

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई  
IN THE INCOME TAX APPELLATE TRIBUNAL  
'B' BENCH: CHENNAI

श्री यस यस विश्वनेत्र रवि, न्यायिक सदस्य एवं श्री अमिताभ शुक्ला, लेखा सदस्य के समक्ष  
BEFORE SHRI SS VISWANETHRA RAVI, JUDICIAL MEMBER AND  
SHRI AMITABH SHUKLA, ACCOUNTANT MEMBER

आयकर अपील सं./ ITA No.1717/Chny/2024, निर्धारण वर्ष /Assessment Years:2013-14  
आयकर अपील सं./ ITA No.1730/Chny/2024, निर्धारण वर्ष /Assessment Years:2014-15  
आयकर अपील सं./ ITA No.1733/Chny/2024, निर्धारण वर्ष /Assessment Years:2013-14  
आयकर अपील सं./ ITA No.1734/Chny/2024, निर्धारण वर्ष /Assessment Years:2014-15

Income Tax Officer,  
Corporate Ward-1,  
Coimbatore

Cheran Enterprises Private Limited,  
No.78, Cheran Towers Government  
Arts College Road,  
Coimbatore-641018.  
[PAN: AACCC5150C]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by

: Shri Sharath Rao, CA & Mr.Shreyansh,  
CA

प्रत्यर्थी की ओर से /Respondent by

: Ms.Gouthami Manivasagam, JCIT

सुनवाई की तारीख/Date of Hearing

: 08.10.2024

घोषणा की तारीख /Date of Pronouncement

: 23.10.2024

**आदेश / O R D E R**

**PER AMITABH SHUKLA, A.M :**

The Revenue has challenged the decision of Ld. CIT(A) in deleting additions made by the Ld. AO in the case of the assessee for AY-2013-14 and 2014-15 along with penalty imposed u/s 271(1)(c ) for corresponding years as per following details.

:- 2 :-

S. No.	Appeal Nos.	Din No.	AYs	Section in which order challenged	Appellant
1	ITA-1717 / Chny / 2024	ITBA / NFAC / S / 250 / 2024-25 / 1064000231(1) dt. 09.04.2024	2013-14	147 r.w.s 144	<b>Income Tax Officer, Corporate Ward-1, Coimbatore</b>
2	ITA-1730 / Chny / 2024	ITBA / NFAC / S / 250 / 2024-25 / 1064000680(1) dt. 09.04.2024	2014-15	147 r.w.s 144	
3	ITA-1733 / Chny / 2024	ITBA / NFAC / S / 250/2024-25 / 1064071048(1) dt. 12.04.2024	2013-14	271(1)(c)	
4	ITA-1734 / Chny / 2024	ITBA / NFAC / S / 250 / 2024-25 / 1064071232 (1) dt. 12.04.2024	2014-15	271(1)(c)	

2.0 In the above appeals delay of 3 days each in ITA Nos. 1717, 1733 & 1734 and of 6 days in ITA No.1730 have been noted. The revenue has filed a request for condonation of delay. It is the case of the revenue that the delay was purely unintentional and caused on account of pre-occupation with time barring work as well as some unforeseen technical glitches in the electronic platforms. The Ld. AR did not oppose the condonation of delay. We are satisfied with the justification given by the

**:- 3 -:**

revenue and condoning the delay we proceed for adjudication of the appeals.

3.0 The only issue raised by the Revenue vide appeals bearing ITA-1717/Chny/2024 for AY 2013-14 & ITA-1730/Chny/2024 for AY 2014-15 are regarding the deletion of Interest income of Rs.2,46,16,767/- and Rs.2,50,55,139/- respectively by the Ld. CIT(A). The impugned addition was made by the Ld. AO vide his orders u/s 147 r.w.s 144 of the Act 13/3/2022 for both the years. Since both the years are having common issues the two appeals are adjudicated together. For the purpose of this adjudication AY 2013-14 is taken as the lead year and its figures considered accordingly.

4.0 Inviting reference to the order of the Ld. AO u/s 147 r.w.s 144 of the Act 13/3/2022, the Ld. Counsel for the assessee submitted that information was received from AIMS module that the assessee was in receipt of interest income of Rs.2,46,16,767/- from the State Bank of India Erode on which TDS of Rs.24,61,681/- was deducted. As the assessee had not filed any Return of Income (ROI) for AY under consideration, the Ld. AO proceeded to issue notice under section 148 r.w.s 147 of the Act requiring filing of income tax return. No ROI was filed. There was no response to

:- 4 -:

repeated notices under section 142(1) & 144 to file reasons for non-disclosure of interest income. The Ld. AO therefore proceeded to pass ex parte assessment order dated 13/3/22 supra by making addition of impugned interest income of Rs. 2,46,16,767/- as income from other sources.

5.0 The Ld. Counsel informed that aggrieved by the order, the assessee preferred an appeal before the Ld. CIT(A) and made detailed submissions qua peculiar facts of the case relying upon a catena of judicial pronouncements to allude that it is not liable for payment of any tax on interest income as it has not received any . The Ld. First Appellate Authority deleted the addition made by the AO. Aggrieved by the same the Revenue has filed this appeal challenging the order of Ld CIT(A).

6.0 The Ld. Counsel for assessee brought to our notice the following brief factual matrix of the case. It was informed that assessee Company was incorporated in 2003 and was engaged in the business of civil engineering and construction / alterations of residential buildings or part thereof. Two other group of companies of the assess viz., M/s Cheran Holdings Private Limited ('CHPL') and M/s KCP Associates Holdings

:- 5 -:

Limited ('KCPAHL') had acquired the shares of M/s Data Access India Limited ('DAIL'), a company based out of New Delhi from its erstwhile promoters by and under a series shareholders agreements entered into in the year 2004. Further, DAIL had opened an account with the ABN Amro Bank, Haddows Road, Chennai bearing account No. 1130826 and a sum of USD 17 Million (Approximately Rs.75 Crores) was received in the said account from Data Access America Inc., which is a 100% subsidiary of DAIL. Meanwhile some disputes arose between the new shareholders of DAIL and its erstwhile promoters, the new shareholders had transferred a sum of Rs.78.45 Crores out of the said amount to the account of CHPL bearing Account No. 1103945 with the ABN Amro Bank, Haddows Road, Chennai on 19 August 2004. Thereafter, CHPL had transferred a sum of Rs.35,30,46,483 out of the said amount to the account of the assessee bearing Account No. 922322 with the same ABN Amro Bank, Haddows Road, Chennai and further some amounts were transferred by CHPL to the account of KCPAHL and Sporting Pastime India Limited ('SPIL'). Further, out of the sum received by the assessee amounting to Rs.35,30,46,482 from CHPL, a sum of Rs.25 Crores was deposited by the appellant assessee in a Fixed Deposit with the State Bank of India, Erode Branch in its name.

:- 6 -:

7.0 The Ld. Counsel submitted that Pacific Convergence Corporation Limited ('PCCL') is a company incorporated under the laws of the Cayman Islands which had granted loans to DAIL. Upon failure to repay such loans, PCCL filed a winding up petition against DAIL in the Hon'ble Delhi High Court. The Hon'ble Delhi High Court vide its order dated 17 December 2004 passed an order attaching the moneys lying in the accounts of the assessee, and its group companies viz KCPAHL, CHPL, SPIL, etc. Further, the Canara Bank which had also lent money to DAIL claimed stake over the money received by DAIL from its American Subsidiary amounting to USD 17 Million (Approximately Rs.75 Crores). In spite of the fact that the assessee, and its group companies CHPL, SPIL and KCPAHL etc had also staked their respective claims over the said sum which was lying in their respective accounts, the Hon'ble High Court of Delhi vide its order dated 18 November 2005 (page 26 to 58 of paper book filed during present proceedings) had confirmed the interim order of attachment of the moneys made on 17 December 2004 and had further directed all the parties to remit the moneys received by them to the account of DAIL with ABN Amro Bank, Haddows Road, Chennai and the same was to be remitted to the account of Canara Bank. In support of its

:- 7 :-

contentions the Ld counsel invited reference to Paragraph 72 of the said order dated 18 November 2005 which read as follows: -

*“Interim order dated 17<sup>th</sup> December 2004 is accordingly confirmed. Consequence would be that the amount which has been transferred from ABN AMRO Account No. 1014374 of the company to CHPL and other companies shall be remitted back by those parties to the account of the company maintained with ABN AMRO Bank. Needful in this respect shall be done within two weeks. After receiving this amount, the ABN AMRO Bank shall remit this amount to Canara Bank. It is because of the admitted liability of the bank and charge of the bank over this money. Furthermore, in case it is found ultimately that the money is to be refunded to Odyssey Re etc., appropriate orders can be passed directing Canara Bank to refund the amount and the bank has sufficient means to carry out such directions. Appropriate orders shall be passed in the company petition as to how this amount is to be dealt with depending on the nature of the final orders passed in the company petition.”*

8.0 The assessee proceeded to file Company Application No. 1459 of 2006 seeking modification of the order dated 18 November 2005 of the Hon'ble High Court of Delhi, seeking to relieve them of their obligation to remit back the sum of INR 35,30,46,482 to the account of DAIL with ABN Amro Bank. The said Application together with various other applications filed by Canara Bank and other parties were heard and disposed of the Hon'ble High Court of Delhi vide its order dated 21 January 2011 wherein it was held in Paragraph 36 as follows: -

*“Keeping in view the aforesaid facts, the following directions are issued: -*

- 1. All bank accounts and deposits of CEPL, CHPL, SPIL and KCPAHPL are hereby attached. No payments will be made from the said bank accounts except with the permission of the Company Court. The aforesaid companies are also restrained from selling, disposing of, or creating third party interest in respect of the movable and immovable assets.*

:- 8 -:

2. *Managing Director/Principal Officer of CEPL, CHPL, SPIL and KCPAHPL will file affidavits in the Court within fifteen days furnishing the following details:*

- a) *Account Numbers and details of the banks including details of fixed deposits and other deposits.*
- b) *Details of movable and immovable assets including shares.*
- c) *Names and addresses of the Directors.”*

9.0 The Ld. Counsel submitted that the said disputed amount of Rs.25 Crores deposited by it with the State bank of India, Erode Branch was attached by the Hon'ble High Court of Delhi on 18 November 2005 and it continued to remain in interest bearing Fixed Deposit. However, the ownership of the said money was not with the Respondent from the date on which the same was attached in the year 2005. Finally, the Hon'ble High Court, Delhi vide its order dated 20 March 2017 made in CCP (CO) No. 31 of 2005 and Company Application Nos. 1755 of 2005, 164 of 2013 and 815 of 2013 had directed the State Bank of India, Erode Branch to transmit the entire amount of Rs.25 Crores lying in the Fixed Deposit together with the accrued interest thereon to Canara Bank, Green Park Branch. The operative portion of the said order read as under: -

*“In view of the consents given by Mr. K.C. Palanisamy, Mr. Chandran Ratnaswamy and Mr. Ramasamy Athappan, the Managing Director and nominee Directors, respectively, of Cheran Enterprises Pvt. Ltd., (CEPL), it is considered just necessary and proper to direct the State Bank of India, Erode Branch, Tamil Nadu, to transmit the entire money lying with the said State Bank of India branch to the credit of CEPL along with the interest, that may have accrued thereon till date, to the Canara Bank, Green Park Branch, New Delhi, under intimation to the latter, forthwith. The Canara Bank upon receipt of*

:- 9 -:

*the said money from the State Bank of India, Erode Branch shall deposit the same in an interest-bearing fixed deposit initially for a period of one year. It is, however, made clear that the entitlement of the said amount shall be subject to further orders/directions that may be passed in the company petition with regard to its disbursement.” (Emphasis supplied)”*

10.0 The Ld. Counsel for the assessee submitted that consequently, the entire balance in the account which includes a sum of Rs 24,616,767 and Rs.25,055,139 accrued as interest on the said Fixed Deposit, for AY 2013-14 and AY 2014-15 respectively, was also transferred to the account of Canara Bank, Green Park, New Delhi on 31 March 2017 in compliance to the order of the Hon'ble High Court of Delhi dated 20 March 2017. Copy of the Bank statement in support thereof has been provided in the paper book. It was argued that, since the assessee had no control or dominion over the funds lying in Fixed Deposit from the year 2005 till 2017 when the same was transferred to the Canara Bank, it cannot be deemed to be the beneficiary of the interest accrued thereon.

11.0 It is the case of the assessee that as said interest income never crystallized in its hands and hence, there would be no case for any corresponding tax liability also. In support of its contentions the assessee reiterated its reliance on the following judicial precedents and ratios prescribed therein, which were also placed before the Ld CIT(A) :

8.1 *That the Hon'ble Delhi High Court in the case of PCIT v. Rajdarbar Heritage Venture Ltd. [2022] 145 taxmann.com 438 has held that where fixed*

:- 10 -:

deposits were made in name of assessee in pursuance of an arbitration proceedings, till final award was passed by Tribunal determining ownership of such fixed deposits and interest, it could not be said that interest income had crystallized in assessee's hands and same could not be held to be income of assessee under section 5(1). The relevant extract of the ruling was extracted as under :

“9. Consequently, this Court in agreement with the finding of the two Appellate Authorities below that till the final award was passed by the Arbitral Tribunal determining the ownership of the fixed deposits and interest, it could not be said that the interest income had crystallized in the respondent's hands and the same cannot be held to be income of the respondent-assessee under section 5(1) of the Income-tax Act, 1961 ('the Act').

10. Accordingly, no substantial question of law arises for consideration in the present appeals and the same are dismissed.”

8.2 That the Hon'ble Chennai Tribunal in the case of Selvi J. Jayalalitha v. ACIT (2016) ITA No. 1288/Mds/2008 & W.T.A No. 20/Mds/2008 has held that the interest income can be recognized only when there is no uncertainty and significant scope to receive the same. Further the same shall be subject to tax in the year in which it is actually received by the assessee or the right to receive is accrued to the assessee. The relevant extract of the ruling was extracted as under :

“12. From the above, it is apparent that the interest income of the assessee can be recognized only when there is no uncertainty and a significant scope to receive the same. Therefore, in the case of the assessee the accrued interest on the bank deposit frozen by the DVAC, wing of the Govt. of Tamil Nadu cannot be treated as interest income of the assessee during the relevant assessment year. Hence, we hereby direct the Learned Assessing Officer to delete the interest income of INR 36,10,000 /- while computing the total taxable income of the assessee.”

8.3 That the Hon'ble Bangalore Tribunal in the case of Bellary Iron-Ores Pvt. Ltd. v. ITO [2023] 156 taxmann.com 392 has held that interest accrued on bank deposits subject to CBI's prohibitory order cannot be treated as income until the assessee actually receives it from bank, even though it was subject to deduction of tax at source. The relevant extract of the ruling was extracted as under :

“Being so, in our opinion, the lower authorities has committed an error in bringing the interest accrued on FD which is subject to prohibitory order by CBI Hyderabad into tax in these assessment years under consideration and the same has to be taxed in assessment year when it was actually received by the assessee or 17 right to receive accrued to the assessee. In other words, the assessee has to pay

:- 11 -:

*the tax on the same on actual accrual of right to receive this impugned interest by the assessee in any assessment year and not in these assessment years. Accordingly, this ground of appeal of the assessee is partly allowed.”*

8.4 *Similar view was also reported to have been upheld in the following judicial precedents:*

- ✓ *E. D. Sassoon And Company Ltd v. CIT 1954 AIR 470 (Supreme Court);*
- ✓ *Keshav Mills Ltd v. CIT [1953] 23 ITR 230 (SC);*
- ✓ *Ashokbhai Chimanbhai v. CIT [1965] 56 ITR 42 (SC);*
- ✓ *DSL Enterprises (P.) Ltd. V. Mrs. N.C. Chandratre, ITO [2013] 35 taxmann.com 477 (Bombay High Court);*
- ✓ *Sushil Thomas Abraham v. CIT [2018] 93 taxmann.com 64 (Kerala High Court);*
- ✓ *T.V. Patel (P.) Ltd. V. DCIT [2023] 157 taxmann.com 108 (Bombay High Court);*
- ✓ *Govind Prasad Prabhu Nath v. CIT [1987] 35 TAXMAN 513 (Allahabad High Court);*
- ✓ *Vijay Sales v. DCIT [2014] 52 taxmann.com 310 (Mumbai Tribunal).*

12.0 Placing reliance on the above stated judicial precedents the Ld counsel argued that, the the interest income shall be taxable in its hands only when it acquires a right to receive such interest income, or the interest income has actually come in its control. It was urged that in the instant case, the said interest accrued on the fixed deposit held with SBI cannot be said to be “received” by it since such interest never crystallized in its hands. The Ld. Counsel would like to also make us believe that as the said interest income is subject matter of the dispute which is still pending before the Delhi High Court it has no right to receive such interest income. Therefore the same shall not form part of

**:- 12 -:**

its total income as referred to in section 5 of the Act and thus, no tax liability shall arise in its hands.

13.0 The Ld. DR relied upon the order of the Ld AO. It is the case of the revenue that the assessee was a non-filer and the department could get information of the impugned FD and corresponding interest income through proceeding u/s 147 r.w.s 148. The Ld. DR would like to make us to believe that the issue about the confirmed ownership of FD under consideration is still subjudice. The Ld. DR has raised an apprehension , that with the present order of Ld. CIT(A) deleting the addition, in coming future, in case the Hon'ble Courts decide that the said FD belongs to the assessee, then at that stage the revenue would not have any mechanism left with it to tax the same.

14.0 We have heard rival submissions in the light of material available on records. It is an undisputed fact of the case that the assessee was exercising a legal ownership over the impugned FD of Rs.25 Crs maintained with Erode Branch of State Bank of India. It is also an undisputed fact that the assessee has and is contesting the decision of Hon'ble Delhi High Court directing its remission to Canara Bank, Delhi.

**:- 13 -:**

It is also an undisputed fact that Hon'ble Delhi High Court has directed that the ownership over the said FD is to be kept in open till a final decision qua its ownership is taken by the Hon'ble Court. Thus, in a situation where the ownership per se of the FD is in question, the decision of the Ld. First Appellate Authority in deleting the addition made by the Ld. AO becomes questionable. It is not the case of the assessee that it is not exigible for taxation qua interest earned from the said FD. Its basic case is that because by way of a Court Order, the ownership of the impugned FD has been taken away from it, no tax is payable by it. We also find force in the argument of the assessee, supported by relied upon case laws that it cannot be taxed in respect of an asset over which it does not has any conclusive ownership. The fact of the matter however remains that the issue of final ownership is yet to be decided by the court. The assessee therefore cannot say that it is permanently excluded for taxation qua interest earned from the said FD. To allay the apprehension of revenue, the assessee has filed during present proceedings an affidavit, principally to the effect that in the event of ownership of the said FD vested back to him, it shall be liable for payment of due taxes on the interest income for the relevant period. Accordingly, we set aside the order of the Lower Authorities and direct the assessing officer to consider and re adjudicate afresh,

:- 14 -:

the issue of taxation of interest income over the impugned FD, only once the Hon'ble High Court decides upon its ownership. Accordingly, the grounds of appeal raised by the revenue in ITA-1717/Chny/2024 for AY 2013-14 are allowed for statistical purposes only.

15.0 ITA-1730/Chny/2024 for AY 2014-15

As discussed herein above, the facts of the case for this appeal are also identical to those in ITA-1717/Chny/2024 for AY 2013-14 supra therefore the decision taken therein would apply mutatis mutandis. Accordingly, the grounds of appeal raised by the revenue in ITA-1730/Chny/2024 for AY 2014-15 are also allowed for statistical purposes only.

**ITA-1733/Chny/2024 for AY 2013-14 & ITA-1734/Chny/2024 for AY 2014-15**

The above appeals vide ITA numbers 1733 & 1734 made by the Revenue are regarding action of the Ld AO in imposing penalty u/s 271(1) (c) for AY's 2013-14 & 2014-15 respectively and the decision

**:- 15 -:**

of Ld CIT ( A) in quashing the same . Through our decision in ITA no's 1717 & 1730 supra we have held as under :-

“....Accordingly, we set aside the order of the Lower Authorities and direct the assessing officer to consider and re adjudicate afresh, the issue of taxation of interest income over the impugned FD, only once the Hon'ble High Court decides upon its ownership...”. Thus where the quantum additions stand set aside there wouldn't be any tax on concealed income for levy of penalty. Therefore in the light of above directions to the Ld AO we also set aside the orders of lower authorities. The Ld AO may decide the issue of imposition of penalty if any as per law upon his decision on taxation of impugned interest income from FD's. Accordingly the grounds of appeal raised by the revenue in ITA's number 1733 & 1734 are allowed for statistical purposes only.

In the result the appeal of the revenue is allowed for statistical purposes only.

:- 16 -:

17.0 In the result, the appeals of the revenue are decided as under:-

ITA Nos	AY	Result
ITA-1717 / Chny / 2024	2013-14	The appeal of the revenue is allowed for statistical purposes only.
ITA-1730 / Chny / 2024	2014-15	The appeal of the revenue is allowed for statistical purposes only.
ITA-1733 / Chny / 2024	2013-14	The appeal of the revenue is allowed for statistical purposes only.
ITA-1734 / Chny / 2024	2014-15	The appeal of the revenue is allowed for statistical purposes only.

Order pronounced on 23<sup>rd</sup>, October-2024 at Chennai.

Sd/-

(यस यस विश्वनेत्र रवि)

(SS Viswanethra Ravi)

न्यायिक सदस्य / Judicial Member

Sd/-

(श्री अमिताभ शुक्ला)

(Amitabh Shukla)

लेखा सदस्य /Accountant Member

चेन्नई/Chennai, दिनांक/Dated: 23<sup>rd</sup>, October-2024.

KB/-

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT - Coimbatore
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF