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

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER**
**AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER**

**I.T. A. No. 56/Asr/2020**
Assessment Year: 2016-17

| | | |
|---|---|---|
| Dy. Commissioner of Income Tax, Circle-1, Bathinda | **V.** | M/s G. H. Crop Science Pvt. Ltd., 48, Homeland Enclave, Bathinda<br>[PAN: AACCG 1026D] |
| **(Appellant)** | | **(Respondent)** |

| | |
|---|---|
| Appellant by | Sh. Sudhir Sehgal, AR |
| Respondent by | Sh. Rajiv Wadhera, Sr. DR |

**I.T. A. No. 84/Asr/2020**
Assessment Year: 2016-17

| | | |
|---|---|---|
| Income Tax Officer, Ward-1(1), Bathinda | **V.** | M/s Apex Fibre India Ltd., 53 Homeland Enclave, Bathinda<br>[PAN: AABCL 0479Q] |
| **(Appellant)** | | **(Respondent)** |

| | |
|---|---|
| Appellant by | Sh. Sudhir Sehgal, AR |
| Respondent by | Sh. Rohit Mehra, CIT-DR |

| | | |
|---|---|---|
| Date of Hearing | : | 09.02.2023 |
| Date of Pronouncement | : | 23.02.2023 |

## ORDER

**Per Dr. M. L. Meena, AM:**

Both the appeals have been filed by the Revenue against the order of the Ld. Commissioner of Income Tax (Appeals)-1, Amritsar (Camp at Bathinda), even dated 29.11.2019 in respect of Assessment Year 2016-17.

2. The Revenue has raised the following grounds of appeal in ITA No. 56/Asr/2020:

*"(i) The CIT(A) has erred in not taking into consideration the findings of Hon'ble Supreme Court in Davenport & Co. (P) Ltd. vs. CIT, (1975) 100 ITR 715, Nirmal Trading Co. vs. CIT (1980) 121 ITR 54, and Jute Investment Co. Ltd. vs. CIT (1980) 121 ITR wherein it was held that the transaction of transfer to delivery notes as speculative.*

*(ii) The CIT(A) has erred in holding that the transactions under took by the assessee are not speculative in nature disregarding the definition of speculative transaction provided by section 43(5) of the Act.*

*(iii) The CIT(A) has erred in holding that the AO was not justified in invoking provisions of section 145(3) of the Act disregarding the fact that the assessee failed to submit the documents as required by the AO to deduce correct profits of the assessee.*

*(iv) The CIT(A) erred in holding that the interest earned on FDRs and other interest had an immediate nexus with the business of the assessee without appreciating that the assessee failed to prove how the interest earned on FDRs and other interest related to his business activities despite the fact that he was specifically required to prove it during assessment proceedings.*

*(v) The CIT(A) has erred in holding that there is direct nexus between interest income and business activities without giving any clear findings as to how such nexus has been proved in the instant case.*

*(vi) The CIT(A) has erred in not recording whether the findings are based on additional evidence produced by the assessee and admitted by the CIT(A), which was in violation of Rule 46A of the Rules as such production of additional evidence was not covered under clause (a) to (d) of Rule 46A and no reasons have been recorded by the CIT(A) for admitting such additional evidence.*

*(vii) The CIT(A) erred in not taking into consideration the findings of Hon'ble Rajasthan High Court in the case of CIT vs. Bhaval Synthetics India, 81 taxmann.com 478 wherein, it was held that interest earned on FDRs kept in bank as margin money for obtaining LOC to purchase machinery was taxable as income from other sources.*

*(viii) The CIT(A), Bathinda erred in not taking into consideration the findings of Hon'ble Supreme Court in the case of .Conventional Fasteners vs. CIT, 94 taxmann.com 80 wherein, the finding of the Hon'ble Uttarakhand High Court that interest income earned from FDRs kept as security and as a business pre requisite had nothing to do with carrying on business, were upheld.*

## 3. **Grounds of appeal in ITA No. 84/Asr/2020**

*"(i) The CIT(A) has erred in not taking into consideration the findings of Hon'ble Supreme Court in Davenport &. Co. (P) Ltd. vs. CIT, (1975) 100 ITR 715, Nirmal Trading Co. vs. CIT (1980) 121 ITR 54, and Jute Investment Co. Ltd. vs. CIT (1980) 121 ITR wherein it was held that the transaction of transfer to delivery notes as speculative.*

*(ii) The CIT(A) has erred in holding that the transactions under took by the assessee are not speculative in nature disregarding the definition of speculative transaction provided by section 45(3) of the Act.*

*(iii) The CIT(A) erred in holding that the interest earned had an immediate nexus with the business of the assessee without appreciating that the assessee failed to prove how the interest earned related to his business activities*

*despite the fact that he was specifically required to prove it during assessment proceedings.*

*(iv) The CIT(A) has erred in holding that there is direct nexus between interest income and business activities without giving any clear findings as to how such nexus has been proved in the instant case.*

*(v) The CIT(A) has erred in not recording whether the findings are based on additional evidence produced by the assessee and admitted by the CIT(A), which was in violation of Rule 46A of the Rules as such production of additional evidence was not covered under clause (a) to (d) of Rule 46A and no reasons have been recorded by the CIT(A) for admitting such additional evidence.*

*(vi) The CIT(A), Bathinda erred in not taking into consideration the findings of Hon'ble Uttarakhand High Court in the case of Conventional Fasteners vs CIT, subsequently upheld by the Hon'ble Supreme Court (94 taxmann.com 80), wherein, in para 24 of the order, it was held that any income, which may be derived from carrying on the business, even if it is incidental, would quality as business income under section 28 but that is not the same thing as saying that it is a business income, which is derived from the said business."*

4. In both the appeals, there are common grounds of appeal on identical facts, challenging the issue of additional evidence admitted by the CIT(A), under Rule 46A of the ITAT Rules1963, therefore, both the appeals were taken up for hearing and adjudicated together simultaneously by this common order for the sake of brevity.

5. The facts are taken from ITA No. 56/Asr/2020 as a lead case for discussion. The assessee is a private limited company dealing in import/export of edible/non-edible product and also engaged in the marketing of pesticides/insecticides and other crop saving materials. It had filed its return

declaring income of Rs.59,06,920/- for the assessment year 2016-17 on 15.09.2016. The case of the assessee was selected for complete scrutiny through CASS and assessment u/s 143(3) of the Act was framed after invoking provision of section 145(3) of the Act at the total income of Rs.2,37,67,280/- vide an order dated 28.12.2018 and the speculative loss of Rs. 1,78,06,371/- was allowed to be carried forward separately. While making assessment, the AO held that transactions involving sale and purchase of oil undertaken by the assessee did not involve actual delivery of goods, and thus, the assessee indulged in speculative transactions within the meaning of section of 43(5) of the Act. Regarding the interest income of Rs.2,22,31,375/- which was claimed as business income and set off against the speculative loss, the AO held such income to be taxable under the head 'Income from other sources' as the assessee failed to explain how the interest income was related to business activities. Interest income of Rs.2.22 Cr comprised interest amounting to Rs.0.91 Cr on FDRs and other interest amounting to Rs.1.30 Cr on loans and advances. The assessee failed to substantiate as to how the interest of Rs.2.22 Cr credited to P & L as 'Interest' formed part of business activities of the assessee. Therefore, the interest amounting to Rs.2.22 Cr was held to be taxable under the head 'Income from other sources.

6. Aggrieved with the assessment order, the assessee filed an appeal before CIT(A), Bathinda. The CIT(A) vide order dated 29.11.2019 in Appeal No. 454/2019-20 allowed the appeal of the assessee. The CIT(A) held that the transactions undertook by the assessee were not speculative within the meaning of section 43(5) of the Act. The CIT(A) held that the interest earned on FDRs and other interest had an immediate nexus with the business of the assessee i.e., import of edible oil and resale and that such interest income was part and parcel of the business of the assessee and therefore allowed to be set off against speculative loss. The CIT(A) also held that the AO was not justified in rejecting the books of the assessee u/s 145(3) of the Act and that the AO was not justified in estimating that expenses pertaining to pesticide business without pointing out any specific defect.

7. Being aggrieved with the appellate order, the departed is in appeal before us. The Ld. Addl. CIT(DR) submitted that the CIT(A) has erred in not taking into consideration the findings of Hon'ble Supreme Court in Davenport & Co. (P) Ltd. vs. CIT, (1975) 100 ITR 715, Nirmal Trading Co. vs. CIT (1980) 121 ITR 54, and Jute Investment Co. Ltd. vs. CIT (1980) 121 ITR wherein it was held that the transaction of transfer to delivery notes as speculative. He contended that the transactions under took by the assessee are speculative in

nature in view of the definition of speculative transaction provided by section 43(5) of the Act; that the AO was justified in invoking provisions of section 145(3) of the Act as the assessee failed to submit the documents as required by the AO to deduce correct profits of the assesse; that the interest earned on FDRs and other interest had no immediate nexus with the business of the assessee has not been appreciating as the assessee failed to prove how the interest earned on FDRs and other interest related to his business activities despite the fact that he was specifically required to prove it during assessment proceedings and that the findings are based on additional evidence produced by the assessee and admitted by the CIT(A), was in violation of Rule 46A of the Rules as such production of additional evidence was not covered under clause (a) to (d) of Rule 46A and no reasons have been recorded by the CIT(A) for admitting such additional evidence. The Ld. DR argued that the CIT(A) erred in not taking into consideration the findings of Hon'ble Rajasthan High Court in the case of CIT vs. Bhaval Synthetics India, 81 taxmann.com 478 wherein, it was held that interest earned on FDRs kept in bank as margin money for obtaining LOC to purchase machinery was taxable as income from other sources and that the CIT(A), Bathinda has not considered the findings of Hon'ble Supreme Court in the case of Conventional Fasteners vs. CIT, 94 taxmann.com 80 wherein, the finding of the Hon'ble Uttarakhand High Court

that interest income earned from FDRs kept as security and as a business pre requisite had nothing to do with carrying on business, were upheld. He pleaded that the impugned order be set aside.

8. The Ld. Counsel heavily relied upon the impugned order. He contended that the Ld. CIT(A) has been justified in granting relief to the appellant assesse. He argued that no fresh evidence was filed to be admitted by the Ld. CIT(A) and thus, the allegation of admission of additional evidence is factually incorrect. He has filed a paper book and written synopsis in support of the contentions raised at the time of hearing before the bench. The relevant part is reproduced as under:

**1.** The present appeal has been filed by the department against the order of CIT(A), Bathinda, in appeal no. 454/2019-20 vide order dated 29.11.2019.

**2.** The CIT(A), Bathinda allowed the following reliefs in the appeal filed by the assessee against the **order u/s 143(3) dated 28.12.2018** of the DCIT Circle-1, Bathinda.

2.1 The Grounds of Appeal raised by the Department and the relevant findings of the CIT(A) have been discussed alongwith findings of the CIT(A) & further rebuttal to the grounds of appeal as under:

| S.No. | Grounds of Appeal raised by the AO | Finding of the CIT(A)/Rebuttal of the assessee |
|---|---|---|
| 1. | (6) The CIT(A) has erred in not recording whether the findings are based on additional evidence produced by the assessee and admitted by the CIT(A), which was in | Rebuttal of the assessee<br><br>The grounds of appeal on the issue of the alleged violation of the provisions of Rule 46A is vague because of the wording |

| | | |
|---|---|---|
| | violation of Rule 46A of the Rules as such production of additional evidence was not covered under clause (a) to (d) of rule 46A and no reasons have been recorded by the CIT(A) for admitting such additional evidence. | "whether the findings are based on additional evidence produced by the assessee".<br><br>The CIT(A) has based his findings on the bills of entry as an evidence for physical delivery of goods on which the complete particulars of the name of the importer/end user has been mentioned. [Page 17 of CIT(A) order]<br><br>The invoices issued by the exporter/bill of lading/bill of entry uploaded by the assessee during the course of assessment proceedings is in paper book-2(Pg-1-62) alongwith the evidence of uploading the same during the course of assessment proceedings.<br><br>In view of the above stated facts, no additional evidence has been submitted, before the CIT(A)during the course of appellate proceedings, by the assessee. |
| 2. | (3) The CIT(A) has erred in holding that the AO was not justified in invoking provisions of Section 145(3) of the Act disregarding the fact that the assessee failed to submit the documents as required by the AO due to deduce correct profits of the assessee. | Findings of the CIT(A)<br><br>[Page 31of the CIT(A) order]<br><br>The CIT(A), has given the following finding under the heading Decision<br><br>*"It is observed that the AO had applied the provisions of section 145(3) and after rejecting the books of accounts he bifurcated the expenses relating to edible oil and pesticides business without pointing out any defect in the books of account. It is admitted fact that the appellant had maintained books of accounts of the business carried out by him and the same were audited by a CA and the tax audit report along with audited accounts was placed before the AO in the assessment proceedings, but no specific defect was pointed out in the books of accounts. Merely because the appellant did not submit separate trading and profit and loss account for purchase and sale of edible oil and pesticides, it cannot be said to be specific defect for rejecting the books of accounts and the case of the assessee is covered by the decision of Hon'ble Punjab and Haryana High Court in the case of CIT vs. Smt.Salochana Bhatia 20 taxmann.com 298 and in the case of CIT vs. Om overseas(2009) 315 ITR 185 [P&H].* |

| | | |
|---|---|---|
| | | *In these circumstances the rejection of books of account without any basis is unsustainable and the rejection of books of accounts u/s 145(3) of the Act is dismissed."*<br><br>Rebuttal of the assessee<br><br>That since no specific defects have been pointed out by the Assessing officer and, as such, the whole basis of rejection of books of account is on presumptions, conjectures and on surmises and, thus, the Ld. CIT (A) has rightly held that the books of accounts are not liable to be rejected. |
| 3. | (1) The CIT(A) has erred into taking into consideration the findings of Hon'ble Supreme Court in Davenport & Co. (P) Ltd. vs. CIT, (1975) 100 ITR 715, Nirmal Trading Co. vs. CIT (1980) 121 ITR 54, and Jute Investment Co. Ltd. vs. CIT (1980) 121 ITR 56 wherein it was held that the transaction of transfer to delivery notes as speculative. | The CIT(A) has distinguished the judgments of Supreme Court relied upon by the AO on Page 18-19 of the appellate order and all three cases relied upon by the AO has been discussed in detail.<br><br>The finding of the CIT(A) [Page 19 of the order] *"Therefore in all the three cases relied upon by the Assessing Officer it was categorically held that only the delivery orders exchanged hands and there was no physical and actual delivery of goods. But that was not the case in the case of the appellant where physical delivery of goods had taken place from the seller to edible oil by loading the same into the ship and edible oil was sold by the assessee to the subsequent buyer being a trader or end user and the delivery of such edible oil was taken by the end user from the port in India by submitting the bill of entry at the time of taking delivery."*<br><br>The CIT(A) has relied on the judgment of Andhra Pradesh High Court in the case of Laxminarayana trading co. (1995) 82 taxman 301(AP) in which it has been held that where the seller transfers possession of the goods by parting with the commodity either by putting the commodity on the carrier, rail or any other transport, and on the way the purchasers sells the commodity to some third party, the purchase by the first purchaser cannot be treated as speculative |

| | | |
|---|---|---|
| | | transactions. [Page 19 -21 of CIT(A) order].<br><br>The CIT (A) has also relied on the judgment of SripalSatyaPal vs. ITO [2008] 217 CTR 337 (Raj.) in which it has been held that catch lies in the fact of taking the physical delivery of the goods by the assessee is not the test for determining the speculative transaction in terms of section 43(5) but the test is settlement of the transaction entered into by the assessee or on his behalf otherwise than by actual delivery of the commodity [Page 21-24 of CIT(A) order].<br><br>The CIT(A) has also relied on the judgment of Calcutta High Court in the case of HoosenKasam Dada (India) Ltd. vs. CIT(1964) 52 ITR 171 in which the speculative transactions has been defined to me where there is no delivery under a settlement contract, it is speculative transaction. On the other hand, however speculative the transaction might be, if there is delivery, it cannot be considered to be a speculative transaction.<br><br>SECTION 43(5)<br><br>Speculative transactions means a transaction in which a contract for the purchase or sale of any commodity, including stocks and shares, is periodically or ultimately settled otherwise than by the actual delivery or transfer of the commodity or scripts.<br><br>Facts relating to transactions of edible oil during High Seas<br><br>(<u>Relevant documents filed in Paper book-2 pages-1-62</u>)<br><br>• The AO treated the transaction of edible oil carried on by the assessee as speculative transaction within the meaning of section 43(5) because according to the |
| | (2) The CIT(A) has erred in holding that the transactions under took by the assessee are not speculative in nature disregarding the definition of speculative transaction provided by section 45(3) of the Act. [Section 43(5) as the section has been mentioned wrongly.] | |

| | | |
|---|---|---|
| | | AO the assessee did not take actual delivery of goods.<br>• The assessee made two type of transactions and in the first type of transactions the entity making export of goods from outside India transfers the possession, to the assessee as importer, by parting with the edible oil/goods by loading the same into ship and the assessee sold the same to the subsequent buyer and delivery of such edible oil/goods was taken by the end user from the port of arrival in India, and after paying taxes by such end user the port authority issued bill of entry to the end user.<br>• In the second type of transaction the assessee purchased edible oil/goods from the first importer [entity who purchased the edible oil/goods from exporter] while edible oil/goods was in transit in the ship and the delivery of such edible oil/goods was taken by the end user at the port of arrival in India to whom bill of entry is issued by the port authority.<br>• The invoice issued by the exporter & the bill of entry has been uploaded during the course of assessment proceedings to prove the actual delivery of the goods.<br><br>Hence in both the cases the transaction was settled by the actual delivery of the goods received by the 1st buyer and the ultimate buyer i.e. the end user and the transaction of edible oil/goods could not be branded as speculative transaction.<br><br>Findings of the CIT(A)<br><br>The CIT(A) has discussed the submissions of the assessee from Page 3 to 15 of the assessment order and the findings under the head Decision from Page 14 to 25 of the |

| | | |
|---|---|---|
| | | assessment order.<br><br>The CIT(A) has given the finding on Page 25 of the order that the import of edible oil by the assessee from exporter outside India is not speculative as the edible oil was loaded in the ship by seller of goods which amounts to physical delivery of the goods taken by the buyer i.e., appellant as an importer.<br><br>It has been further held by the CIT(A) that the edible oil has been purchased by the assessee while in transit and the appellant has sold the same to the subsequent buyer on High Seas and the physical delivery of the goods has been taken by the end user for which the evidence has been placed on record.<br><br>The CIT(A) has given the finding on Page 24 that the fact of taking the physical deliver of the goods by the assessee is not the test for determining the speculative transaction in terms of section 43(5) but the test is settlement of the transaction entered into by the assessee or on his behalf otherwise than by actual delivery of the commodity or scrips.<br><br>The CIT(A) after relying on the judgments of Andhra Pradesh High Court in the case of CIT vs. Lakshminarayana Trading Co(1995) 82 Taxman 301(AP)/ Rajasthan High court in the case of SripalSatypal vs. ITO (2008) 217 CTR [Raj] and Calcutta High Court in the case of HoosenKasam Dada(India) Ltd. vs. CIT (1964) 52 ITR 171has held on Page 27 that it is held the transactions of trading in edible oil by the appellant are not speculative in nature within the meaning of section 43(5) of the Act. Accordingly, the business loss incurred by the appellant is eligible for set off against other income in terms of the provisions of |

| | | |
|---|---|---|
| | | section 71(1) of the Act.<br><br>Rebuttal of the assessee<br><br>The CIT(A) has held the transactions of edible oil by the assessee during high seasasnon-speculative as against treatment of the same by the AO as speculative as defined u/s 43(5) of the Income Tax Act, 1961 for which the facts of the case brought on record by the assessee, during the course of appellate & assessment proceedings, to prove that the actual delivery of the goods was taken by the assessee in the ship as importer & by the end user at the time of arrival in India has been discussed threadbare by the CIT(A).<br><br>The CIT(A) has distinguished the judgements of Apex Court relied on by the AO & has also given the detailed reasons for following judgements as cited by the assessee. |
| 4. | (4) The CIT(A) erred in holding that the interest earned on FDRs and other interest had an immediate nexus with the business of the assessee without appreciating that the assessee failed to prove how the interest earned on FDRs and other interest related to his business activities despite the fact that he was specifically required to prove it during assessment proceedings. | Findings of the CIT(A)<br><br>With regard to theinterest on FDR pledged with bank for foreign letter of credit, CIT(A) has given the finding on Page 28 and has relied on the judgment of Delhi High Court in the case of CIT vs. Koshika Telecom Ltd.(2006) 287 ITR 479 in which the judgment of Apex Court in the case of CIT vs. Karnal Coop Sugar Mills Ltd (2001) 118 Taxman 489 (SC) has been followed and it has been held that the interest earned by the assessee from fixed deposits is inextricably linked to the business of the assessee of trading of edible oil as the fixed deposits have been kept a security for the purpose of obtaining foreign letter of credit from the bank. |

| | | |
|---|---|---|
| | (5)The CIT(A) has erred in holding that there is direct nexus between interest income and business activities without giving any clear findings as to how such nexus has been proved in the instant case. | With regard to interest income from the parties amounting to Rs. 1,30,41,800, the findings of the CIT(A) is at page 31 of the order as under:-<br><br>*"Since, the purchase and sale of edible oil by the appellant has been held while deciding the ground of appeal no.1 above to be non-speculative in nature and not hit by the provisions of u/s 43(5) of the act, therefore, the 'other interest of income' of the assessee amounting to Rs. 1,20,41,800/- is allowed to be set off u/s 71 (1) of the Act against the loss arising to the appellant from the business of the appellant of purchase/sale of edible oil."* |
| | (7) The CIT(A) erred in not taking into consideration the findings of Hon'ble Rajasthan High Court in the case of CIT vs. Bhaval Synthetics India, 81 taxnabb.com 478, wherein, it was held that interest earned on FDRs kept in bank as margin money for obtaining LOC to purchase machinery was taxable as income from other sources. | The finding of the CIT(A) is on Page 28 in which it has been held that the judgment of Bhawal Synthesis India 81 Taxman 478 is distinguishable on facts because the Rajasthan High Court has relied on the Apex Court in the case of Tuticorin Alkali Chemicals and Fertilizers Ltd. vs. CIT (1997) 227 ITR 172 but Delhi High Court in the case of Koshika Telecom Ltd.(2006) 287 ITR 479 relied on the judgments of Apex Court in the case of Karnal Coop Sugar Mills Ltd (2001) 118 Taxman 489 (SC) in which it has been held that interest from deposit of margin money with the banks inextricably linked with the requirement of furnishing of bank guarantee of the assessee is income from business as compared to the interest from the deposits which is on account of parking of surplus funds with the bank to render the interest and from the same exigible to tax as income from other sources. |
| | (8) The CIT(A), Bathinda erred in not taking into consideration the findings of Hon'ble Supreme Court in the case | The CIT(A) has distinguished the judgment of Apex Court in the case of Conventional Fasteners vs. CIT 94 taxmann.com 80 on Page 28 of the order and it has been held |

| | | |
|---|---|---|
| | of Conventional Fasteners vs. CIT 94 taxmann.com 80 wherein, the findings of the Hon'ble Uttarakhand High Court that interest income earned from FDRs kept as security and as a business pre-requisite had nothing to do with carrying on business, were upheld. | that the judgment of the Apex Court is not applicable to the facts of the case because the case before the Apex Court related to claim of deduction u/s80IC and it has been held by the Apex Court that the interest earned from the fixed deposit kept as security had nothing to do with carrying on of business of manufacture and sale of electric meter and the assessee was not entitled to deduction u/s 80IC.<br><br>Rebuttal of the assessee<br><br>During the course of assessment proceeding, it was stated before the AO that the goods imported by it are backed up with LC [letter of credit] and that FDR made by it was not surplus FDR but as per bank's term, it uses to make FDR as cash margin against these LCs opened against the import of goods and that the income arising out from these FDRs is its operative income and business income. [Para Page 3 of the Assessment order]<br><br>In the following cases it has been held by the various courts that the interest from fixed deposits which is inextricably linked to the business of the assessee is income from business income & not income from other sources.<br><br>CIT vs. Koshika Telecom Ltd.[2006] 287 ITR 479 (Delhi)<br><br>CIT vs. Karnal co-op Sugar Mills Ltd. [2001] 118 Taxman 489 (SC)<br><br>CIT vs. Bokaro Steel Ltd. [1999] 102 Taxman 94 (SC)<br><br>CIT vs. Shri Ram Honda Power Equip's case [2007] 158 Taxman 474 (Delhi)<br><br>CIT vs. Karnal Co-op Sugar Mills Ltd. [1999] |

| | | |
|---|---|---|
| | | 102 Taxman 11 (P&H)<br><br>Lalsons Enterprises vs. DCIT [2004] 89 ITD 25 (Delhi)<br><br>CIT vs. Shahi Export House [2010] 195 Taxman 163 (Delhi)<br><br>With regard to interest from parties, the same is also linked to the business of the assessee. Even otherwise, since there is current year loss in the business of edible oil, the loss is liable to be adjusted against the business income derived from this and for this the reliance is placed on the findings of the CIT(A) reproduced above. |

9. We have the heard rival contentions, perused the relevant material on record, impugned order, written submissions and case law cited before us.

10. The revenue one of the major objection is regarding alleged violation of the provisions of Rule 46A of Income Tax Rules 1962. The Ld. DR argued that the CIT(A)'s findings are based on additional evidence produced in violation of Rule 46A of the Rules as not covered under clause (a) to (d) of rule 46A and no reasons have been recorded by the CIT(A) for admitting such additional evidence. The Ld. AR in rebuttal submitted that the issue of the alleged violation of the provisions of Rule 46A is vague because of the wording used are "whether the findings are based on additional evidence

produced by the assessee". The counsel contended that the CIT(A) has based his findings on the bills of entry as an evidence for physical delivery of goods on which the complete particulars of the name of the importer/end user has been mentioned. [Page 17 of CIT(A) order]. This fact is further supported by the invoices issued by the exporter/bill uploaded by the assessee and lading/bill of end user, during the course of assessment proceedings (APB-2, Pgs.1-62) alongwith the evidence of uploading the same during the course of assessment proceedings. Thus, the allegation of the department as regards to admission of additional evidence in violation of Rule 46A of the Income Tax Rules, is factually incorrect. Hence, this ground is dismissed.

11. The next issue raised argued by the Ld. AR is that the CIT(A) erred in holding that the AO was not justified in invoking provisions of Section 145(3) of the Act, disregarding the fact that the assessee failed to submit the documents as required by the AO. The CIT(A) on the issue of rejection of books of accounts categorically observed that the AO had applied the provisions of section 145(3) and rejected the books of account without pointing out any defect in the books. It is admitted fact that the appellant had maintained books of accounts of the business carried out by him and the same were audited by a CA and the tax audit report along with audited

accounts was placed before the AO in the assessment proceedings, but no specific defect was pointed out in the books of accounts. Merely because the appellant did not submit separate trading and profit and loss account for purchase and sale of edible oil and pesticides, it cannot be said to be specific defect for rejecting the books of accounts and the case of the assessee is covered by the decision of Hon'ble Punjab and Haryana High Court in the case of CIT vs. Smt. Salochana Bhatia 20 taxmann.com 298 and in the case of CIT vs. Om overseas (2009) 315 ITR 185 [P&H]. In view of the matter, we hold that the rejection of books of account is without any basis. Since, there have been no specific defects pointed out by the Assessing officer and, as such, the whole basis of rejection of books of account is on presumptions, conjectures and surmises and, thus, the Ld. CIT (A) has rightly held that the rejection of books of accounts u/s 145(3) of the Act is not liable to be rejected and thus, in our view, the rejection of books of account in such manner is unsustainable. This ground of revenue is rejected.

12. The Ld. CIT(A) has distinguished the judgments of Supreme Court relied upon by the AO on Page 18-19 of the appellate order and all three cases relied upon by the AO has been discussed in detail. The CIT(A) has observed on Page 19 of the impugned order as under:

> *"Therefore in all the three cases relied upon by the Assessing Officer it was categorically held that only the delivery orders exchanged hands and there was no physical and actual delivery of goods. But that was not the case in the case of the appellant where physical delivery of goods had taken place from the seller to edible oil by loading the same into the ship and edible oil was sold by the assessee to the subsequent buyer being a trader or end user and the delivery of such edible oil was taken by the end user from the port in India by submitting the bill of entry at the time of taking delivery."*

13. The CIT (A) has also relied on the judgment of "Sripal Satya Pal vs. ITO", [2008] 217 CTR 337 (Raj.) in which it has been held that catch lies in the fact of taking the physical delivery of the goods by the assessee is not the test for determining the speculative transaction in terms of section 43(5) but the test is settlement of the transaction entered into by the assessee or on his behalf otherwise than by actual delivery of the commodity. The CIT(A) has also relied on the judgment of Calcutta High Court in the case of "HoosenKasam Dada (India) Ltd. vs. CIT",(1964) 52 ITR 171 in which the speculative transactions has been defined to me where there is no delivery under a settlement contract, it is speculative transaction. On the other hand, however speculative the transaction might be, if there is delivery, it cannot be considered to be a speculative transaction.

14. As per Section 43(5) of the Act, the Speculative transactions means a transaction in which a contract for the purchase or sale of any commodity,

including stocks and shares, is periodically or ultimately settled otherwise than by the actual delivery or transfer of the commodity or scripts. The assesse has filed a paper book in support of the facts relating to transactions of edible oil on High Seas Transactions (APB-2, Pgs. (1-62). The AO treated the transaction of edible oil carried on by the assessee as speculative transaction within the meaning of section 43(5) because according to the AO the assessee did not take actual delivery of goods.

14.1 The assessee made two types of transactions. In the first type of transactions, the entity making export of goods from outside India, transfers the possession, to the assessee as importer, by parting with the edible oil/goods by loading the same into ship and the assessee sold the same to the subsequent buyer and delivery of such edible oil/goods was taken by the end user from the port of arrival in India, and after paying taxes by such end user the port authority issued bill of entry to the end user. In the second type of transaction the assessee purchased edible oil/goods from the first importer [entity who purchased the edible oil/goods from exporter] while edible oil/goods was in transit in the ship and the delivery of such edible oil/goods was taken by the end user at the port of arrival in India to whom bill of entry is issued by the port authority. The invoice issued by the exporter &

the bill of entry has been uploaded during the course of assessment proceedings to prove the actual delivery of the goods. Thus, in both the cases the transaction was settled by the actual delivery of the goods received by the 1st buyer and the ultimate buyer i.e. the end user. Meaning thereby, such transaction of edible oil/goods could not be branded as speculative transaction as per the definition of section 43(5) of the Act.

14.2 It is seen that the CIT(A) has stated on page 25 that the import of edible oil by the assessee from exporter outside India is not speculative as the edible oil was loaded in the ship by seller of goods which amounts to physical delivery of the goods taken by the buyer i.e., appellant as an importer. It has been further held by the CIT(A) that the edible oil has been purchased by the assessee while in transit and the appellant has sold the same to the subsequent buyer on High Seas and the physical delivery of the goods has been taken by the end user for which the evidence has been placed on record. The Ld. CIT(A) has categorically discussed on Page 24 that the fact of taking the physical delivery of the goods by the assessee is not the test for determining the speculative transaction in terms of section 43(5) but the test is settlement of the transaction entered into by the assessee or on his behalf otherwise than by actual delivery of the commodity

or scrips. For this finding, he relied on the judgments of Andhra Pradesh High Court in the case of CIT vs. Lakshminarayana Trading Co (1995) 82 Taxman 301(AP); Rajasthan High court in the case of Sripal Satypal vs. ITO (2008) 217 CTR [Raj] and Calcutta High Court in the case of Hoosen Kasam Dada(India) Ltd. vs. CIT (1964) 52 ITR 171. Accordingly, it is held that the transactions of trading in edible oil by the appellant are not speculative in nature within the meaning of section 43(5) of the Act. Therefore, the business loss incurred by the appellant is eligible for set off against other income in terms of the provisions of section 71(1) of the Act.

14.3 Considering the factual matrix and Judicial analysis of law, we find no infirmity or perversity in the finding of the Ld. CIT(A) in holding that the transactions of trading in edible oil by the appellant are not speculative in nature within the meaning of section 43(5) of the Act and therefore, the business loss incurred by the appellant is eligible for set off against other business income in terms of the provisions of section 71(1) of the Act. Thus, the grounds on the issue of speculative transaction and set off of business loss is rejected.

15. The Last issue is regarding the interest on FDR pledged with bank for foreign letter of credit. The Ld. CIT(A) has discussed the issue on Page 28

while relying on the judgment of Delhi High Court in the case of "CIT vs. Koshika Telecom Ltd.",(2006) 287 ITR 479 in which the judgment of Apex Court in the case of CIT vs. Karnal Coop Sugar Mills Ltd (2001) 118 Taxman 489 (SC) has been followed and it was held that the interest earned by the assessee from fixed deposits is inextricably linked to the business of the assessee of trading of edible oil as the fixed deposits have been kept a security for the purpose of obtaining foreign letter of credit from the bank.

15.1 However, regarding the interest income from the parties amounting to Rs. 1,30,41,800, the findings of the CIT(A) as given on page 31 of the order is as under:-

> *"Since, the purchase and sale of edible oil by the appellant has been held while deciding the ground of appeal no.1 above to be non-speculative in nature and not hit by the provisions of u/s 43(5) of the act, therefore, the 'other interest of income' of the assessee amounting to Rs. 1,20,41,800/- is allowed to be set off u/s 71 (1) of the Act against the loss arising to the appellant from the business of the appellant of purchase/sale of edible oil."*

The finding of the CIT(A) is on Page 28 in which it has been held that the judgment of Bhawal Synthesis India 81 Taxman 478 is distinguishable on facts because the Rajasthan High Court has relied on the Apex Court in the case of Tuticorin Alkali Chemicals and Fertilizers Ltd. vs. CIT (1997) 227 ITR 172 but Delhi High Court in the case of Koshika Telecom Ltd.(2006) 287 ITR

479 relied on the judgments of Apex Court in the case of Karnal Coop Sugar Mills Ltd (2001) 118 Taxman 489 (SC) in which it has been held that interest from deposit of margin money with the banks inextricably linked with the requirement of furnishing of bank guarantee of the assessee is income from business as compared to the interest from the deposits which is on account of parking of surplus funds with the bank to render the interest and therefore the same is exigible to tax as income from other sources.

15.2 The CIT(A) has distinguished the judgment of Apex Court in the case of Conventional Fasteners vs. CIT 94 taxmann.com 80 on Page 28 of the order by holding that the judgment of the Apex Court is not applicable to the facts of the case because the case before the Apex Court related to claim of deduction u/s80IC and it has been held by the Apex Court that the interest earned from the fixed deposit kept as security had nothing to do with carrying on of business of manufacture and sale of electric meter and the assessee was not entitled to deduction u/s 80IC.

15.3 It is evident from the Assessment Order that during the course of assessment proceeding, it was stated before the AO that the goods imported by it are backed up with LC [letter of credit] and that FDR made by it was not surplus FDR but as per bank's term, it uses to make FDR as cash margin

against these LCs opened against the import of goods and that the income arising out from these FDRs is its operative income and business income. [Para Page 3 of the Assessment order].

15.4 In view of the above factual discussion, and judicial precedent, we hold that the goods imported by the assessee are backed up with LC [letter of credit] and that FDR made by it was not surplus FDR but as per bank's term and hence, the interest from these fixed deposits which were inextricably linked to the business of the assessee would taxed as business income and not as income from other sources. Accordingly, the department ground no. 7 and 8 that interest earned on FDRs kept in bank as margin money for obtaining LOC and bank security for high Sea Business Transaction to be income from other sources as against business income are rejected.

15.5 So far as the interest from parties is concerned, the same cannot be said to be also linked to the business of the assessee. Even otherwise, since there was current year loss in the business of edible oil, the loss is liable to be adjusted against the business income derived from this year and for this reason, the Ld AR has no objection to our view that the interest from

the parties would be charged to tax under the head Income from other sources.

**I.T. A. No. 84/Asr/2020**

16. The facts in I.T.A. No. 84/Asr/2020 in are identical to the facts, in I.T.A. No. 56/Asr/2020. Therefore, our observation and finding given in I.T.A. No. 56/Asr/2020 shall be applicable in mutatis mutandis to the appeal in I.T.A. No. 84/Asr/2020.

17. In the backdrop of the aforesaid discussion, the department appeals in ITA No. 56/Asr/2020 and I.T.A. No. 84/Asr/2020 are disposed of in the terms indicated as above.

*Order pronounced in the open court on 23.02.2023*

| | |
|---|---|
| **Sd/-** | **Sd/-** |
| **(Anikesh Banerjee)** | **(Dr. M. L. Meena)** |
| **Judicial Member** | **Accountant Member** |

**GP/Sr./P.S.**

Copy of the order forwarded to:

(1)The Appellant
(2) The Respondent
(3) The CIT
(4) The CIT (Appeals)
(5) The DR, I.T.A.T.

True Copy

By Order