&

SRI MANISH BORAD, ACCOUNTANT MEMBER

I.T.A. No.: 6/Pat/2020

Assessment Year: 2013-14

Fort Technocrats Pvt. Ltd.....Appellant
[PAN: AAACF 5503 E]

Vs.

ACIT, Range-2, Begusarai.....Respondent

Appearances by:

None appeared on behalf of the Assessee.

Sh. Pranab Kumar Koley, Sr. D/R, appeared on behalf of the Revenue.

Date of concluding the hearing : August 29th, 2022

Date of pronouncing the order : August 31st, 2022

ORDER

Per Manish Borad, Accountant Member:

This appeal filed by the assessee pertaining to the Assessment Year (in short "AY") 2013-14 is directed against the order passed u/s 250 of the Income Tax Act, 1961 (in short the "Act") by Id. Commissioner of Income-tax (Appeals), Bhagalpur [in short Id. "CIT(A)"] dated 18.11.2019 which is arising out of the assessment order framed u/s 143/147 of the Act dated 29.11.2018.

2. Registry has informed that the appeal is time barred by 2 days. Condonation application has been filed by the assessee. After perusing the same, we find force in the reasons mentioned therein and are satisfied that the assessee was prevented for reasonable cause in filing the instant appeals within statutory time limit. We, therefore, condone the delay and admit the appeal for adjudication

3. The assessee is in appeal before this Tribunal raising the following grounds:

“1. For that the grounds of appeal hereto are without prejudice to each other.

2. For that the order of the learned assessing officer as well as the learned Commissioner of Income Tax (Appeal) is bad both in law and on facts.

3. For that the order of the learned assessing officer as well as the learned Commissioner of Income Tax (Appeal) is based on presumption, surmises and conjectures.

4. For that the order of the learned assessing officer as well as the learned Commissioner of Income Tax (Appeal) is further violative of the settled principles of natural justice in as much as no opportunity much less adequate opportunity was ever afforded to the appellant to furnish its defence in course of assessment proceedings.

5. For that the order of the learned assessing officer as well as the learned Commissioner of Income Tax (Appeal) is wholly perverse in as much as the same are contrary to and at variance with the materials available on record.

6. For that the order of the ld. assessing officer has erred in initiating a proceeding of reassessment on the solitary ground that income from interest on NSC and FDR is to be assessed as income from business separately notwithstanding the fact that the condition precedent to the exercise of jurisdiction under section 147 of the Act is not satisfied.

7. For that the learned assessing officer has erred initiating a proceeding of reassessment on the solitary ground that income from interest on NSC and FDR is to be assessed separately

notwithstanding the fact the appellant has made true and fair disclosure of income from interest on NSC and FDR in its original return ; in view of the embargo in the proviso appended to section 147 of the Act issue of notice under section 148 of the Act beyond a period of four years is not permissible; there is no omission or failure to make such disclosure; the condition precedent to the exercise of jurisdiction is not satisfied; reassessment on the basis of mere change of opinion is not permissible and that in view of the judgement and order of the Hon Tale Patna High Court in the case of Shyam Bihari vs. Commissioner of Income Tax reported in 251 CTR 155 (Pat) such income is to be assessed as income from business only.

8. For that the learned Commissioner of Income Tax (Appeal) has erred in dismissing the appeal on the grounds inter-alia that the learned assessing officer has applied his mind on the particular facts and yet did not consider them for making the addition; there is no case for change of opinion; by oversight even the other income which included the interest income was included while estimating the profit from contract business and that the reassessment was justiciable on the basis of certain other judicial pronouncements of the different other Hon hie High Courts that too in absence of a finding of omission or failure on the part of the appellant to make a disclosure.

9. For that in any view of the matter the order of the ld. assessing officer as well as the ld. Commissioner of Income Tax (Appeal) to the extent as aforesaid is bad and is therefore, fit to be set aside.

10. For that other various grounds which may be urged at the time of hearing.”

4. When the case was called for, none appeared on behalf of the assessee. A perusal of the records shows that sufficient opportunities have been given to the assessee but there is no compliance. It seems that the assessee is not interested to pursue the appeal and, therefore, we decide to adjudicate the appeals with the assistance of ld. D/R and the available records.

5. Perusal of the grounds revealed that the sole grievance of the assessee is that the ld. CIT(A) erred in confirming the addition of interest income of Rs. 5,94,799/-.

6. Brief facts of the case are that the assessee is a private limited company. Income of Rs. 10,55,630/- declared in the e-return filed on 23.09.2013 for AY 2013-14. Assessment proceedings u/s 143(3) of the Act were carried out vide order dated 13.01.2016. Income was assessed at Rs. 11,63,580/- after rejecting the books of account and estimating net profit @8% of the gross receipts. Thereafter, case of the assessee was reopened on the basis of the details available on record that the assessee has earned interest income on FDR & NSC of Rs. 5,94,799/- and the same has escaped the assessment. Notice u/s 148 of the Act was issued for reopening the assessment and the reassessment proceedings were carried out. During the course of proceedings, the assessee contended that the said interest income is a business income in view of the judgment of Hon'ble jurisdictional High Court in the case of *Shyam Bihari vs. CIT & Anr. High Court, Patna (2012) 251 CTR (Pat.) 155* and since the income has already been estimated by rejecting the books of account alleged addition is uncalled for. However, ld. AO was not satisfied and he made the addition for interest income on FDR & NSC of Rs. 5,94,799/- and assessed the income at 17,10,798/-.

7. Aggrieved, the assessee preferred appeal before ld. CIT(A) but failed to succeed and the addition made by ld. AO was confirmed.

8. Aggrieved, the assessee is in appeal before this Tribunal.

9. Ld. D/R vehemently argued supporting the orders of both the lower authorities but did not controvert this fact that both the lower authorities have accepted that interest income is in the nature of business income as it was earned on the deposits in the form of FDR & NSC pledged as security towards the contracts awarded to the assessee.

10. We have heard ld. D/R and perused the records placed before us. The only dispute before us pertains to the FDR & NSC interest of Rs. 5,94,799/- added in the hands of the assessee whereas in the assessment proceedings u/s 143(3) of the Act books of accounts have been rejected and best judgment has been taken by ld. AO computing the business income of the assessee at the rate of 8% of the gross receipts. Ld. D/R failed to controvert this fact that the alleged interest income is in the nature of business income. Since it was earned on the deposits held in the form of FDR & NSC which are pledged before the Executive Engineer for obtaining work contract, the interest income earned thereon is a business income as per the ratio laid down by Hon'ble jurisdictional High Court in the case of *Shyam Bihari (Supra)*. Further, we observe that the business income of the assessee has been estimated @8% of the gross receipts after rejecting the book results and once the ld. AO has rejected the book results and has computed business income by applying a certain percentage on the gross receipts, there hardly remains any justification to make any other addition on account of business income earned in the form of interest income on FDR & NSC. We, therefore, set aside the finding of ld. CIT(A) and delete the alleged addition of Rs.

5,94,799/- and allow the sole substantive issue raised in the grounds of instant appeal.

11. In the result, the appeal filed by the assessee is allowed.

Kolkata, the 31st August, 2022.

Sd/-
[Rajpal Yadav]
Vice President

Sd/-
[Manish Borad]
Accountant Member

Dated: 31.08.2022

Bidhan (P.S.)

Copy of the order forwarded to:

- 1. Fort Technocrats Pvt. Ltd., 1, Fort Area, Munger-811 201.**
- 2. ACIT, Range-2, Begusarai.**
3. CIT(A), Bhagalpur.
4. CIT-
5. CIT(DR), Patna Bench, Patna.

True copy

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata