

**IN THE INCOME TAX APPELLATE TRIBUNAL  
INDORE BENCH, INDORE**

**BEFORE SHRI MAHAVIR PRASAD, JUDICIAL MEMBER**  
**AND**  
**SHRI B.M. BIYANI, ACCOUNTANT MEMBER**

*(Conducted through Virtual Court)*

**ITA No. 876/IND/2019**  
**Assessment Year: 2012-13**

Indore Development fund Limited, IMC Campus, M.G. Road Indore	<b><u>Vs.</u></b>	ITO-2(5), Indore
(Appellant / Assessee)		(Respondent/ Revenue)
<b>PAN: AABCI 1081 K</b>		
Assessee by	Shri Ashish Goyal, AR	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	08.08.2022	
Date of Pronouncement	18.08.2022	

**ORDER**

**Per B.M. Biyani, A.M.:**

1. This appeal by assessee is directed against the order dated 10.06.2019 of learned Commissioner of Income-Tax (Appeals)-III, Indore [**Ld. CIT(A)**] in Appeal No. CIT(A)-IT-10586/2018-19/2034, which in turn arises out of the order of assessment dated 20.03.2015 passed by the learned ITO-2(5), Indore [**Ld. AO**] u/s 143(3) of the Income-tax Act, 1961 [**the Act**] for the Assessment-Year 2012-13.

2. The assessee has raised following grounds of appeal:

- “1. The order of the Ld. CIT(A) is bad in law as well as facts on record.*
- 2. The Ld. CIT(A) has erred in confirming the addition made of Rs. 15,57,459/- towards the interest income.”*

3. The assessee is a non-profit making Government Company created as a Special Purpose Vehicle for reconstruction of roads in the city of Indore.

For the relevant assessment year 2012-13, the assessee filed return on 29.09.2012 declaring total income at Rs. Nil, tax liability at Rs. Nil and claiming refund of Rs. 1,85,757/- on account of TDS out of interest from bank-FDR. The case was selected for scrutiny and statutory notices u/s 143(2) and 142(1) were issued from time to time which were responded by the assessee. During the course of assessment proceeding, the Ld. AO found that the assessee has earned interest income of Rs. 15,57,459/- on bank-FDR, out of which the aforesaid TDS of Rs. 1,85,757/- was deducted, but the assessee has not offered interest income for taxation. Being dis-satisfied with the submission of assessee, the Ld. AO made an addition of Rs. 15,57,459/- and completed assessment. Being aggrieved, the assessee filed an appeal before the ld. CIT(A). However, the ld. CIT(A) did not grant any relief. Now the assessee is in appeal against the order of Ld. CIT(A).

4. Ld. Counsel appearing on behalf of the assessee submitted the factual details about the FDR and interest income at length. Ld. AR submitted that the assessee had awarded a contract to M/s Pratibha Industries Limited, Chembur, Mumbai. But since M/s Pratibha Industries Limited committed certain default, the assessee invoked bank-guarantee, as a result of which a banker cheque of Rs. 2,16,40,604/- was received. However, M/s Pratibha Industries Ltd. filed a petition to Hon'ble M.P. High Court and obtained a stay-order on 12.08.2008. Ld. AR submitted that due to the direction of Hon'ble High Court contained in the stay-order, the assessee could not utilize the sum of Rs. 2,16,40,604/- received on invocation of bank-guarantee and hence the same was deposited in a bank FDR, on which the assessee earned the impugned interest of Rs. 15,57,459/-. Ld. AR submitted that the Hon'ble High Court had also directed for referring matter to an arbitration-panel which was actually done. Thereafter, the arbitration-panel passed its award on 12.10.2012, according to which the assessee became entitled to a sum of Rs. 1,17,06,775/-. However, M/s Pratibha Industries Ltd. filed an application to the Competent-Court against the award of arbitration-panel, whereupon the Competent-Court passed an order on 11.04.2018 and reduced the amount of award from Rs. 1,17,06,775/- to Rs.

28,55,797/- . Ld. AR submitted that the matter is still pending for final adjudication. With this factual matrix, the Ld. AR submitted that although the assessee is holding FDR of Rs. 2,16,40,604/- in its own name, the FDR does not belong to the assessee in real sense or absolute terms. Ld. AR submitted that the issue has been a matter of long battle and still pending for final adjudication. Ld. AR submitted that there is a gross uncertainty in the matter and in such a situation, the assessee cannot be burdened with tax-liability on the interest income. Ld. AR submitted that mere holding of FDR in its own name does not mean that the FDR or Interest thereon belongs to the assessee. Ld. AR submitted that the earning of income has to be with perfect certainty, only then tax can be charged, but in the present case it is otherwise. With these submissions, the Ld. AR urged that it is neither legal nor logical to tax the the interest income of Rs. 15,57,459/- in the hands of assessee. Therefore, the addition of Rs. 15,57,459/- made by revenue authorities must be deleted.

5. Ld. AR also made an alternative submission. Ld. AR submitted that as of now, the assessee is entitled to Rs. 28,55,797/- only after the order of Competent-Court which is just 13.20% of the original sum / FDR of Rs. 2,16,40,604/-. Therefore, 13.20% of the interest of Rs. 15,57,459/-, which comes to Rs. 2,05,585/-, should only be taxed in the hands of assessee and not the whole interest of Rs. 15,57,459/-.

6. Per contra, Ld. DR made strong submission to contend that the entire income of Rs. 15,57,459/- has been rightly taxed in the hands of assessee. Ld. DR submitted that the FDR is held in the name of assessee and the interest income has also accrued / arisen to the assessee. Ld. DR submitted that the assessee has also claimed credit of full TDS of Rs. 1,85,757/- deducted by bank out of the impugned interest of Rs. 15,47,459/- and thereby obtained a refund of Rs. 1,85,757/- from the Income-tax Department. Ld. DR submitted that by lodging a claim of refund before Income-tax Department, the assessee has admitted that the interest income of Rs. 15,57,459/- has been earned by it. Ld. DR made a further submission

that interest income cannot remain untaxed and it is the assessee who is liable for such taxation. With these submissions, the ld. DR argued that the addition made by ld. AO is very much correct and must be upheld.

7. We have considered rival submissions of both sides and perused the material held on record. We observe that it is the assessee who invoked bank-guarantee and on such invocation, received a sum of Rs. 2,16,40,604/-. We observe that the assessee has invested this money in a bank FDR and the said FDR is held in assessee's own name. We further observe that although the litigation between assessee and M/s Pratibha Industries Ltd. has travelled to the Courts, as of now the FDR is held by the assessee and interest income has also accrued / arisen to the assessee. More importantly, we find much weightage in the submission of Ld. DR that the assessee has claimed credit of full TDS deducted by bank out of interest and has also obtained refund of full amount of TDS from Income-tax Department. This act of claiming credit of TDS and obtaining refund from Income-Tax Department demonstrates that the assessee is consciously accepting the interest income as its own income, although a dispute raised by M/s Pratibha Industriest Ltd. is pending. We also find merit in the argument of Ld. DR that the income cannot remain untaxed. Considering the overall situation, we are of the view that as of now, the Ld. AO has rightly taxed the interest income in the hands of assessee. Therefore, we do not find any merit in the appeal of assessee.

**8. In the result, this appeal of assessee is dismissed.**

*Order pronounced as per Rule 34 of I.T.A.T. Rules, 1963 on 18/08/2022.*

Sd/-

**(Mahaveer Prasad)**  
Judicial Member

Sd/-

**(B.M. Biyani)**  
Accountant Member

**Indore**

दिनांक /Dated : 18.08.2022

**Patel/Sr. PS**

*Copies to: (1) The appellant*  
*(2) The respondent*  
*(3) CIT*  
*(4) CIT(A)*  
*(5) Departmental Representative*  
*(6) Guard File*

*By order*

*Sr. Private Secretary*  
*Income Tax Appellate Tribunal*  
*Indore Bench, Indore*

1.	Date of taking dictation	
2.	Date of typing & draft order placed before the Dictating Member	
3.	Date on which the approved draft comes to the Sr. P.S./P.S.	
4.	Date on which the fair order is placed before the Dictating Member for pronouncement	
5.	Date on which the file goes to the Bench Clerk	
6.	Date on which the file goes to the Head Clerk	
7.	Date on which the file goes to the Assistant Registrar for signature on the order	
8.	Date of dispatch of the Order	