



IN THE INCOME TAX APPELLATE TRIBUNAL, 'B' BENCH LUCKNOW



BEFORE HON'BLE SHRI G. D. PADMAHSHALI, ACCOUNTANT MEMBER

AND

HON'BLE SHRI SUBHASH MALGURIA, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.264 & 265/LKW/2020

निर्धारण वर्ष / Assessment Year : 2013-14 to 2014-15

Sangam Power Generation Company Ltd,
Sector – 128, Gautam Budh Nagar,
Noida, UP-201304
PAN: AAKCS8971P

..... अपीलार्थी / *Appellant*

बनाम / V/s.

The Income Tax Officer,
Ward-6(1), Lucknow, UP-226001

..... प्रत्यर्थी / *Respondent*

द्वारा / Appearances

Assessee by : Mr B. P. Yadav ['Ld. AR']

Revenue by : Mr Sanjeev Krishna Sharma ['Ld. DR']

सुनवाई की तारीख / Date of conclusive Hearing : 10/07/2024

घोषणा की तारीख / Date of Pronouncement : 19/09/2024

आदेश / ORDER

Per G. D. Padmahshali, AM;

1. This Two alike appeals have been instituted by the assessee against separate first appellate orders of Commissioner of Income Tax(Appeals)-2, Lucknow ['CIT(A)' hereinafter] passed u/s 250 of the Income Tax Act, 1961 ['Act' hereinafter] both dt. 22/06/2020 anent to assessment year 2013-14 & 2014-15 ['AY' hereinafter].

2. Since facts & issue involved in both these appeals are common & identical, on rival party's request, for sake of convenience & brevity these are heard together for being disposed of by way of common & consolidated order.



3. Succinctly stated the common facts of the case are that;

3.1 The Sangam Power Generation Company Ltd [‘SPGCL’ hereinafter] is an unlisted public company registered under the erstwhile Companies Act, 1956 and wholly owned subsidiary company of Jai Prakash Power Ventures Ltd [‘JPPVL’ hereinafter]. The assessee has been incorporated by its Parent company to construct/setup a thermal power project [‘Project’ hereinafter] of 1980MW at tehsil Karchana in Uttar Pradesh as per the direction of State Government of Uttar Pradesh [‘UP-Gov’ hereinafter].

3.2 For several reasons as emanating from statement of facts narrated before us it deciphered that work on thermal project could not be proceeded even after making prerequisite deposit with UP-Gov and payment of compensation for land acquisition. As a result, project under installation and preoperational activities are in progress in the years under adjudication. The assessee has confirmed that all the aforestated payments were met from the equity capital raised by it for the sole purpose of Project.

3.3 For the conduct of business, the assessee was contractually obligated to furnish a bank guarantee to a third party / vendor and it was an indispensably necessary for the assessee to provide margin money in the form of deposits to seek bank guarantee from bank/financial institution. Hence the assessee opened a Term Deposit Receipt [‘TDR’ hereinafter] and obtained bank guarantee to meet its business expediency.



3.4 The assessee earned interest income on the aforesaid TDR in both the assessment years. The interest income earned/accrued on such TDR was recorded/treated by the assessee as a capital receipt and consequently debited to preoperative expenses. In effect, the pre-operative expenses were reduced to that extent.

3.5 The Ld. AO began the assessment by issuing a notice u/s 143(2) of the Act followed by the notice u/s 142(1) of the Act. After considering the submissions of the assessee the Ld. AO brought to tax the interest earned on such TDR as the income of the assessee under the head of 'Income from Other Sources' u/s 56(2) of the Act. Thus, the Ld. AO thereby denied the assessee's claim to treat the same as 'capital receipt' so as to allow the assessee to reduce from its pre-operative expenses.

4. Aggrieved assessee contested the aforestated treatment unsuccessfully in separate appeals before the first appellate authority. Further aggrieved, the assessee came in present twin appeal on four argumentative grounds which are inconsonance with rule 8 of Income Tax Appellate Rules, 1963, hence reproduction thereof in verbatim is dispensed with. However, for the purpose of our adjudication the Ld. AR Mr Yadav averred that, these common grounds are collectively directed against action treating the interest earned on TDR as 'Revenue Receipt' as against the treatment given by assessee as 'Capital Receipt'.



5. Thus, the sole & substantive question in present twin appeals revolves around determination of true character of interest earned on TDR.

6. The Ld. AR Mr Yadav adverting to co-ordinate bench decision & judgment of Hon'ble jurisdictional High court rendered for preceding assessment years has candidly submitted that, the similar dispute in assessee's own case came for adjudication in ITA No. 357/Luck/2015 and 358/Luck/2015 for the AY 2011-12 & 2012-13, wherein the coordinate bench had positively upheld the assessee's contention of reducing the interest earned on the TDR from the cost of the project instead of taxing it as an income under section 56 of the Act. The abstract from the order is reproduced for reference;

"In our considered opinion, source of income and head of income are two different things and these should not be mixed up. In a given case, there may be one source of income giving rise to incomes taxable partly under one head and partly under a different head and in another case, there may be more than one source of income but all giving rise to income which are taxable under one head only. Source of income in the present case is the industrial undertaking for generation of power being set up by the assessee and all the funds, which are available with the assessee at its disposal are arranged by the assessee for that purpose. A chart showing cost of project and means of finance is available on page no. 62 as per which total project



cost is Rs. 10,780 crores to be financed by equity of Rs. 2,698 crores I.e. 25% of total project cost and debt Rs. 8,085/- crores I.e. 75% of total project cost. Till 31/03/2011, the assessee has arranged total funds of Rs. 1378.97 crores and the same was used till that date on account of purchase of land, computers and furniture, on account of advance for land and supplier for capital equipment , short term FD with bank and the balance amount was left with bank in current account. Hence, it is seen that the entire funds available with the assessee company are in respect of this project being set up by the assessee company being generation of power and FD income is earned by temporary deployment of this fund of this business undertaking and not of any surplus funds not needed for this business undertaking and, therefore, source of income is this project only. The source of income and head of income should not be mixed up because both are different. Any income arising out of a source of income can be taxable under different heads because if the business is set up and commenced then the income from operation is taxable under the head income from business and if after set up of the business, the assessee is left with surplus funds and such surplus fund is used in earning interest income, then such interest income shall be taxable under the head income from other sources and if surplus fund is used for making investment then any income on sale of such investment will be taxable under the head income capital gain but source of income for all these



*income taxable under these three different heads is same I.e. business undertaking. Hence, in the facts of the present case, where the entire funds available with the assessee company is in respect of the business undertaking being set up by the assessee company, previous year will start only after the setting up of the business undertaking and not before that and the interest income from the GD is not an independent source of income de horse the business undertaking because the earning of interest income is not the object of the assessee company and the funds were not arranged by the assessee company for earning interest income and therefore, the previous year in the facts of the present case will start on setting up of the business and thereafter, if the assessee is having any interest income then the same will be taxable under the head income from other sources and after the commencement of the business, the income from operation will be taxable under the head income from business but it cannot be said that interest income is a separate and new source of income de horse the business undertaking and therefore, the previous year in respect of interest income starts on the date of purchase of FD. In our considered opinion, **on the date of purchase of FD, no new source of income has come into existence because in our considered opinion, the source of income is business undertaking and therefore, requirement of starting of previous year in the facts of the present case is setting up of business which has not happened till 31/03/2011 in the present case***



and therefore, any income from this source cannot be brought to tax before the setting up of business is completed resulting into start of the previous year". (Emphasis supplied)

7. It is further averred that although the assessee emerged victorious in its appeal to Tribunal, the course of events ended up by the decision of Hon'ble Jurisdictional High Court which in overturned the order of Ld. Co-ordinate bench by conclusively settling the issue in favour of Revenue and against the assessee in the very same case in IT Appeal No. 87 & 88 of 2016. While ceasing the disputed subject matter in favour of Revenue, the Hon'ble Jurisdictional High Court placing reliance on the binding decision of Hon'ble Apex Court came conclude the issue vide para 17-18 as;

17. We find that issue raised in this appeal is squarely covered by three judges judgment of Supreme Court in Tuticorin Alkali Chemical and Fertilizers Ltd. Vs. ITC, 1997 (6) SCC 117. Therein company was incorporated on 03.12.1971 and commenced business on 31.06.1982. It has taken term loan from various banks and financial institutions but substantial amount of borrowed funds, which was not immediately required by Company was kept invested in short-term deposits with banks. For the A.Y 1982-83 (financial year 1981-82) , Assessee received a total amount of interest of Rs. 2,92,440 and disclosed the said amount as "income from other sources". Company then disclosed a business loss of Rs. 3,21,802 and after setting off interest income



against business loss, it claimed benefit of carry forward of net loss of Rs. 29,360/-. Subsequently revised return was filed by company, claiming a business loss of Rs. 3,21,802/- and with respect to interest income, it claimed that it will go to reduce pre- production expenses, therefore, interest income was not exigible to tax. A.O rejected this claim and CIT (A) confirmed the view of A.O. Tribunal also rejected appeal of company. Supreme Court also confirmed the aforesaid view. It confirmed Madras High Court's decision in [Commissioner of Income Tax Vs. Seshasayee Paper and Boards Ltd](#) 1985 (156) ITR 542, that interest earned by Assessee on investment of share capital in call deposits, even before production commenced, would be assessed separately under the heads "Other sources". Contrary view taken by Andhra Pradesh High Court in [Commissioner of Income Tax Vs. Nagarjun Steels Ltd](#) 1988 Tax LR 973 (AP), by Orrisa High Court in [Commissioner of Income Tax Vs. Electrochem Orrisa Ltd](#) 1995 Tax LR 911 (Orrisa) and Bombay High Court in [Commissioner of Income Tax Vs. Maharashtra electro smelt Ltd](#) 1995 Tax LR 1002 (Bombay) was overruled. Court also referred to a decision of this Court in [Kedar Narain Singh Vs. Commissioner of Income Tax](#) 1938 6 ITR 157 (ALL) holding "anything which can properly be described as income is taxable under the Act unless expressly exempted". Following the above principle, Court held that interest earned by Assessee is clearly its income and unless it can be shown that any provision like [Section](#)



10 has exempted it from tax, it will be taxable. The fact that source of income was borrowed money does not detract anything from Revenue character of receipt. Further giving **the reason as to why interest earned on deposit can be held taxable**, in Tuticorin Alkali Chemical (supra) Court said :-

"The question of adjustment of interest payable by the Company against the interest earned by it will depend upon the provisions of the Act. The expenditure would have been deductible as incurred for the purpose of business if the Assessee business had commenced. But that is not the case here. The Assessee may be entitled to capitalise the interest payable by it. But what the Assessee cannot claim is adjustment of this expenditure against interest assessable under Section 56. Section 57 of the Act sets out in its Clauses (i) to (iii) the expenditures which are allowable as deduction from income assessable under Section 56. It is not the case of the Assessee that the interest payable by it on term loans are allowable as deduction under Section 57 of the Act"
(emphasis added)

18. **Similar view** has been taken by Delhi High Court in Commissioner of Income Tax Vs. Mereena Creations 2011 (330) ITR 199 (Delhi), Supreme Court in Totgar's Co-operative Society Ltd Vs. Income Tax Officer (2010) 322 ITR 283 (SC) and by **this Court in ITA No. 186 of**



2000, Commissioner of Income Tax Vs. M/s Brij Bhusan Lal and Sons decided on 20.07.2012 wherein, Court in para-17 of judgment, has said as under:-

"After hearing learned counsel for the parties and considering the judgments cited by them, we are of the opinion that in view of the clarification made by the Supreme Court in [Totgar's Co-operative Society Ltd's](#) case (supra), in the present case the interest on the FDRs cannot be treated as income from profits and gains of business. The word 'income' has been defined in [Section 2 \(24\) \(i\)](#) of the Act to include 'profits and gains'. Sub-section is an inclusive. The business profits have been specifically included in the word 'income'. The assessee-company had invested the surplus funds, which were not immediately required by it, in FDRs, which were later on encashed and used for expansion of business. The deposits made by the company were not in the regular course of business, nor it was the business of the company to make deposits and earn interest. The interest income cannot be said to be attributable to the activities of the company. **The interest had accrued on the funds, which were not immediately required by the assessee-company for its business purposes and which were invested in FDRs.** The assessee company is engaged in the business of manufacture of oxygen and nitrogen gas; re-rolling of steel; and fabrication of railway wagons. The surplus profits retained by the company were kept in FDRs. The interest earned on such



income was not earned out of business regularly carried out by the assessee company". *(Emphasis supplied)*

8. Having taken note of settled position of law on the subject matter of dispute the bench thought fit to proceed to conclude the present vanilla proceeding as the facts of the present twin appeals are indifferent and without an iota of doubt former judicial binding precedent convincingly and potentially applicable verbatimly until out of the blue a critical fact pressed to our attention by the Ld. AR during the course of closure. The Ld. AR revealed the root cause behind the opening of TDR with the banker and submitted that ‘the assessee was under an obligation to facilitate business expediency by way of furnishing a bank guarantee towards execution of contract and/or for supply of equipment and materials. And for the issuance of such bank guarantee the assessee was requiring obligatory to give/provide margin money in the form of deposits with the bank which were then lien marked for the purpose.’ This crucial fact though was on record right from the beginning was however neither brought to the notice during the course of assessment proceeding or in first appellate proceedings. Therefore, it is prayed to do a double take on the dubious subject matter by a remand to the first appellate authority if not the assessing officer as the same was never considered by tax authorities below. It is also averred that; in the preceding years where the former subject ultimately decided against the assessee the



former crucial & influencing fact was also there on record & but remained to be agitated at all levels of adjudications including before the Hon'ble Court.

9. In support of payer for remand Ld. AR submitted that this imperative fact is very much on record but is presented for the very first time in the present twin appeals before this bench. The said crucial fact through oversight but undeliberately remained to be pressed during the course of assessment proceedings and in first appellate proceedings. And since this fact being the sole determinant factor in deciding the nature of interest it would be unjust if not re-evaluated in the light thereof.

10. On perusal of the written and oral submissions made by the representatives of contending parties and after diving deep into fundamental facts of the case and dispute, the substantial question of law that rose for adjudication under the present appeal can be delineated as follows;

'Whether the character of interest on Term Deposit Receipt would change to capital if such Term Deposit Receipt are placed as security for issuance of bank guarantee to be offered/offered to third party/customers in obtaining business contract which in turn generate business income? (emphasis supplied)

11. The assessee appears to have earned interest income as an unintended outcome of creating a TDR with bank which in turn opened for the intended



purpose of seeking bank guarantee compelling it to deposit in terms of margin money in TDR form so as to enable & enter into business contracts which in turn will generate source of business income thus must need to be considered as part and parcel of transaction/activity conducted in the business. On the other hand the case were the assessee had surplus funds lying in the bank and intends intermittently earn income from investments when there was no scope for deployment of funds in business commotion then it unambiguously suggest an income falling outside the ambit of section 28 of the Act and thus taxable under section 56 of the Act.

12. During the process of adjudication on a specific query from the bench the appellant expressed its inability to place immediately on record (a) the copy of TDR to verify the lien marking (b) the copy of bank guarantee to vouch in whose favour & for what purpose it was issued and (c) copy of contract necessitating issuance of bank guarantee & (d) other documentary evidences substantiating issuance's for the sake of business etc. For the want of these documents, the contention of the appellant cannot baldly be adjudicated as to whether the character of interest on Term Deposit Receipt would change to capital if such Term Deposit Receipt are placed as security for issuance of bank guarantee to be offered/offered to third party/customers or vendor in obtaining business contract which in turn generate business income.



13. Keeping in mind all the considered viewpoints as adequately explained hitherto, as the facts are already on record needs to be examined in the light of cogent & corroborative evidences which can only be possible on its remand to the tax authorities below. In view thereof the assessee in the larger interest of justice deserves an opportunity for the former limited purpose to present aforesaid documentary evidences upon which issue can cementingly be decided which the Ld. DR could hardly object.

14. For the aforesaid reasons and direction, without setting-aside the impugned orders we deem it fit to remand the limited issue to the Ld. CIT(A) with a direction to decide the same on merits in accordance with law after providing the assessee not less than two effective opportunities to supply furnish/produce evidences as may be necessary to prove its claim.

15. In result, these two appeals of the assessee are PARTLY ALLOWED FOR STATISTICAL PURPOSES in above terms.

In terms of rule 34 of ITAT Rules, the order pronounced in the open court on this Thursday 19th day of September, 2024

-S/d-

SUBHASH MALGURIA
JUDICIAL MEMBER

-S/d-

G. D. PADMAHSHALI
ACCOUNTANT MEMBER

दिनांक / Dated : 19th day of September, 2024

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

1. अपीलार्थी / The Appellant.
4. DR, ITAT, Bench 'B', Lucknow

2. प्रत्यर्थी / The Respondent.
5. गार्डफाइल / Guard File.

3. The CIT(A)-2 Lucknow

आदेशानुसार / By Order,
वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलार्थी न्यायाधिकरण, लखनऊ/ ITAT, Lucknow