

FIN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'C' BENCH,
NEW DELHI

BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT, AND
SHRI NAVEEN CHANDRA, ACCOUNTANT MEMBER

ITA No. 2333/DEL/2017 [A.Y. 2013-14]

IIFCL Asset Management Co.
5th Floor, Block -02, Plate - A
NBCC Tower, Kidwai Nagar
New Delhi

Vs.

The Dy. CI.T.
Central Circle-12(1)
New Delhi

PAN - AACCI 9090 F

(Applicant)

(Respondent)

Assessee By : Shri Saurav Rohtagi, CA

Department By : Shri Choudhary N.C. Roy, Sr. DR

Date of Hearing : 27.11.2024

Date of Pronouncement : 29.11.2024

ORDER

PER NAVEEN CHANDRA, ACCOUNTANT MEMBER:-

This appeal by the assessee is preferred against the order of the
ld. CIT(A) -18, New Delhi dated 27.02.2017 pertaining to A.Y. 2013-14.

2. The assessee has raised the following grounds of appeal:

"1. The Learned CIT (A) has erred in fact and in law in disallowing the ground of framing of an assessment u/s 143(3) of the Income Tax Act, 1961 at an income of Rs. 87,37,507/- and thereby raising a demand of Rs. 20,64,850/- which is liable to be annulled.

2. The Learned CIT (A) has erred in fact and in law in disallowing the ground of non-consideration of the provisions of Section 71 of IT Act, 1961 in the computation of income, by failing to set off the loss incurred under "Profit from Business & Profession" head amounting to Rs. 49,71,970.65/- against the income under "Other Sources" head amounting to Rs. 87,37,507.00/-, thus resulting in net taxable income of Rs. 37,65,536.35/-,

3. The Learned CIT(A) has erred in fact and in law in disallowing the ground of considering the Income from FDR amounting Rs. 87,37,507/- under the head 'Income from Other sources' instead of Operating income of the company and thus disallowing all business expenditure incurred during the year.

4. That the appellant craves leave to amend the grounds of appeal or add new grounds that may be necessary and relevant to this appeal."

3. The representatives of both the sides were heard at length, the case records carefully perused and we have duly considered the documentary evidences brought on record in the form of Paper Book in light of Rule 18(6) of ITAT Rules.

4. Briefly stated, the facts of the case are that the assessee company was formed on 28.03.2012. The company is engaged in the business of investment management or to act as asset management company and to administer mutual fund. The assessee filed its Return of Income on 03.09.2013 declaring an income of Rs. 37,65,540/.

5. During the year the company has earned interest on FDR of Rs. 87,37,507/-. The assessee has treated this interest as 'business income' whereas the Assessing Officer treated this as 'Income from other sources' as according to him there was no business activity during the year.

6. Aggrieved, the assessee went in appeal before the Id. CIT(A).

7. The Id. CIT(A) held that surplus funds were put into FDR without any commercial expediency and thus the interest is not linked with business and has to be treated as income from other sources. The

CIT(A), referring to the decision of the Hon'ble Supreme Court in the case of Tuticorin Alkalies 227 ITR 192, sustained the addition was made by the Assessing Officer.

8. Aggrieved by this order of the ld. CIT(A), the assessee is in appeal before us.

9. It is the say of the ld. counsel for the assessee that both the authorities below held that as no business was started during the year and only interest on FDR has been received, the business expenses is not to be allowed and set off against the interest on FDR.

10. Before us, the ld. counsel for the assessee vehemently stated that as per the MOA clause 1,3,19 the business of the company is also to invest the money not immediately required for the business and to hold and deal with stocks, shares, bonds, debentures, obligations, notes and securities of any company. Thus, as per the MOA also the investment in FDR is main object of the company business.

11. The ld. counsel for the assessee furnished the 1st audited financial for the FY. 2012-13 (AY 2013-14) and the Directors Auditors report to say that IIFCL registered IIFCL Asset Management Company Limited, a company registered under Companies Act, 1956 on 28th March 2012. Subsequently, on completion of prescribed formalities SEBI accorded registration to IIFCL Mutual Fund (IDF) and given approval for IAMCL to act as Asset Management Company of IIFCL Mutual Fund.

12. The ld. counsel for the assessee further submitted that now, it is a settled law that all business expenses which are incurred after setting up of business, as defined in Section 3 of Act, and before commencement of business are allowable. It is the say of the ld AR that CIT(A) admitted that the assessee company has received fees from services in F.Y. 2013-14. Thus, as per CIT(A) the business has commenced in FY 2013-14 (AY 2014- 15) and therefore, expenses has to be allowed in FY 2013-14 (AY 2014-15).

13. The ld. counsel for the assessee further submitted that the assessee company was to act as a Asset Management Company (AMC) of IIFCL Mutual Fund. To act as a AMC, it was necessary to have net worth

of Rs. 10 crore or more. Therefore, it is a case of commercial expediency for infusion of share capital of Rs. 12.50 crores. Therefore, the Id AR averred that the interest earned on FDR may be treated as 'business income.'

14. The Id. counsel for the assessee relied on the decision in the case of *CIT vs. Arcane Developers Pvt. Ltd.* (2014) 221 Taxmann 0475 (DEL.) wherein it has been held that there may be an interval between date of setting up of business and commencement of business and all expenses incurred after setting up of business and before the commencement of business, would be permissible deduction. Thus, the issue to be decided is that when the business of the assessee is said to be set up. The Id AR also relied on the decision of *AXIS Private Equity Ltd.* by Mumbai ITAT upheld by the Bombay High Court and the case of *Pine bridge India Pvt Ltd* of the co-ordinate bench at Mumbai.

15. Per contra, the Id DR relied on the orders of authorities below and on the case of *DCIT Vs PPFAS Asset Management P Ltd* (2019) 105 Taxmann.com 103 (Mumbai-Tri) for the proposition that expense may be allowed after the commencement of assessee business in AY 2014-15.

16. We have heard the rival submissions and have perused the relevant material on record. It is not in dispute that the assessee has declared interest income from FDR of Rs. 87,37,507/- which the AO has treated as 'income from other sources'. It is also not in dispute that the assessee had received Rs 12.50 crore as share capital which were parked as FDR on which the said interest was received. We also find that the assessee company has incurred employees benefit expenses for Rs. 13,37,810/- and administrative and general expenses at Rs. 56,18,929/- during the year.

17. The only dispute that we are called upon to adjudicate is on the nature of the interest earned on the FDR whether it is 'business income' or 'Income from other sources' and whether the expenses incurred during the year is to be allowed in the year of set up of the business or the year in which the business has commenced.

18. The distinction between the setting up of business and commencement of business was recognized by the hon'ble Delhi High Court in the case of *CIT vs. Arcane Developers Pvt. Ltd.* (2014) 221 Taxmann 0475 (DEL.) wherein it held that there may be an interval between date of setting up of business and commencement of business

and all expenses incurred after setting up of business and before the commencement of business, would be permissible deduction. Thus, the issue to be decided is that when the business of the assessee is said to be set up.

19. The factual matrix of the case shows that the company has been incorporated on 28.03.2012 and the certificate of commencement of business was obtained on 13.04.2012. The Investment Management Agreement has been executed on 17.08.2012. On 24.01.2013, the assessee paid the SEBI registration Fees upon which the SEBI granted registration certificate to IIFCL Mutual Fund in terms of Regulation 9 of SEBI on the same day. SEBI vide letter dated 24.01.2013 approved the IIFCL Asset Management Company to act as asset management company of IIFCL Mutual Fund.

20. We also note that during the financial year, the assessee company has incurred expenses on salary of employees of Rs 13,37,810/- administrative and general expense including rent of Rs 56,18,929/- which goes on to indicate that the assessee has taken steps to set up its business during the FY 2012-13 relevant to AY 2013-14.

21. We find that as per the proviso to Section 3 of the Income Tax Act, in case of newly set up business the previous year shall be period beginning with the date of setting up business and ending with the said financial year. Thus, as per Section 3, it is the date of setting up business which is relevant to the present case. We find that the company was formed on 28.03.2012. It obtained all the necessary documents to commence business in FY 2012-13, rented a premises for the business and hired personnel for the conduct of the business as narrated above in the Financial year 2012-13 relevant to AY. 2013-14. We are therefore of the opinion that though the business commenced in AY 2014-15, the business of the assessee was set up in FY. 2012-13 relevant to A.Y 2013-14. In accordance therefore with the decision of *CIT vs. Arcane Developers Pvt. Ltd.* (supra) the expenses incurred after the setting up of the business would be permissible deduction i.e., in the instant AY. 2013-14.

22. On the issue of whether the income is 'business income' or not, we find from the facts of the case that the assessee company was to act as a Asset Management Company (AMC) of IIFCL Mutual Fund and to act as a AMC, it was necessary to have net worth of Rs. 10 crore or more. The share capital obtained by the assessee of Rs 12.50 crore was

for the purpose of meeting the requirement of the AMC and therefore there is an intimate connection of commercial expediency between the share capital and the business of the assessee.

23. Furthermore, as per the Memorandum of Association of the assessee, the business of the assessee is also to invest the money not immediately required for the business. We therefore are of the considered opinion that the funds invested as FDR is inextricably linked with the business of the assessee of management of AMC. The interest income earned on such FDR deposit is incidental to the setting up its business of asset management company and therefore the interest earned on it could not be treated as “income from other sources” but is to be treated as “business income”.

24. We also find that the decision of the Hon'ble Supreme Court in the case of *Tuticorin Alkali Chemicals* 248 ITR 110 is factually distinguishable as in that case the funds were ‘surplus’ whereas in the instant case the funds were inextricably linked with the business of management of AMC. The decision in the case of *Bokaro Steels Ltd.* 236 ITR 315 applies to the factual matrix of the instant case as also the decision in the case of *CIT vs Karnal Co-Operative Sugar Mills Ltd.*

[2000] 243 ITR 2(SC) on 23 April, 1999, wherein the hon'ble Supreme Court held as follows:

"2. In the present case, the assessee had deposited money to open a letter of credit for the purchase of the machinery required for setting up its plant in terms of the assessee's agreement with the supplier. It was on the money so deposited that some interest has been earned. This is, therefore, not a case where any surplus share capital money which is lying idle has been deposited in the bank for the purpose of earning interest. The deposit of money in the present case is directly linked with the purchase of plant and machinery. Hence, any income earned on such deposit is incidental to the acquisition of assets for the setting up of the plant and machinery. In this view of the matter the ratio laid down by this court in [Tuticorin Alkali Chemicals and Fertilizers Limited v. CIT](#) , will not be attracted. The more appropriate decision in the factual situation in the present case is in [CIT v. Bokaro Steel Ltd.](#) . The appeal is dismissed. There will be no order as to costs.

25. The Hon'ble High Court of Delhi in the case of *Indian Oil Panipat Power Consortium Ltd* 315 ITR 255 has similarly held as under:

"5.2 It is clear upon a perusal of the facts as found by the authorities below that the funds in the form of share capital were infused for a specific purpose of acquiring land and the development of infrastructure. Therefore, the interest earned

on funds primarily brought for infusion in the business could not have been classified as income from other sources. Since the income was earned in a period prior to commencement of business it was in the nature of capital receipt and hence was required to be set off against pre-operative expenses. In the case of *Tuticorin Alkali Chemicals & Fertilisers Ltd. (supra)* it was found by the authorities that the funds available with the assessee in that case were 'surplus' and, therefore, the Supreme Court held that the interest earned on surplus funds would have to be treated as 'income from other sources' . On the other hand in *Bokaro Steel Ltd. 's case (supra)* where the assessee had earned interest on advance paid to contractors during pre-commencement period was found to be 'inextricably linked' to the setting up of the plant of the assessee and hence was held to be a capital receipt which was permitted to be set off against pre-operative expenses.

6.1 In our view the situation in the instant case is quite similar except here instead of paying interest on funds brought in for specific purpose interest is earned on funds brought in by way of share capital for a specific purpose. Could it be said that in the former situation interest could have been capitalized and in the later situation it cannot be capitalized. To test the principle we could extend the example, that is, would our answer be any different had assessee passed on the interest to the respective shareholders. If not, then in our view the only conclusion possible is that interest earned in the present circumstances ought to be capitalized.

7. In view of the discussion above, in our opinion the Tribunal misdirected itself in applying the decision of the Supreme Court in *Tuticorin Alkali Chemicals & Fertilizers Ltd. 's case (supra)* in the facts of the present case. In our opinion on account of the finding of fact returned by the CIT(A) that the funds infused in the assessee by the joint venture partner were inextricably linked with the setting up of the plant, the interest earned by the assessee could not be treated as income from other sources. In the result we answer the question as framed in favour of the assessee and against the revenue. The appeals are allowed and the impugned judgment is set aside.”

26. In light of the afore-stated factual matrix and the judicial pronouncements, we are of the considered view that the interest earned on FDR is inextricably linked to the business of investment management and, therefore, the findings of the ld. CIT(A) in treating interest of Rs. 87,37,507/- as ‘income from other sources’ is not only erroneous but against the facts of the case in hand as explained hereinabove. Considering the facts of the case in totality, we direct the Assessing Officer to consider the interest of Rs. 87,37,507/- as ‘business income’ and allow the expenses in the instant year. The ground no 1 to 3 are therefore allowed.

27. In the result, the appeal of the assessee in ITA No. 2333/DEL/2017 is allowed.

The order is pronounced in the open court on 29.11.2024.

Sd/-

**[MAHAVIR SINGH]
VICE PRESIDENT**

Sd/-

**[NAVEEN CHANDRA]
ACCOUNTANT MEMBER**

Dated: 29th NOVEMBER, 2024.

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	