

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

**Before Shri George George K., Judicial Member
and**

Ms. Padmavathy S., Accountant Member

ITA Nos. 853 & 854/Coch/2022 (Assessment Years: 2013-14 & 2014-15)		
M/s. K.K. Abraham and Company 04/3450, M.G. Road Ernakulam 682035 PAN – AAIFK7488R	vs	The Income Tax Officer Non Corporate Ward 1(3) Kochi
(Appellant)		(Respondent)
Assessee by:	Shri Narayanan P. Potty, Advocate	
Revenue by:	Smt. J.M. Jamuna Devi, Sr. DR	
Date of hearing:	01.03.2023	
Date of pronouncement:	03.03.2023	

ORDER

Per: George George K., J.M.

These appeals at the instance of the assessee are directed against two orders of the CIT(A), both dated 11.07.2022. The relevant assessment years are 2013-14 & 2014-15. Common issues are raised in these appeals, hence, they were heard together and are being disposed off by this consolidated order.

2. Identical grounds are raised in both the appeals. The grounds raised read as follows: -

“1. The order of the Commissioner of Income Tax (Appeals), NFAC in so far as it is prejudicial to the appellant is erroneous in law, facts and circumstances of the case.

2. The Appellant Firm is a BPCL dealer doing the business of trading Petroleum products for the last 15 years. The incomes generated from the business were invested in Fixed Deposits at

Nationalized Banks. Nature of the business did not provide any avenue for capitalizing the surplus in the business other than depositing the same in FDR of reputed Banks. In this case the source of the interest income and destination of the interest income were the same Firm, it is quite natural that it is to be treated as Business gain.

3. The CIT (Appeals) ought to allow the Appellant firm to include the Interest income generated out of the deposits in the business profit of the firm for the purpose of determining the allowable deduction of partner's remuneration under Section 40(b) of the Income Tax Act, 1961

4. The CIT (Appeals) ought to have seen that Section 29 of the Act provides how the income from profit and gain of the business should be computed and this has to be done as provided under Section 30 to 43D. By virtue of Section 5 of the Act, that total income of any previous years includes all income from whatever source derived. For the purpose of Section 40(b) read with Explanation, there cannot be separate method of accounting for ascertaining the net profit and/or book profit. The said section nowhere provides that the net profit as shown in the profit and loss account, not the profit computed under the head 'profits and gains of business or profession'.

*5. The Appellant is relied on the decision of the Hon'ble Gujarat High Court in the case of **Commissioner of Income Tax vs. J J Industries** [{2013} 358 ITR 531(Guj)].The copy of the judgment is attached here as **Annexure A.**”*

3. The brief facts of the case are as follows: -

For assessment years 2013-14 & 2014-15 assessments were completed by disallowing portion of partners remuneration claimed under Section 40(b) of the Income Tax Act, 1961 (the Act) by Rs.1,50,000/- and Rs.2,24,216/- respectively. The assessee, in the return of income filed for AYs 2013-14 & 2014-15 had claimed remuneration to partners by including in the book profit the interest income. The Assessing Officer (AO) recalculated the remuneration of the partners by excluding interest income from book profit. Consequently the remuneration of the partners were restricted to Rs.1,50,000/- (claimed Rs. 3,00,000/- in the return) and Rs.1,20,740/- (claimed Rs.3,45,000/- in the

return) for AY s 2013-14 and 2014-15 respectively. The AO placed reliance on the judgement of the Hon'ble Rajasthan High Court in the case of CIT vs. M/s. Allen Career Institute reported in (2018) 403 IT 375. The relevant findings of the AO for AY 2013-14 is as follows: -

“2.3 Since the generation of interest income is not from normal business activities of the firm, it cannot be treated as income from business or profession. The judgement in the case of Commissioner of Income Tax, Kota vs. M/s. Allen Career Institute, issued on 12.09.2017 by the Hon'ble High Court of Rajasthan also held that the income which has been earned in the FDR cannot be considered as part of the income from business. Hence the same can only be considered under income from other sources and cannot be included in the book profit for computation of remuneration to the partners, thereby the book profit will be reduced to Rs.1,64,658/-. When there is such a reduction in the computation of book profit, the remuneration claimed by the assessee become in excess to the extent of Rs.1,50,000/-. The same is disallowed and added back to the total income for the assessee.”

4. Aggrieved by the orders completed for AYs 2013-14 and 2014-15 the assessee preferred appeals before the first appellate authority. The CIT(A) confirmed the view taken by the AO. The CIT(A) noticed that the judgement relied on by the assessee in the case of CIT vs. J.J. Industries reported in (2013) 358 ITR 531 (Guj.) was considered by the Hon'ble Rajasthan High Court in the case cited by the AO. The CIT(A) further noted that the Hon'ble Rajasthan High Court has distinguished the judgement of the Hon'ble Gujarat High Court relied on by the assessee. Therefore, the CIT(A) following the judgement of the Hon'ble Rajasthan High Court rejected the appeals of the assessee.

5. Aggrieved by the order of the CIT(A) the assessee filed the present appeals before the Tribunal. The learned A.R. relied on the grounds raised.

6. The learned D.R., on the other hand, supported the orders of the AO and the CIT(A).

7. We have heard the rival contentions and perused the material on record. The judgement relied on by the learned A.R. of the Hon'ble Gujarat High Court in the case of J.J. Industries (supra) is distinguishable on facts. The assessee in the said case was into the business of purchase of raw cotton and ginning the same which was a seasonal business. When the business is seasonal in nature the spare funds were invested and interest income was generated. Such interest income was declared as part of business income and the AO in the said case has accepted the same as business income. In such a situation the Hon'ble Gujarat High Court held that when the AO in the assessment order has taxed the interest income as business income, for the purpose of computation of remuneration paid to the partners under Section 40(b) of the Act, the AO cannot reduce such interest income. The Hon'ble Gujarat High Court held that there is no substantial question of law arising for its adjudication and the correctness of the Tribunal's view on the specific issue may be gone into in an appropriate case (refer 358 ITR 531 (Guj) at page 534). Whereas in the instant case the AO, for both the assessment years, have treated the interest income as income from other sources and not as income from 'business'. Moreover, the assessee in the facts of the instant case is not having seasonal business whereby the idle funds when not required is deployed for term deposits for treating it to be part of business income. In the facts of the instant case there is disconnect between earning of interest income and the business of the assessee per se. Therefore the judgement of the Hon'ble Rajasthan High Court relied on by the AO in the case of M/s. Allen Career Institute (supra) is applicable to the facts of the instant case. For the aforesaid reasons and the judgement of the Hon'ble Rajasthan High Court in the case of M/s. Allen Career Institute (supra) we uphold the view taken by the AO, which was confirmed by the CIT(A).

8. In the result, the appeals filed by the assessee are allowed.

Order pronounced in the open Court on 3rd March, 2023.

Sd/-
(Padmavathy S.)
Accountant Member

Sd/-
(George George K.)
Judicial Member

Cochin, Dated: 3rd March, 2023

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2. *The Respondent*
3. *The CIT(A) -NFAC, Delhi*
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By Order

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Assistant Registrar
ITAT, Cochin

n.p.