

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ ' बी ', अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
" B " BENCH, AHMEDABAD

BEFORE MS. SUCHITRA KAMBLE, JUDICIAL MEMBER
AND
SHRI WASEEM AHMED, ACCOUNTANT MEMBER

ITA No.644/Ahd/2023
Assessment Year : 2015-16

The DCIT Central Circle-3 Vadodara	Vs	BTW Atlanta Transformers India Pvt.Ltd. 3 rd Floor, Shreeji Complex Vasana Bhaili Road Opp. Taksh Complex Vadodara - 390 015
PAN:AAECB 9579 N		
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
Assessee by :		Shri Dhanesh Bafna & Shri Amol Mahajan, CA
Revenue by :		Shri Sudhendu Das, CIT-DR

सुनवाई की तारीख/Date of Hearing : 01/04/2024
घोषणा की तारीख /Date of Pronouncement: 10/04/2024

आदेश/O R D E R

PER MS. SUCHITRA KAMBLE, JUDICIAL MEMBER

This appeal is filed by the Department against the order dated 16/06/2023 passed by the Commissioner of Income-tax (Appeals)-12, Ahmedabad ["CIT(A)" in short] for Assessment Year (AY) 2015-16.

2. Grounds of appeal taken by the Department are as under:

"1) On the facts and in the circumstance of the case and in law, the Ld.CIT(A) has erred in allowing the claim of interest income of Rs.3,40,38,900/- holding that the same are as capital receipts and ignoring the fact that interest income of FDs is assessable under the head 'income from other sources' as held by the Hon'ble Supreme Court in the case of CIT Vs. Autokast Ltd. [2001] 116 Taxman 244 (SC) and despite the fact that the assessee itself declared the interest income as taxable income in the return of income.

2) On the facts and in the circumstances of the case and in law, the Ld.CIT(A) has erred in following the order of the ITAT without considering the fact that the assessee has not show any nexus between the funds borrowed and the specific investment to be made of it, retaining it to be in the nature of surplus funds.

3) The appellant craves to add, amend, alter, substitute, modify the above ground of appeal, raise any new ground of appeal, if necessary, either before or during the course of the hearing of the appeal on the basis of submissions to be made. On the facts and in the circumstances of the case and in law, the Ld.CIT(A)-12, Ahmedabad ought to have upheld the order of the Assessing Officer.

4) It is, therefore, prayed that the order of the ld.CIT(A) may be set aside and that the Assessing Officer may be restored to the above extent."

3. The brief facts of the case are that the assessee-company filed its return of income for Asst.Year 2015-16 on 30/09/2015 declaring total income under normal provisions at Rs.1,73,64,470/- and Book Profit u/s.115JB of the Income Tax Act, 1961 (hereinafter referred to as "the Act") of Rs.1,95,34,645/-. The case was selected for scrutiny assessment and a notice u/s.143(2) and u/s.142(1) of the Act was issued on 19/09/2016. Further, on change of incumbent notice u/s.142(1) r.w.s.129 of the Act was issued on 28/06/2017 calling for details. The assessment was completed u/s.143(3) on 29/11/2017, wherein the Assessing Officer computed the

total income of Rs.3,18,68,730/- and book profit u/s.115JB of the Act of Rs.1,95,34,645/-.

4. Being aggrieved by the assessment order, the assessee filed the appeal before the Ld.CIT(A). The Ld.CIT(A) partly allowed the appeal of the assessee.

5. The Ld.DR submitted that the assessee-company had itself shown the interest income of Rs.3,40,38,900/- on FDs as taxable in its return of income. Under the circumstances, it was not proper for the Ld.CIT(A) to hold that the said "interest income" was in the nature of "capital receipt".

6. The Ld.AR submitted that an identical issue was involved in assessee's own case for AYs 2013-14 & 2014-15 and the Ld.ITAT Ahmedabad Bench "B" had held in ITA Nos.1642 & 1643/Ahd/2018 vide order dated 06/03/2020 that the interest income earned on Fixed Deposits pertaining to prior period commencement of business of the assessee should be treated as "capital receipt". Thus, the issue is squarely covered in favour of assessee by the earlier decision of the Tribunal.

7. We have carefully considered the submissions of both the sides. It is found that an identical issue was involved in the appellant's own case for the AYs 2013-14 & 2015-16 before the Tribunal, which was decided in favour of assessee vide order dated 06/03/2020(supra). The operative part of the said order is as under:

“In the light of the above facts and after considering the various judicial pronouncements of the Hon’ble High Courts and Co-ordinate Benches of the ITAT as cited above, we consider that the impugned interest receipt by the assessee company is related to the prior period to commencement of business which is in nature of capital receipt and was required to be set off against pre-operative expenses. Therefore, first ground of appeal of the assessee for treating expenses to the amount of Rs.2,33,36,037/- as revenue expenditure is dismissed. However, the alternative ground of appeal of the assessee for treating the interest income earned on fixed deposit pertaining to prior period commencement of business is allowed by treating the impugned interest income as capital receipt which is adjusted against pre-operative expenses of the assessee. Therefore, the alternative ground of appeal of the assessee is allowed.”

7.1. There is no dispute to the fact that the business activities of the assessee-company had not commenced in the FY 2014-15 as well. The Assessing Officer has given a categorical finding, in this regard, in the assessment order itself. Thus, the interest earned on FDs during the year was prior to commencement of business of the assessee-company and was in the nature of “capital receipt” as held in the assessee’s own case in the AYs 2013-14 & 2014-15. The objection of the Department is that the assessee had not shown any nexus between the funds borrowed and the specific investment made by it, is not found relevant as such nexus has to be examined in the year in which the investments were made for the first time. In the present case, the investments were made in the earlier years that is continuing in the current year and the assessee-company is deriving interest income on the Fixed Deposits made by it in the earlier years. Respectfully following the decision of the Co-ordinate Bench in the AYs 2013-14 & 2014-15, we hold that the interest income earned on Fixed Deposits pertaining to the prior period commencement of business was in the nature of “capital receipt”. As held in that year the preoperative expenses of the assessee has to be adjusted with this “capital receipt” and only the balance expense, if

any, need to be amortized as per provisions of Section 35D of the Act. Accordingly, the Ld.CIT(A) had rightly allowed the claim of the assessee.

8. In the result, the appeal filed by the Department is dismissed.

Order pronounced in the Court on 10th April, 2024 at Ahmedabad.

Sd/-

**(WASEEM AHMED)
ACCOUNTANT MEMBER**

Sd/-

**(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

Ahmedabad, Dated 10/04/2024

टी.सी.नायर, व.नि.स./T.C. NAIR, SK. PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)-12, Ahmedabad
5. विभागीय प्रतिनिधि,आयकर अपीलीय अधिकरण ,राजकोट/DR,ITAT, Ahmedabad,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित //True Copy//

सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण, ITAT, Ahmedabad