

**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 Nos.812/Hyd/2019**  
(निर्धारण वर्ष / Assessment Years: 2014-15)

Agarwal Industries (P) Ltd, Hyderabad PAN:AACCA0094R (Appellant)	Vs.	Income Tax Officer Ward -1 (2) Hyderabad (Respondent)
राजस्व द्वारा/Revenue by:	Smt. K. Haritha, CIT(DR) and Smt. Sheetal Sarin, DR	
निर्धारिती द्वारा/Assessee by:	Shri Sunil Kumar Jain, CA	
सुनवाई की तारीख/Date of hearing:	19/03/2024	
घोषणा की तारीख/Pronouncement:	22/03/2024	

**आदेश/ORDER**

**Per Laliet Kumar, J.M**

ITA 812/Hyd/2019 for the A.Y 2014-15 filed by the assessee is directed against the order dated 8.02.2019 of the learned CIT (A)-1 Hyderabad.

2. The assessee has raised the following concise grounds:

*"1. The Order of the Ld. CIT Appeals dt. 08.02.2019 in ITA NO. 250/2017-2018 is contrary to law and facts.*

***Addition of Rs. 6,61,00,000 as estimated notional interest***

2. The Ld. Commissioner erred in upholding the addition made by Assessing Officer of Rs. 6,61,00,000 towards estimated notional interest on money's advanced by the appellant to Agarwal Agri & Steel Private Limited. The said amount cannot be treated as income of the appellant company.

3. The Ld. Commissioner erred in considering the above amount as income. The prospect of receiving any interest from the borrowing company is remote as the borrowing company is in losses and is in financial distress. In the facts and circumstances there is no accrual of income much less any notional interest income taxable in the appellant's hands.

4. The Ld. Commissioner erred in assuming rate of interest paid by the appellant on the loans borrowed by it as ranging between 12 to 16%. The Learned Commissioner should have seen that the average cost of borrowing of the appellant company was ranging around 5.04%.

**Disallowance of Employees Contribution to PF Rs. 3,74,400**

5. The Ld. Commissioner erred in not considering the ground relating to disallowance of Employees contribution to PF. The said amount was paid with a minor delay and that too before the due date for filing of Income Tax return. Hence, no disallowance is called for and the same is allowable u/s 37(1) of the Income Tax Act, 1961.

**Disallowance of interest levied for belated filing of TDS returns.**

6. The Ld. Commissioner erred in not considering the ground relating to deduction of interest of Rs. 1,10,661/- being interest levied for late filing of TDS returns, as business expenditure u/s 37 (1) of the Income Tax Act.

**Enhancement of Income Ordered by CIT(A)-Rs. 6,31,27,644 and Rs.7,83,011/-**

7. The Ld. Commissioner erred in directing that the interest on fixed deposit of Rs. 6,31,27,044/- and Rs. 7,83,011/- to be taxed as to be taxed as Income from Other Sources and not as business Income.

8. The Ld. Commissioner erred in not considering that if the above amounts is to be assessed as "Income from Other Sources", it should be deleted from Computation of income

*under the head "Income from Business". In such an event the income from business being Loss should be set off against income from Other Sources in the same Asst. Year. There is therefore no need to order any enhancement.*

*9. The Ld. Commissioner while ordering enhancement omitted to consider that the business income has to be recomputed and the business loss should be set off against income from other sources. The said enhancement ordered is erroneous and uncalled for.*

*10. The appellant craves leave, to add to, amend or alter any of the above grounds as the occasion may require."*

3. With regard to the ground of appeal No.1 to 5 regarding Addition of Rs. 6,61,00,000/- as estimation of notional interest is concerned, the learned AR submitted that the Assessing Officer added a sum of Rs.6,61,00,000/- as notional interest on amounts lent by the assessee to Agarwal Agri Steel (P) Ltd. From the accounts statement submitted in the written submission, it could be seen that the opening balance of Rs.80,52,42,674/- as on 1.4.2013 is made up of sales made by the assessee to Agarwal Agri Steel Pvt Ltd amounting to Rs.34,01,34,798/-. To this extent of sales made, the transaction is covered by the commercial expediency being sister company and the assessee has not charged any interest keeping the long-term business interests in mind. Moreover, during the financial year 2014-15 an amount of Rs.75,22,50,000/- has been returned.

4. Rejecting the arguments advanced by the assessee, the Assessing Officer added an amount of Rs.6,61,00,000/- on the ground that the loans given by the assessee to its sister concern

M/s. Agarwal Agri & Steel (P) Ltd was estimated at 16% and made addition of Rs.6,61,00,000/-.

5. In appeal, the learned CIT (A) upheld the addition made by the Assessing Officer on the loans given by the assessee to its sister concern at 16%.

6. The assessee also relied upon the decision of the Hon'ble Supreme Court in the case of SA Builders vs. CIT (A) reported in 288 ITR 1, according to which no notional interest is chargeable to Rs.34,01,34,798/- and there is apparent mistake on the part of the Assessing Officer in making the addition.

7. The LD.AR had submitted that the assessee was having interest free fund available which were more than the amounts advanced by the assessee to its sister concern. It was submitted that the interest free fund available with the assessee were as under:

<u>Particulars</u>	<u>Amount</u>
Share capital	9,10,11,130
Reserves & Surplus (excluding Revaluation Reserve)	52,12,64,333
Interest-free unsecured loans	<u>10,93,14,911</u>
Total	<b>72,15,90,374</b> =====

7.1 It was submitted that the approach of the learned CIT (A) is contrary as he failed to take into account the balance sheet of the assessee and has wrongly held the notional interest rate @16%.

7.2 Per contra, ld.CIT (DR) drew our attention to the balance sheet of the assessee and he has drawn our attention to note 9, 12 and 13 to the balance sheet and submitted that if we take into account the above details, then it is amply clear that the assessee was not having the interest free loan available with it. The ld.DR further submitted that the assessee has accepted the addition @ 8% in the previous year i.e 2012-13 & 2013-14, therefore, the principle of consistency is required to be applied.

8. Per contra, ld.AR submitted that the contention of the ld. LD.AR is not correct and for that purpose he has drawn our attention to the Paper Book filed and it is the submission of the assessee that the assessee was having the interest free fund available with it.

9. We have heard the rival contention of the parties and perused the material available on record. The issue of adding the notional interest in the hands of the assessee in case the assessee is having own funds and interest free funds which were advanced to its sister concern, is no more res integra and the hon'ble Supreme Court in the case of South Indian Bank Ltd vs. CIT (2021) 10 SCC 153 had examined this issue and held as under:

*17. In a situation where the assessee has mixed fund (made up partly of interest free funds and partly of interest-bearing funds) and payment is made out of that mixed fund, the investment must be considered to have been made out of the interest free fund. To put it another way, in respect of payment*

*made out of mixed fund, it is the assessee who has such right of appropriation and also the right to assert from what part of the fund a particular investment is made and it may not be permissible for the Revenue to make an estimation of a proportionate figure. For accepting such a proposition, it would be helpful to refer to the decision of the Bombay High Court in Pr. CIT v. Bombay Dyeing & Mfg. Co. Ltd. [IT Appeal No. 1225 of 2015, dated 28-11-2017], where the answer was in favour of the assessee on the question, whether the Tribunal was justified in deleting the disallowance under section 80M of the Act on the presumption that when the funds available to the assessee were both interest free and loans, the investments made would be out of the interest free funds available with the assessee, provided the interest free funds were sufficient to meet the investments. The resultant SLP of the Revenue challenging the Bombay High Court judgment was dismissed both on merit and on delay by this Court. The merit of the above proposition of law of the Bombay High Court would now be appreciated in the following discussion.*

**18.** *In the above context, it would be apposite to refer to a similar decision in CIT v. Reliance Industries Ltd. [2019] 102 taxmann.com 52/261 Taxman 165/410 ITR 466 (SC), where a Division Bench of this Court expressly held that where there is finding of fact that interest free funds available to assessee were sufficient to meet its investment it will be presumed that investments were made from such interest free funds.*

**19.** *In HDFC Bank Ltd. v. Dy. CIT [2016] 67 taxmann.com 42/383 ITR 529 (Bom.), the assessee was a Scheduled Bank and the issue therein also pertained to disallowance under section 14A. In this case, the Bombay High Court even while remanding the case back to Tribunal for adjudicating afresh observed (relying on its own previous judgment in same assessee's case for a different Assessment Year) that, if assessee possesses sufficient interest free funds as against investment in tax-free securities then, there is a presumption that investment which has been made in tax-free securities, has come out of interest free funds available with assessee. In such situation section 14A of the Act would not be applicable. Similar views have been expressed by other High Courts in CIT v. Suzlon Energy Ltd. [2013] 33 taxmann.com 157/215 Taxman 272/354 ITR 630 (Guj.), CIT v. Microlabs Ltd. [2017] 79 taxmann.com 365/[2016] 383 ITR 490 (Kar.) and CIT v. Max India Ltd. [2016] 75 taxmann.com 268/388 ITR 81 (Punj. & Har.). Mr. S Ganesh the learned Senior Counsel while citing these cases from the High Courts have further pointed out that those judgments have attained finality. On reading of these judgments, we are of the*

*considered opinion that the High Courts have correctly interpreted the scope of section 14A of the Act in their decisions favouring the assessees.*

*20. Applying the same logic, the disallowance would be legally impermissible for the investment made by the assessees in bonds/shares using interest free funds, under section 14A of the Act. In other words, if investments in securities is made out of common funds and the assessee has available, non-interest-bearing funds larger than the investments made in tax-free securities then in such cases, disallowance under section 14A cannot be made.*

10. In light of the above, it is settled that in case the assessee is having own funds and interest-free funds available, no addition can be made in the hands of the assessee. However, in the present case, the availability of own funds and free interest funds were disputed by the Assessing Officer/CIT(A) and ld.DR, whereas the assessee has submitted that it has interest-free funds available. . Therefore, we deem it appropriate to remand back this issue to the file of the Assessing Officer with a direction to examine the availability of funds with the assessee at the time of lending to its sister concern. If on verification it is found by the Assessing Officer that the assessee was having own funds and interest free funds, then the Assessing Officer shall delete the addition. Hence, this issue is allowed is statistical purposes.

11. The ground of appeal No.5 & 6 on the disallowance of contribution to PF of Rs.3,74,440/- is concerned, the assessee submitted that there was a minor delay in the deposit of the employee's contribution to PF for a few months and the same was discharged with applicable interest and charges as per the relevant fact.

12. We have heard the rival contentions and perused the record. It is an admitted fact that an amount of Rs. 3,74,440/- being employees' contribution to PF and has not been deposited on or before the due dates provided under the respective Acts but has been deposited before the due date of filing of the return of income. We find the issue now stands decided against the assessee by the decision of the Hon'ble Supreme Court in the case of Checkmate Services (P) Ltd vs. CIT vide civil appeal No.2833 of 2016 order dated 12th October 2022, wherein the Hon'ble Supreme Court has held that if the Employees' contribution to PF & ESI are not deposited before the statutory due dates mentioned in the respective Act, the same cannot be allowed as a deduction. Since admittedly, the assessee, in the instant case, has not deposited the Employees' Contribution to PF before the statutory due dates but has deposited the same before the due date of filing of the return of income, therefore, the learned CIT (A) was fully justified in upholding the addition/disallowance made by the Assessing Officer. Respectfully following the decision of the Hon'ble Supreme Court in the case of Checkmate Services (P) Ltd (Supra), this ground raised by the assessee is dismissed.

13. With regard to ground of appeal No.6, the assessee submitted that the Learned CIT (A) erred in not considering the ground relating to deduction of interest of Rs. 1,10,661/- being interest levied for late filing of TDS returns, as business expenditure u/s 37 (1) of the Income Tax Act.

14. The Id.AR relied upon the written submissions filed by the assessee and he relied upon the decision of the Kolkata Tribunal in the case of DCIT vs. M/s Narayani Ispat Pvt Ltd. Per contra, the Id.DR relied upon the provision of section 2(28A) r.w.s. 36 of the I.T. Act. She had also relied upon the decision of the Hon'ble Madras High Court in the case of Chennai Properties.

15. We have heard the rival contentions and perused the material available on record. This very issue came for our consideration in the case of M/s. Analogics Tech India Ltd vs. DCIT in ITA No.247/Hyd/2023, order dated 8.9.2023. This being, while considering the scope of section 2(28A) r.w.s. 37/36/201 and other provisions of the Act have held that the interest payable on TDS is not an allowable expenditure. Therefore, respectfully following our own decision in the case of Analogics Tech India Ltd (Supra), we dismiss this ground by the assessee.

16. With regard to ground of appeal No. 7 to 10 regarding enhancement of income Ordered by learned CIT(A)- at Rs. 6,31,27,644 and Rs.7,83,011/-are concerned, The Ld. Commissioner erred in not considering that if the above amounts is to be assessed as "Income from Other Sources", it should be deleted from Computation of income under the head "Income from Business". In such an event the income from business being Loss should be set off against income from Other Sources in the same Asst. Year. Thus, no need to order any enhancement and the Ld. CIT (A) while ordering enhancement omitted to consider that the

business income has to be recomputed and the business loss should be set off against income from other sources. The said enhancement ordered is erroneous and uncalled for.

17. The Id.AR in this regard relied upon the written submissions filed and drew our attention to the written submissions. In this regard the written submissions of the assessee mentioned as under:

The Appellant Company also submits that the weighted average rate of interest and commission charges on the sanctioned limits of Cash credit and Letter of credit lies in the range on 2% -3%. However, the interest rate on the actual amounts borrowed lies between 3%-5%. Hence, the estimated exorbitant interest of 16% is unjustified, unwarranted and groundless.

We would like to reiterate that the amount advanced to sister concerns was in the course of furtherance of business and purely out of the Appellant company's own and interest free funds. As such, no addition of interest should be made. The Appellant prays that the addition of Rs. 6,61,00,000/- made should be deleted.

The aforementioned facts clearly indicate that the Assessing Officer made an incorrect decision by imposing interest at an excessively high rate, without duly considering the facts, explanations, and documents provided by the Appellant. Moreover, the assessing officer has merely presumed that the Appellant is diverting interest bearing funds to its sister concerns. This action appears to be driven by an intention to harass the Appellant rather than a genuine effort to assess the revenue.

**4. Addition in Interest Income on fixed deposit to be assessed as "income from other sources"**

It is submitted that the CIT (A) has erroneously classified Interest received under the head "Income from Business" to "Income from Other Sources".

We would like to bring to your attention that the interest under consideration is the Interest on Fixed Deposits (FD). It has to be noted the said Fixed Deposit is kept as LC Margin Money with various banks where the appellant has CC Facility as well as LC facility.

When the assessee has to open an LC for purchase of material, he has to deposit 10%-15% of the amount as margin money by way of fixed deposit.

The fixed deposits with the banks serves as LC Margin Money. These deposits fluctuate throughout the year, with the LC Margin Money being transferred from the CC account to the FD account. Therefore, the bank charges interest on the amount withdrawn from the CC Account and gives Interest on the FD Account.

As such these FDs are for business only. Any income earned on these FDs is business income which is rightly reflected by the assessee in his accounts and offered to tax.

We would like to bring to your attention the order upheld by the Amritsar Bench of the Income-tax Appellate Tribunal in the matter of DCIT vs. G. G. Continental Traders (P.) Ltd -

*"The investment in fixed deposit of the assessee were duly utilized for formation of letter of credit in relation to the foreign transaction. In the export and import, the I.T.A. Nos.506/Asr/2019 investments are utilised in short term investment and there is no such any fix time of investment related to generation of the interest out of the said investment. We also relied on the order of the ITAT, Amritsar Bench. Accordingly, the order passed by the Id. CIT(A) is not required for any intervention related interest issue. Accordingly, ground taken for the issue of interest by the revenue is dismissed."*

**For AGARWAL INDUSTRIES PVT**

Similarly, in the present case the interest earned by the taxpayer on fixed deposit receipts (FDRs) kept with the bank as margin money for letter of credit is taxable as business income and not as Income from Other Sources.

In the matter of M/s M. K. Industries vs. The Asst. Commissioner of Income Tax, Circle 15(2), the appellant had argued that bank interest on bank deposit kept as margin money should be treated as normal business income. The Hon'ble ITAT, Mumbai Bench in the above matter had passed the following order-

*"Assessee before us claim that bank and FD interest of Rs.2,87,874/- received during the financial year 2008-09 relevant to the assessment year 2009-10 pertains to FD kept as margin money for issuing letter of credit and bank guarantee for carrying out general business transactions and hence interest earned as in the nature of business income. Therefore, it was argued that interest on bank deposit should be treated as normal business income*

.....

*Respectfully following the same we allow the claim of the assessee and direct the AO to allow the claim of the assessee."*

The appellant submits that the interest expense on the LC Margin money is an integral part of business expenses, therefore the income derived from it should be recognized as business revenue. Since, such a facility is in the course of furtherance of business and forms a part of the activities of business of the appellant, it should be considered as a Business Revenue.

The appellant further submits that the interest earned on fixed deposits was related to the business of the taxpayer and it was not a case of surplus and idle funds of the taxpayer having been invested or parked in FDs of long or short term maturity.

Additionally, even if this interest were to be considered as part of "Income from other Sources," it should be excluded from "Income from Business" to prevent the unjust imposition of double taxation on the taxpayer.

We would like to bring to your attention that Section 71 of the Income Tax Act, 1961:

*"(2) Where in respect of any assessment year, the net result of the computation under any head of income, other than "Capital gains", is a loss and the assessee has income assessable under the head "Capital gains", such loss may, subject to the provisions of this Chapter, be set off against his income, if any, assessable for that assessment year under any head of income including the head "Capital gains" (whether relating to short-term capital assets or any other capital assets)."*

It has to be noted that the Business Loss will be set off against such "Income from other Sources" as per the Section 71 of the Income Tax Act stated above and the Total income of the assessee will remain the same. Such a reclassification of Interest Income will have no effect on the Total Income and Tax Liability of the Appellant

Considering the above the Appellant requests that the order of the Ld. CIT (A) be dismissed all allow the appellant's appeal.

Your Honour is requested to consider the above mentioned facts and allow the appeal of the appellant.

**For AGARWAL INDUSTRIES PVT. LTD**

18. The learned DR relied upon the orders passed by the lower authorities.

19. We have heard the rival contention and perused the material available on record. It is the case of the assessee that the deposits made in the Bank/Electricity Board were intrinsically related to the business of the assessee and it was necessary to deposit the amounts with the said institution and therefore, the income earned from the said deposit was integral and essential part of the business activities of the assessee. We do not find any quarrel with the above said submission of the assessee. However, we are of the considered opinion it is for the assessee to demonstrate as to how much amount was deposited with the Institutions which were necessary for carrying out the business activities of the assessee and how much interests were earned on such deposits. Since the above said relevant information is not available on record, therefore, we deem it appropriate to remand back the matter to the file of the Assessing Officer, with a direction to verify as to how much interest was earned by the assessee on account of compulsorily deposit of the amount with the said institution/Board. If the Assessing Officer on verification found that the assessee was required as a pre-conditions to deposit the amounts with the said Institution/Board, then the Assessing Officer shall allow the interest which is attributable to such deposits. With the above said the ground of the assessee is allowed for statistical purposes.

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

Order pronounced in the Open Court on 22<sup>nd</sup> March, 2024.

**Sd/-**

**Sd/-**

<b>(R.K. PANDA) VICE-PRESIDENT</b>	<b>(LALIET KUMAR) JUDICIAL MEMBER</b>
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Hyderabad, dated 22<sup>nd</sup> March, 2024

***Vinodan/SPS***

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3	Pr. CIT -1, Hyderabad
4	DR, ITAT Hyderabad Benches
5	Guard File

*By Order*