

IN THE INCOME TAX APPELLATE TRIBUNAL
"G" BENCH, MUMBAI

SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER

ITA No. 2191/MUM/2021
(Assessment Year: 2012-13)

Shree Sai Sagar Consultants,
1, Ram Kripa, Devji Bhimji Lane,
Mathuradas Road, Kandivali (W),
Mumbai - 400067
[PAN: AAYFS6207K]

..... Appellant

Deputy Commissioner of Income Tax
Central Circle 5(4),
Mumbai - 400021

Vs

..... Respondent

Appearances

For the Appellant/Assessee : Shri Jayant Bhatt & Jitali Gandhi
For the Respondent/Department : Shri R.N. D'Souza

Date of conclusion of hearing : 01.11.2022
Date of pronouncement of order : 25.01.2023

ORDER

Per Rahul Chaudhary, Judicial Member:

1. By way of the present appeals the Appellant has challenged the order, dated 26.08.2019, passed by the Ld. Commissioner of Income Tax (Appeals)-53, Mumbai [hereinafter referred to as 'the CIT(A)'] for the Assessment Year 2012-13, whereby the Ld. CIT(A) had partly allowed the appeal against the Assessment Order, dated 31.03.2015, passed under Section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').
2. The appeal was accompanied by application seeking condonation of delay of 743 days in filing the appeal. A copy of the order passed by the CIT(A), dated 26.08.2019, was served

upon the Appellant on 19.09.2019. Shri Jayesh Vinodkumar Tanna, partner of the Appellant, was a severe diabetic patient suffering from high blood pressure and hypertension. During the month of November 2019, he was hospitalized from 11.11.2019 to 15.11.2019 and was advised complete bed rest thereafter. Though, the Chartered Accountant engaged by the Appellant at the relevant time was instructed to file the appeal against the order passed by CIT(A), no appeal was filed. In March, 2020, lockdown was imposed on account of Covid Pandemic and therefore, the office of the Appellant was shut down. In April, 2021, Shri Jayesh Kumar Tanna suffer from Covid and was advised to be in isolation. Thereafter, in July 2021, when Shri Jayesh Kumar Tanna recovered, he asked his staff to request the aforesaid Chartered Accountant to provide complete set of document filed in appeal before the CIT(A). However, in October, 2021, Sh. Jayesh Vinodkuamar Tanna, was hospitalized for kidney stone operation. In the above facts and circumstances, the Appellant filed appeal for the Assessment Year 2012-13 on 30.11.2021. Excluding the Covid period, there was a delay of 154 days in filing the present appeal. The Ld. Authorised Representative for the Appellant relied upon order dated 15.07.2022, passed by the Tribunal in appeal filed by the Appellant for the Assessment Year 2014-15 [ITA No. 2194/MUM/2021] wherein, in the identical facts and circumstances, delay of 124 days (excluding covid period) in filing the appeal was condoned. In view of the aforesaid facts and circumstances, we hold that the Appellant was prevented by reasonable cause from presenting the appeal within limitation. The application for seeking condonation of delay in filing the present appeal is, therefore, allowed.

3. We now proceed to adjudicate the following grounds raised in the present appeal:

- “ 1. On the facts and circumstances of the Appellant’s case and in law the Ld. Commissioner of Income Tax (Appeals) erred in confirming the addition of Rs, 5,00,000/- being 12.5% of the Total Turnover for the year by considering the same as estimated business income from the project TEXPROCIL.*
- 2. On the facts and circumstances of the Appellant’s case and in law the Ld. Commissioner of Income Tax (Appeals) erred in confirming the addition made by the Ld. AO of Rs. 64,75,000/- being advance received against sale of Flats or Shops by treating the same as unexplained cash credit u/s 68 of the Act.*
- 3. On the facts and circumstances of the Appellant’s case and in law the Ld. Commissioner of Income Tax (Appeals) erred in confirming the addition of Rs. 9,08,629/- being interest on Fixed Deposits by wrongly treating the same as Income From Other Sources without appreciating the fact that the said Fixed Deposits were kept against the Bank Guarantee given, which is part of the business of the appellant.”*

4. The relevant facts, in brief, are that the Appellant filed return of income for the Assessment Year 2012-13 on 29.09.2012 declaring loss of INR 45,50,614/-. Thereafter, the Appellant filed revised return on 30.11.2012 declaring income of INR 13,12,025/-. The case of the Appellant was selected for scrutiny. The Assessing Officer completed the assessment under Section 143(3) of the Act vide order, dated 31.03.2015 after making, inter alia, addition of INR 5,00,000/- on account of estimated project profit, as net profit arising from sale of stock of the project 'TEXPROCIL' computed at the rate of 12.5% of the turnover of 40,00,000/- [INR 40,00,000/-]. The Assessing Officer included interest of INR 9,08,629/- (credited by the Appellant to the project account) as income chargeable to tax under the head 'Income from Other Sources'. The Assessing

Officer also made a disallowance of INR 64,75,000/- under Section 68 of the Act on the ground that genuineness of the transaction, and identity & creditworthiness of parties were not proved during the assessment proceedings.

