

आयकर अपीलीय अधिकरण, हैदराबाद पीठ
IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad 'B' Bench, Hyderabad

Before Shri R.K. Panda, Vice-President
AND
Shri Laliet Kumar, Judicial Member

आ.अपी.सं / **ITA No.745/Hyd/2019**
(निर्धारण वर्ष/Assessment Year: 2014-15)

Alakananda Hydro Power Company, Secunderabad PAN:AAFAC2081B	Vs.	Dy. C. I. T. Circle 1(1) Hyderabad
(Appellant)		(Respondent)
निर्धारिती द्वारा/Assessee by:	Advocate H. Srinivasulu	
राजस्व द्वारा/Revenue by::	Smt. Sheetal Sarin, DR	
सुनवाई की तारीख/Date of hearing:	18/01/2024	
घोषणा की तारीख/Pronouncement:	31/01/2024	

ORDER

Per R.K. Panda, Vice-President

This appeal filed by the assessee is directed against the order dated 28.02.2019 of the learned CIT (A)-1, Hyderabad relating to A.Y.2014-15.

2. Facts of the case, in brief, are that the assessee is a company engaged in the business of generation of power through hydel. It filed its return of income on 9.9.2014 declaring loss of Rs.(-)30,87,399/-. The case was selected for scrutiny and statutory notices u/s 143(2) and 142(1) of the Act were issued and served on the assessee calling for certain information. In response to the said statutory notices, the AR of the assessee

appeared before the Assessing Officer and filed the requisite details.

3. From the various details furnished by the assessee, the Assessing Officer noticed that the assessee has not yet commenced its business activities. From the balance sheet attached to the return of income, the Assessing Officer noted that the assessee has received interest income amounting to Rs.2,69,95,590/-. The Assessing Officer asked the assessee to explain as to why the interest income should not be taxed under the head "income from other sources" in view of the decision of the Hon'ble Supreme Court in the case of Tutoicorin Alkani Chemicals and Fertilizers Ltd vs. CIT (227 ITR 0172). In absence of any objection from the assessee, the Assessing Officer held that the interest earned by the assessee from investment of the borrowed funds in short term deposits would be chargeable to tax under the head "income from other sources". He accordingly treated the interest income of Rs.2,69,95,590/- as income from other sources.

4. In appeal, the learned CIT (A) upheld the action of the Assessing Officer. She, however, noted that such interest income received for the impugned A.Y was at Rs.1,67,93,342/- and therefore, directed the Assessing Officer to restrict the addition of Rs.1,67,93,342/- by observing as under:

5.3 I have carefully considered the facts of the case, assessment order and the submissions of the appellant. The Assessing Officer adopted interest income at Rs.2,69,95,590/- as per balancing figure as on the year ended on 31.03.2013. But during this FY year ended on 31.03.2014, the interest received was FY Rs.1,67,93,342/-. As per the details, it is found that the appellant has excess amounts of deposits in the bank account and earned interest thereon. Therefore, interest earned is clearly falls under 'other income'. Since the facts are different and case laws relied upon by the appellant are different, the addition made by the Assessing Officer is correct. However, the interest income earned for this year ending on 31.03.2014 is Rs.1,67,93,342/-, the same to be adopted as Other income. Hence the addition is confirmed to the extent of Rs.1,67,93,342/- as 'other income'.

5. Aggrieved with such order of the learned CIT (A) the assessee is in appeal before the Tribunal by raising the following grounds:

"1.The Order of the Commissioner of Income Tax (Appeals)-1, Hyderabad dated 28-02-2019 is erroneous, contrary to law and facts of the case.

2. The Commissioner of Income Tax (Appeals) is not justified in confirming the action of the Assessing Officer in bringing to tax interest of Rs.1,67,93,342/- earned on deposits made by the Appellant as Income from Other sources. Commissioner of Income Tax (Appeals) ought to have seen that interest earned on fixed deposits made out of borrowed funds on which substantial interest was paid which is more than the interest earned and therefore interest earned is to be set off against interest incurred during the year but could not be considered as income.

3. For all of the above and such other grounds as may be urged at the time of hearing it is most respectfully prayed that this Hon'ble Tribunal may be pleased to allow the appeal and suitable directions be issued to the Assessing Officer not to bring to tax interest of Rs.1,67,93,342/-."

6. The assessee has also raised the following additional grounds:

"(1) Ld A.O failed to appreciate that the interest income of Rs 1,67,93,342 was "Inextricably linked" with the setting up of Hydropower Project and was a capital receipt.

(2) Ld A.O failed to appreciate that the borrowed funds and the capital of the appellant were placed in the "Permitted Investments" for a maximum period of 180 days or requirement of funds for the project construction, whichever is earlier, and had no option to choose the investments as per terms and conditions of Escrow Loan Agreement with the Banks and the Financial Institutions dated 30-03-2016.

(3) Ld A.O failed to appreciate that the assessee had no power to utilize the interest income in any manner, other than using it for the construction of the power project and credit the income to the loan account as per the terms of the Escrow Loan Agreement with the Banks and the Financial Institutions dated 30-03-2016.

(4) Ld A.O failed to appreciate that 'no surplus' funds were deposited with the Banks to earn any interest or other income. The term loans were taken from time to time to meet the increased cost of the project on account of factors beyond the control of the assessee. Interest incurred by the assessee was a sum of Rs 405.19 Cr and the Interest received was a sum of Rs 1.67 Cr. No Surplus funds were deposited in the Fixed deposits with the Banks.

(5) Ld A.O and Ld CIT(A) failed to appreciate that the ratio laid down by the Hon'ble Supreme Court in Tuticorin Alkali Chemicals and Fertilisers Ltd 227 ITR 172 does not apply to the facts of the assessee.

(6) Without prejudice, Ld A.O failed appreciate that Hon'ble Apex court in Tuticorin Alkali did not rule out the allowability of deduction U/s 57 i.e interest payable."

7. The learned Counsel for the assessee referring to the above additional grounds submitted that these are purely legal in nature and no fresh facts are required to be investigated since all material facts necessary for adjudication of the above grounds are available on record. Referring to the decision of the Hon'ble Supreme Court in the case of NTPC Ltd reported in 229 ITR 383 and Jute Corporation of India Ltd reported in 187 ITR 688, he submitted that the additional grounds raised by the assessee should be admitted for adjudication.

8. The learned DR, on the other hand, strongly objected to the admission of the additional grounds.

9. After hearing both sides and in view of the decision of the Hon'ble Supreme Court in the case of NTPC Ltd reported in 229 ITR 383 and Jute Corporation of India Ltd reported in 187 ITR 688, the request of the assessee for admission and adjudication of the additional grounds are accepted.

10. The learned Counsel for the assessee submitted that the assessee filed the original return of income on 9.9.2014 declaring Nil total income which was revised on 25.9.2015 by declaring loss of Rs.(-)30,87,400/-. He submitted that the assessee is in the business of construction of 330MW Hydro Power Project on Alaknanda River, Uttarakhand. During the relevant A.Y 2014-15, the project was under construction. He submitted that initially the cost of the Hydro Power Project was for a sum of Rs.2069 crores and the loan component was a sum of Rs.1494 crores. The assessee has availed foreign currency loan of USD 40 Million. Due to certain unavoidable reasons, the project got delayed and the project cost increased from 2069 crores to Rs.5083 crores. The learned Counsel for the assessee referred to the first loan agreement dated 03.08.2007 with the Banks and a power purchase agreement with UP Govt. entered on 28.06.2006 and submitted that the agreement with the Banks and Financial Institutions were amended and restated as and when loans increased from the initial amount. He submitted that during the impugned A.Y, the assessee has received interest on FDRs with the Bank of Rs.1,32,88,045/- and interest on Electricity Security Deposit of Rs.35,05,297/- both totaling to Rs.1,67,93,342/-. As against the above, the assessee has paid Rs.405.19 crores to various financial institutions and banks. Referring to the copy of the assessment order, he submitted that the Assessing Officer has wrongly mentioned at para 2 of the order that the assessee has

not objected to the proposal. He further observed that the assessee has not commenced the business activity during the year and the total interest income has been mentioned by the Assessing Officer at Rs.2,69,95,590/-.

11. The learned Counsel for the assessee submitted that the assessee has reduced the interest income to Rs.1,67,93,342/- from the pre-operative expenditure of Rs.471.11 crores incurred during the previous year since the interest income was inextricably linked with the construction of the power project.

12. Referring to the various decisions, he submitted that the ratio of Tuticorin Alkali (Supra) is not applicable to the facts of the present case for the following reasons:

“(A) There was no surplus funds with the appellant. The Contractors of the project regularly sought the payments for the work done and usually the appellant had time of 2 to 3 months. In the Interregnum period, with the permission of the Lenders, investments was made in "the permitted Investments" and the appellant had no choice in selecting the investments.

(B) The Appellant cannot use the interest income as it liked. Compulsorily, such income was to be credited to the loan account with IDBI Bank and was used for the construction of the project.

(C) In Tuticorin Alkali, the Hon'ble Apex Court did not decide about the allowability of deduction of interest U/s 57 as that issue was not before the Hon'ble Court. The Appellant alternatively claims the interest paid as

deduction u/s 57 from the Interest Income of Rs 1.67cr.

(D) The Appellant submits that the interest income is "inextricably linked" with the construction of the Hydro Power Project and the funds are efficiently used for the reduction of the project cost.

13. The learned Counsel for the assessee further submitted that there was no accrual of income to the assessee and the right to receive vested with the lenders and income was to be compulsorily credited to the project loan account. Thus, it is a capital receipt and does not partake the nature of revenue as the business was not set up during the previous year.

14. Referring to the following decisions, he submitted that the interest income is not chargeable to tax during the previous year when such receipts are inextricably linked with the construction of the Hydro Power Project and go to reduce the cost of the project and such interest income is in the nature of capital receipts:

- (1) Bokaro steel Ltd- 236 ITR 315 (SC)
- (2) Karnal Cooperative Sugar Mill Ltd - 243 ITR 2 (SC)
- (3) Karnataka Power Corporate -247 ITR 268 (SC)
- (4) Shree Rama Multi Tech Ltd 403 ITR 426 (SC)
- (5) Indian oil Panipat Power consortium Ltd -315 ITR 255 (Del)
- (6) Adani Power Ltd -ITAT, (Ahm) -61 Taxmann.com 355
- (7) VGR Foundations - 298 ITR 132 (Mad)

- (8) Bank Note paper Mill India (P) Ltd- 56ITR (Trib) 266 (ITAT, Bang)
- (9) Prayag Raj Power Generation Co Ltd - 158 ITD 509, ITAT (Luck)
- (10) Facor Power Ltd - 380 ITR 474 (Del)
- (11) Beas Valley Corporation Ltd-ITA:1274 to 1277/Chd/ 2016 ITAT (Chd)
- (12) TO Vs KSK Wind Energy, ITAT, 'A' Bench, Hyderabad - ITA No: 1098 to 1105/Hyd/2017.

15. The learned Counsel for the assessee also filed a petition under Rule 29 of the ITAT Rules for filing of certain additional evidences which is in the shape of loan agreements with banks and financial institutions.

16. The learned DR, on the other hand, heavily relied on the order of the Assessing Officer and the learned CIT (A).

17. We have heard the rival arguments made by both the sides, perused the orders of the AO and the learned CIT (A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us by both sides. We find the AO in the instant case made addition of Rs. 2,69,95,590/- being the interest income received by the assessee during the year treating the same as “income from other sources” by relying on the decision of the Hon'ble Supreme Court in the case of Tutoicorin Alkani Chemicals and Fertilizers Ltd vs. CIT (227 ITR 0172). We find the learned CIT (A) while upholding the order of the Assessing Officer restricted such amount to Rs.1,67,93,342/- on the basis of correct figure as per the financial statement. It is the submission of the learned Counsel for the

assessee that such interest income is inextricably linked with the construction of the power project which would go to reduce the cost of the project by efficiently and effectively using the fund for reduction of the cost of the project. It is also his argument that the ratio of the decision of the Hon'ble Supreme Court in the case of Tutoicorin Alkani Chemicals and Fertilizers Ltd vs. CIT (Supra) is not applicable to the facts of the present case in view of the fact that such interest income is inextricably linked with the construction of the Hydro Electric Project. It is also his submission that the Assessing Officer has wrongly mentioned that the assessee has not objected to the treatment of such interest income as "income from other sources". We find the various arguments advanced by the learned Counsel before the Tribunal were never raised before the lower authorities. The agreement with the financial institutions which are filed before us as additional evidence were not considered by the lower authorities. Further, the order of the learned CIT (A) which has already been reproduced in the earlier paragraph is very cryptic one. Considering the totality of the facts of the case and in the interest of justice we deem it proper to restore the issue to the file of the Assessing Officer with a direction to re-adjudicate the issue in the light of the agreement now produced before the Tribunal for the first time and which goes to the root of the matter. Needless to say, the Assessing Officer shall give due opportunity of being heard to the assessee and decide the issue as per fact and law. We hold and direct accordingly. The grounds raised by the assessee are accordingly allowed for statistical purposes.

18. In the result, appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the Open Court on 31st January, 2024

Sd/- (LALIET KUMAR) JUDICIAL MEMBER	Sd/- (R.K. PANDA) VICE-PRESIDENT
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Hyderabad, dated 31st January, 2024

Vinodan/sps

Copy to:

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2	Dy.CIT, Circle 1(1) Hyderabad
3	Pr. CIT – 1, Hyderabad
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order