

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
DELHI BENCH: 'B' NEW DELHI**

**BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER  
AND  
SHRI MANISH AGARWAL, ACCOUNTANT MEMBER**

ITA No.3466/Del/2023  
Assessment Year: 2016-17

ACIT, C.R. Building, New Delhi	<b>Vs.</b>	M/s. Hansdeep Industries and Trading Company Ltd., 4 <sup>th</sup> Floor, Link House, 3 Bahadur Shah Zafar Marg, New Delhi
<b>PAN: AABCJ0776A</b>		
<b>(Appellant)</b>		<b>(Respondent)</b>

Assessee by	Sh. Ankit Kumar, Adv. Sh. Lalit Mohan, CA
Department by	Sh. Rajesh Kumar Dhanesta, Sr. DR

Date of hearing	28.05.2025
Date of pronouncement	28.05.2025

**ORDER**

**PER SATBEER SINGH GODARA, JM**

This Revenue's appeal for assessment year 2016-17, arises against the Commissioner of Income Tax (Appeals)/National Faceless Appeal Centre [in short, the "CIT(A)/NFAC"], Delhi's DIN and order no. ITBA/NFAC/S/250/2023-24/1056763566(1), dated 04.10.2023 involving proceedings under section 143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act').

2. Heard both the parties. Case file perused.

3. The Revenue's sole and substantive grievance raised in the instant appeal challenges the CIT(A)'s action reversing the assessment findings making notional interest income addition of Rs.5,76,75,000/- vide order dated 17.12.2019; in the lower appellate discussion as follows:

*"3. In the grounds of appeal, appellant stated that while Rs. 23.17 crore was debited to P&L Account in respect of finance costs for the NCD, Rs. 23.74 crore was shown as income out of the loan given to UCWL from the NCD. Such Rs. 23.74 crore comprised Rs. 17.84 crore, Rs. 4.15 crore as interest from investment of NCD fund in debt based mutual funds for short period till request made by UCWL and Rs. 1.75 crore processing fee received from UCWL. In fact, appellant claimed that the loan was given to UCWL at 11.75% which is 0.5% higher than the rate at which loan was raised through NCD. Appellant claimed that all these were explained and submitted before AO but he ignored all and made the addition. Appellant vehemently argued that AO's comment that assessee earned interest of Rs. 5,76,75,000/- and did not disclose the same was wholly incorrect and addition of notional interest was wholly wrong. Appellant cited judgment of jurisdictional Delhi Bench of Income Tax Appellate Tribunal ("ITAT" in short) in Suresh Chand Agrawal vs. ACIT, ITAT,ITA No. 4667/DEL/2019, in which it was held that only the purpose of investment should be earning of income and nowhere in the law it has been specified that income should have been earned as a result of expenditure incurred.*

*4. I have considered the AO's order and appellant's submissions. Assessee has shown the interest of Rs. 17.84 crore, interest of Rs. 4.15 crore and processing fee of Rs. 1.75 crore in Schedule -14 of P&L account. AO's stand is that as per market rate assessee can be said to have earned notional interest of Rs. 5,76,75,000/- @ 0.5% per month. So, what the assessee has attempted is to tax an income which is neither earned nor accrued but merely notional. Section 5 of the Act does not provide for taxation of such notional income which is neither accrued nor arisen nor received. Section 5 reads,*

*"Scope of total income.*

*5. (1) Subject to the provisions of this Act, the total income of any previous year of a person who is a resident includes all income from whatever source derived which—*

- (a) is received or is deemed to be received in India in such year by or on behalf of such person; or  
 (b) accrues or arises or is deemed to accrue or arise to him in India during such year; or  
 (c) accrues or arises to him outside India during such year:  
 .....

5. JUDICIAL PRONOUNCEMENTS: The issue in *Suresh Chand Agrawal vs. ACIT, ITAT, ITA No. 4667/DEL/2019*, cited by appellant, was whether disallowance of interest u/s 57(iii) of the Act was right or wrong whereas the issue in the present case is not about allowance of expenditure but charging notional interest as income. Therefore, the case law is not applicable. However, the principles of law laid down by the Supreme Court, High Court and ITAT are available from the case laws discussed below.

5.1. In *Godhra Electricity Company (1997) 225 ITR 746 (SC)*, reiterating its earlier decision in *Morvi Industries Ltd. v. CIT (1971) 82 ITR 835 (SC)* and *CIT v. Birla Gwalior (1973) 89 ITR 266 (SC)*, the Supreme Court held that tax cannot be imposed on hypothetical accrual of income. It was observed that the question of real accrual of income must be considered by taking the probability of realisation in a realistic manner.

5.2. The Supreme Court in the case of *Poona Electric Supply v. Ld. CIT (Appeals) (1965) 57 ITR 21 (SC)* held that income-tax is a tax on the real income, i.e., the profits arrived at on commercial principles subject to the provisions of the Income-tax Act.

5.3. Supreme Court in the case of *CIT vs. Excel Industries Ltd. (2013) 358 ITR 295 (SC)* had held "...going by the accounting standard though the revenue is collectible by certainty, the assessee in the present case, in fact, had not received any interest and hence, interest in question remained only notional interest. As canvassed by the learned counsel for the assessee, some of the parties did not repay even the principal amount and some of the parties settled the accounts by paying some interest and hence, we agree that computation of notional interest at 14% on all the advances and making additions on that basis to the income of the assessee, is not justified"

5.4. In *Andhra Bank case (1997) 225 ITR 447 (SC)* it was held that there cannot be a tax if no income resulted, despite the entry in the book keeping.

5.5. In the case of *Asian Hotels (2010) 323 ITR 490 (Delhi)*, the Delhi High Court considered the issue of notional income from interest free loans received by the petitioner in respect of shops given on rent. The

Assessing Officer computed tax of 18 percent per annum on the notional interest on the basis that they resulted in benefit to the petitioner. Rejecting this contention, the Court held that the notional income from the interest free loans is not taxable in the absence of a specific provision in the Income Tax Act.

5.6. The Orissa High Court in *CIT vs. Prafulla Kumar Mallik* AIR 1969 Ori 187, ( 1969) 73 ITR 119 (Orissa) emphasized that income tax is imposed only on “profits he actually receives and not on the profits he might have, but has not received”.

5.7. In the case of *Shivnandan Buildcon (P.) Ltd. Vs. CIT* (2015) 60 taxmann.com 347 (Delhi) assessee-company had given advance to one ‘S’ company out of its funds and no interest had been charged for this loan. The Assessing officer computed notional interest on said advance and made addition in income of assessee. The Delhi High Court held that in absence of any specific provision under which said notional income on advance could be brought to tax, impugned addition was to be deleted.

5.8. In *DCIT vs Girish R. Tanti* (ITAT Rajkot), ITA No. 113/Rjt/2018, it was held that interest having neither been accrued to the assessee and neither any interest having been received by the assessee, such interest cannot be subject to tax in the hands of the assessee on purely “notional basis”.

5.9. In *VHBC Value Homes Pvt Ltd v. ITO*, ITA No.2541/Bang/2019 & ITA No. 37/Bang/2020, it was held by ITAT, Bangalore, that where income is not actually received by the taxpayer and it has not accrued to the taxpayer, then the income-tax authorities are not authorised to include such income which was neither due nor collected.

5.10. Thus, it is a well-settled principle of law that income cannot be taxed in the hands of the assessee, on purely “notional” basis. Either the income should accrue or arise to the assessee, as per terms of agreement or otherwise, or else the same should have been received by the assessee. On the basis of the above discussion, I delete the addition of Rs. 5,76,75,000/-.

6. In the result, the appeal is allowed.”

4. We have given our thoughtful consideration to Revenue’s and the assessee’s vehement rival submissions reiterating their

respective stands. There is hardly any dispute between the parties that the sole substantive issue between them herein is that of notional interest income addition made by the Assessing Officer which neither represents accrued nor received interest; as the case may be. All what the Revenue seeks to highlight is the fact that the assessee had raised funds by issuing non-convertible debentures and made interest free advances to its sister concern M/s. Udaipur Cements Works Ltd.; and, therefore, the Assessing Officer had rightly added the above notional interest income thereupon. We further wish to emphasize herein that there is no material on record first of all to indicate that the assessee had to actually receive the above interest income from sister concern. And also that there already exists a statutory provision of interest payment disallowance u/s 36(1)(vii) of the Act in such an instance involving the alleged diversion of interest-bearing funds for non-business purposes which has nowhere been invoked by the Assessing Officer.

5. Faced with the situation, we hereby quote Chainrup Sampatram Vs. CIT (1953) 24 ITR 481 (SC) that no income could be held to have been accrued or arise in assessee's case in absence

of any reasonable certainty as is sought to be projected at the department's behest before us. We thus find no reason to interfere with the CIT(A)'s detailed lower appellate discussion deleting the notional interest income addition of Rs.5,76,75,000/- in very terms. Ordered accordingly.

6. This Revenue's appeal is dismissed.

*Order pronounced in the open court on 28<sup>th</sup> May, 2025*

**Sd/-**  
**(MANISH AGARWAL)**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(SATBEER SINGH GODARA)**  
**JUDICIAL MEMBER**

Dated: 28<sup>th</sup> May, 2025.

RK/-

Copy forwarded to:

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

Asst. Registrar, ITAT, New Delhi