5. Being aggrieved, the Appellant carried the issues in appeal before the CIT(A). However, the CIT(A) declined to grant any relief on the aforesaid issues. Therefore, the Appellant has preferred the present appeal raising grounds reproduced in paragraph 2 above which have taken up hereinafter in seriatim.

6. Ground No. 1

The Ld. Authorised Representative for the Appellant submitted that the Appellant wish to press Ground No. 1 on account of small quantum involved. Accordingly, Ground No. 1 raised by the Appellant being dismissed as not pressed.

Ground No. 2

7. Ground No. 2 of appeal is directed against the order of the CIT(A) upholding addition of INR 64,75,000/- made by the Assessing Officer holding the same to be unexplained cash credit.

8. During the assessment proceedings, on examining the balance sheet for the relevant previous year the Assessing Officer noticed that loans and advances amounting to INR.88,42,57,805/- were shown as outstanding. Therefore, the Appellant was asked to file confirmations, copy of income tax return with balance sheet and bank statement of the parties from whom loans and advances were outstanding to verify the genuineness of the transaction and identity & creditworthiness of the parties. According to the Assessing Officer, the Appellant

failed to furnish the relevant documents/details in relation to the following three parties - Ashish Engineering (INR 50,000/-) D H Hingorani (INR. 13,25,000/-) and Smart Developers (INR. 51,00,000/-). Therefore, the Assessing Officer made addition of INR 64,75,000/- under Section 68 of the Act holding the same to be unexplained cash credits since the Appellant had failed to furnish relevant details/documents and had, thus, failed to prove the genuineness of the transaction and identity & creditworthiness of the parties.

9. In appellate proceedings before the CIT(A), the Appellant filed additional evidence. However, the CIT(A) refused to admit the additional evidence and confirmed the order passed by the Assessing Officer in this regard.
10. Before us, it was contended that the Ld. Authorised Representative for the Appellant that the Appellant had failed to file relevant documents/details before the Assessing Officer on account of lack of time. He submitted that the additional evidence furnished by the Appellant clearly supported the case of the Appellant and it was in the interest of substantive justice to admit the same. However, the CIT(A) refused to admit the additional evidence on the ground that the Appellant had failed to provide reasons as to why the additional evidence was not filed before the Assessing Officer during the assessment proceedings. He further submitted that while making the addition of INR 64,75,000/- under Section 68 of the Act, the Assessing Officer has taken INR 51,00,000/- as the amount outstanding from Panchsheel Height, Mahavir Nagar, Mumbai whereas perusal of the ledger account furnished by the Appellant it can be seen that as on 31.03.2012 only INR

1,00,000/- was due outstanding. Per contra, the Ld. Departmental Representative relied upon the order passed by the Assessing Officer, and the CIT(A). He submitted that the Appellant had failed to furnish the relevant documents/details before the Assessing Officer as well as the reason for such failure in appellate proceedings before CIT(A). Therefore, the Assessing Officer was correct in making the addition of INR 64,75,000/- under Section 68 of the Act.

11. We have considered the rival submissions and perused the material on record. We note that the Assessing Officer made the addition of INR 64,75,000/- under Section 68 of the Act on the ground that Appellant was not able to furnish relevant documents/details. In appeal before CIT(A) the Appellant furnished additional evidence. However, the CIT(A) did not admit the additional evidence holding that the Appellant had failed to provide sufficient reasons for not furnishing the aforesaid evidence during the assessment proceedings when the same could be verified by the Assessing Officer. We have gone through the paper-book containing the aforesaid additional evidence. The Appellant has placed on record confirmation from the three parties and has filed receipts and bank statements in support of the same. On perusal of the additional evidence furnished by the Appellant we find that the same is relevant to the adjudication of the issue before us. As per the confirmation of accounts furnished by the Appellant an amount of 50,000/- outstanding to Ashish Engineering. The aforesaid amount was received by the Appellant from Ashish Engineering through cheque number 566955 dated 05.09.2006, being payment towards token amount against Flat

No. 303 in the project TEXPROCIL. A Receipt to this effect has also been placed at page no. 102 of the paper-book. Ledger account of Shri D H Hingorani maintained by the Appellant shows that an amount of INR 13,25,000/- is outstanding as on 31.03.2011. In support of the aforesaid confirmation, the Appellant has filed bank statement showing receipts/payment through banking channel. The Appellant has also filed ledger account of smart developers which shows that during the relevant previous year INR 51,00,000/- received by the Appellant on 21.07.2011. Thereafter, on 26.12.2011 payment of INR 50,00,000/- was made by the Appellant. Leaving an amount of INR 1,00,000/- as outstanding on 31.03.2012. The Appellant has also filed relevant extract of bank statement in support of the aforesaid transactions. In our view, the additional evidences are relevant and prima facie support the claim of the Appellant. The Appellant had claimed that the same could not be filed on account of lack of time during the assessment proceedings and were, therefore, filed before the CIT(A). In our view, CIT(A) should have admitted the additional evidence instead of rejecting the same for technical reasons. A perusal of the relevant extract of the order passed by the CIT(A) shows that the observations made by the CIT(A) in relation to merits of the matter based upon conjecture and surmise. Therefore, in the interest of substantive justice, we admit the additional evidence forming part of the submissions filed before CIT(A) and remand the issue back to the file of Assessing Officer for de-novo adjudication after taking into consideration the documents/details (including additional evidence) furnished by the Appellant and after giving the Appellant an opportunity of being heard. In view of the aforesaid, Ground No. 2 raised by the Appellant is allowed for

statistical purposes.

Ground No. 3

12. The Ground No. 3 of appeal pertains to addition of interest income of INR 9,08,629/-. During the assessment proceedings, the Assessing Officer noted that the Appellant had earned interest income of INR 9,08,629/- on fixed deposits. The interest income was credited to the running project accounts since the Appellant was of the view that the interest income was received on fixed deposits made by the Appellant for obtaining guarantees for the purpose of the projects undertaken by the Appellant. It was contended on behalf of the Appellant that this is not a case of surplus funds which were available for investment were parked in fixed deposits. However, the Assessing Officer was not convinced and therefore, brought interest income to tax in the hands of the Appellant and income from other sources. In appeal, the CIT(A) decline to grant any relief on this issue.
13. The commission paid to the bank and interest received on the fixed deposits is inextricably interlinked and have a commonality about their nature and character. The same cannot be treated differently. This submission was not accepted by the AO held that interest income on investments by its very nature is to be taxed under the head "Income from other sources". In this view of the matter, the AO assessed the income amounting Rs. 9,08,629/-, credited to the project account as assessable under the head "Income from other sources".
14. We have considered the rival submissions and perused the material on record. The Ld. Authorised Representative for the

Appellant had relied upon the common order, dated 15.07.2022, passed by the Tribunal in the case of the Assessee for the Assessment Year 2014-15 (ITA No. 2194/Mum/2021) the relevant extract of which read as under.

“6. The last issue to be decided in this appeal is as to whether the Id. CIT(A) was justified in confirming the addition made on account of interest on fixed deposits earned by the assessee by treating the same as ‘Income from Other Sources’ in the facts and circumstances of the instant case.

6.1. We have heard the rival submissions and perused the materials available on record. The Id. AO noted that during the year, the assessee had earned interest income on its fixed deposits amounting to Rs 17,74,906/-. The said interest income was credited by the assessee to the running project accounts. In other words, interest income was credited to work in progress by the assessee in the books of accounts. The assessee explained before the Id. AO that the fixed deposits were placed as a margin provided to the banks for securing Bank Guarantees from the Bank in favour of third parties and it was pleaded that the said Guarantees had to be issued by the assessee for the smooth conduct and running of the business. The purpose of issuing Performance Guarantees and Financial Guarantees by the Banks in favour of various third parties including the Government Agencies, for which purpose, the assessee had to necessarily invest cash margins in the form of fixed deposits, were duly explained by the assessee before the lower authorities and the same are duly captured in pages 3 to 5 of the order of the Id. CIT(A). The same are not reiterated for the sake of brevity. Hence the assessee pleaded that the deposits were invested out of business exigencies. It was specifically pointed out that it is not a case of surplus funds available with the assessee which were placed as fixed deposits. It was pointed out that the interest income earned on fixed deposits are inextricably linked with the running projects undertaken by the assessee and therefore the said receipt partakes the character of capital receipt. Accordingly, the assessee had credited the interest on fixed deposits to the

capital work in progress treating it as capital receipt and recovery of the part of the capital cost of project incurred by the assessee.

6.2. We find that the lower authorities however did not heed to the aforesaid contentions of the assessee and treated the interest income on fixed deposits as income from other sources.

6.3. We find that the aforesaid facts are not in dispute and hence the same are not reiterated for the sake of brevity. We find that since the bank guarantees (both performance and financial guarantees) were obtained for the purpose of project, investment in fixed deposits also would have to be construed for the purpose of the project undertaken by the assessee, as admittedly the fixed deposits were invested only as cash margins for the purpose of obtaining those bank guarantees. Hence the business nexus is clearly proved. Under these circumstances, the interest income earned on fixed deposits should have to be construed as inextricably linked with the project and should be treated as recovery of part of the project cost and cannot be treated as income from other sources. We find that the Id. AR had rightly placed reliance on the decision of the Hon'ble Apex Court in the case of CIT vs Karnal Cooperative Sugar Mills Ltd reported in 243 ITR 2 (SC) . The relevant operative portion of the judgement is reproduced hereunder:-

"2. In the present case, the assessee had deposited money to open a letter of credit for the purchase of the machinery required for setting up its plant in terms of the assessee's agreement with the supplier. It was on the money so deposited that some interest has been earned. This is, therefore, not a case where any surplus share capital money which is lying idle has been deposited in the bank for the purpose of earning interest. The deposit of money in the present case is directly linked with the purchase of plant and machinery. Hence, any income earned on such deposit is incidental to the acquisition of assets for the setting up of the plant and machinery. In this view of the matter the ratio laid down by this Court in Tuticorin Alkali Chemicals & Fertilizers Ltd. v. CIT [1997] 227 ITR 172, will not be attracted. The more appropriate decision in the

factual situation in the present case is in CIT v. Bokaro Steel Ltd. [1999] 236 ITR 315 (SC). The appeal is dismissed. There will be no order as to costs."

6.4. Similar views were expressed by the Hon'ble Supreme Court in the case of CIT vs Bokaro Steel Ltd reported in 236 ITR 315 (SC) ; Hon'ble Supreme Court in the case of Bongaigaon Refinery and Petrochemicals Ltd vs CIT reported in 251 ITR 329 (SC); Hon'ble Jurisdictional High Court in the case of Shree Maheshwar Hydrel Power Corporation Ltd vs CIT reported in 96 taxmann.com 167 (Bom) and Hon'ble Delhi High Court in the case of Indian Oil Panipat Power Consortium Ltd vs ITO reported in 315 ITR 255 (Del).

6.5. In view of the aforesaid observations and respectfully following the judicial precedents relied upon hereinabove, we hold that the interest income earned on fixed deposits should be treated as capital receipt and to be reduced from the project cost. Hence we do not find any infirmity in the treatment given by the assessee in the instant case. Accordingly, the Ground No.2 raised by the assessee is allowed." (Emphasis Supplied)

15. We note that in the present case the interest income earned by the Appellant on fixed deposits was directly related and specifically linked to the projects undertaken by the Appellant. The interest income of INR 9,08,629/-, consisted of interest income of INR 7,39,361/- related to the project 'Bhavans' and INR 1,69,268/-, related to the project of 'Juhu Tara'. A perusal of copy of bank guarantees related to the aforesaid project place at pages 129 to 140 of the paper-book shows that the deposits were required to be made for obtaining the aforesaid bank guarantees. The interest income earned by the Appellant on such Fixed Deposits was, therefore, directly linked to the aforesaid two projects. In view of the aforesaid, we hold that the Appellant was correct in crediting the interest receipt to the project account and thereby reducing the amount of Work-in-

Progress by the amount of interest income. The interest income was, thus, not liable to be taxed as 'Income from Other Sources' in the hands of the Appellant. Accordingly, Ground No. 3 raised by the Appellant is allowed.

In the result, the present appeal is partly allowed.

Order pronounced on 25.01.2023.

Sd/-
(Om Prakash Kant)
Accountant Member

Sd/-
(Rahul Chaudhary)
Judicial Member

मुंबई Mumbai; दिनांक Dated : 25.01.2023
Alindra, PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR,
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai