

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'D' BENCH
MUMBAI**

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SHRI VIKRAM SINGH YADAV, ACCOUNTANT MEMBER**

**ITA No.4803/Mum/2025
(Assessment Year :2017-18)**

Robust Transportation Pvt. Ltd., B-426, 4 th Floor NBC Complex, Plot No.43, Sector-11 CBD Belapur, Navi Mumbai- 400 614	Vs.	Income Tax Officer, Ward 15(3)(1), Mumbai
PAN/GIR No.AAECR0046G		
(Appellant)	..	(Respondent)

Assessee by	Shri Ashwani Kumar CA and Ms. Deepali Agarwal
Revenue by	Shri Annavarani Kosuri, Sr. AR
Date of Hearing	25/11/2025
Date of Pronouncement	11/12/2025

आदेश / O R D E R

PER AMIT SHUKLA (J.M):

This appeal, being ITA No. 4803/Mum/2025, has been filed by the assessee against the order dated 16 June 2025 passed by the National Faceless Appeal Centre, Delhi, arising from the assessment framed under section 143(3) of the Income-tax Act, 1961 for Assessment Year 2017-18. The solitary and central grievance of the assessee is against the sustenance of an addition of ₹1,73,68,000 made by the Assessing Officer by way of notional interest @ 8% on

aggregate loans and advances of ₹21,71,00,000 given by the assessee-company to certain entities during the relevant previous year. According to the assessee, the impugned addition seeks to tax a purely hypothetical income which has neither arisen nor been received nor is deemed to accrue under the Act, and therefore is contrary to the scheme of the statute and the doctrine of real income as settled by the higher judiciary.

2. The assessee is a company incorporated with broad and ambitious objects of engaging in the business of transportation across all modes land, air, water and even space for carriage of passengers, goods, articles and commodities, both within India and overseas. It is common ground that the principal business activities for which the company was incorporated had not yet commenced during the previous year relevant to Assessment Year 2017-18. In this interregnum, the assessee was, inter alia, engaged in making investments in shares and in preliminary corporate and financial arrangements ancillary to its long-term business vision.

3. For the year under consideration, the assessee e-filed its return of income on 30 October 2017 declaring total income at nil. The return was processed under section 143(1) of the Act. Subsequently, the case was selected for limited scrutiny under CASS, the two flagged issues being: (i) verification of expenditure debited in relation to exempt income, and (ii) examination of low returned income vis-à-vis the substantial

balances of loans and advances appearing in the balance sheet. In pursuance thereof, notices under section 143(2) and section 142(1) along with a detailed questionnaire were issued. The assessee appeared through its authorised representative, filed written submissions and produced such details and documents as were called for, which now stand forming part of the assessment record.

4. In the course of the assessment proceedings, the Assessing Officer noticed that, as on 31 March 2017, the assessee had reflected in its balance sheet interest-free loans and advances aggregating to ₹21,71,00,000 given to four companies. These comprised an advance of ₹21,68,00,000 to M/s Tremendous Minerals and Mining Pvt. Ltd. and three smaller advances of ₹1,00,000 each to M/s Zip Minerals & Mining Pvt. Ltd., M/s Luminous Cement Pvt. Ltd. and M/s Coalition Agency Pvt. Ltd. Being of the view that such large balances ought ordinarily to yield interest income, the Assessing Officer required the assessee to explain why proportionate interest should not be brought to tax on the footing that the funds so advanced represented deployment of borrowed capital.

5. In response, the assessee submitted that the funds were not advanced as ordinary commercial loans but were intrinsically connected with proposed acquisitions of unquoted shares and corporate arrangements for possible equity participation in the aforesaid entities. The advances, it was explained, were made in the context of negotiations and

arrangements relating to shareholding and restructuring, where no stipulation for interest existed. It was categorically stated that no interest was either contracted, charged or received by the assessee in respect of these amounts. On the source side, the assessee drew attention to its audited financial statements to demonstrate that it had substantial interest-free funds in the nature of share capital, reserves and surplus and amounts received in connection with proposed issue of shares, aggregating to ₹13,58,59,880, and that, in addition, it had received a large sum of ₹125,49,99,625 as advance for purchase of shares, on which no interest was payable. It was pointed out that the assessee had no interest-bearing borrowings whatsoever and had incurred no interest expenditure during the year, and therefore the very premise that borrowed funds were utilised stood falsified by the accounts themselves.

6. The Assessing Officer, however, did not accept the explanation. Without identifying any specific loan or interest-bearing liability in the balance sheet, he proceeded to observe that, in his understanding, the assessee did not have “sufficient reserves and surplus” to justify the giving of such large interest-free advances and, therefore, drew the inference that the advances “must have” been made out of borrowed funds. Having so presumed, he took recourse to the RBI’s Marginal Cost of Funds based Lending Rate (MCLR) for the relevant financial year and, noting that MCLR broadly hovered around 8% to 8.5%, he adopted a flat rate of 8% as a reasonable commercial lending rate. Applying this rate to the

entire amount of ₹21,71,00,000, he computed a sum of ₹1,73,68,000 which he treated as interest income deemed to have accrued to the assessee on these loans and advances, and brought the same to tax, notwithstanding the admitted position that no such interest had either been charged or received.

7. The assessee, in its detailed submissions before the Assessing Officer, and later in appellate proceedings, strongly assailed this approach. It emphasised that the balance sheet clearly showed availability of substantial interest-free funds, that there were no secured or unsecured loans from which a diversion could be alleged, and that no interest had been debited as expenditure. It reiterated that the advances were intrinsically linked to proposed investment and share acquisition arrangements and were not in the nature of interest-bearing loans. It was contended that the Income-tax Act does not authorise the imposition of tax on income which has neither arisen in fact nor is deemed to arise under any specific statutory provision and that, in the absence of a contractual right to receive interest, there was no accrual of interest income. Reliance was placed on the decisions of the Hon'ble Supreme Court in CIT v. Shoorji Vallabhdas & Co. (46 ITR 144) and CIT v. A. Raman & Co. (67 ITR 11) for the proposition that only real income can be subjected to tax and that hypothetical or notional income cannot be taxed merely on the ground that, in the opinion of the Assessing Officer, the assessee could have earned it.

8. As regards the notices issued under section 133(6) to the recipient companies, the assessee submitted that those entities were independent incorporated bodies over whose internal working and compliance behaviour the assessee had no control. It was contended that the non-response or inadequate response of such third parties to departmental notices could not be used as a springboard to infer accrual of income in the hands of the assessee, and that, at the highest, it might invite further investigation or proceedings in the cases of such third parties themselves. The assessee submitted that even if, for argument's sake, the advances were to be regarded as doubtful or irrecoverable, it would not follow that any interest income had ever accrued so as to be taxed.

9. The assessee also placed on record a detailed summary of its financial position, demonstrating that its interest-free funds (capital, reserves, surplus and share issue-related liabilities) along with advances received for purchase of shares were more than sufficient to cover the loans and advances granted. It was argued that, in such circumstances, the settled presumption in law is that advances are made out of interest-free funds and, in the absence of any evidence of borrowings, there was no scope for presuming diversion of borrowed capital. It was further contended that the Assessing Officer's action effectively amounted to treating "what could have been earned" as income, which is precisely what the doctrine of real income, as laid down by the Supreme Court, forbids.

10. The Assessing Officer, however, rejected these contentions and finalised the assessment by making an addition of ₹1,73,68,000 on account of alleged notional interest at 8% on the loans and advances of ₹21,71,00,000, which addition came to be challenged by the assessee before the learned Commissioner of Income Tax (Appeals).

11. The learned CIT(A), after reproducing at length the submissions of the assessee, proceeded to uphold the addition. In substance, he observed that the assessee had failed to furnish sufficient and credible documentary evidence to substantiate its claim that the advances were integrally connected with proposed acquisition of unquoted shares or share subscription transactions. He noted that no agreements, memoranda of understanding, board resolutions or contemporaneous correspondence had been placed on record to demonstrate that the advances were given in furtherance of such share acquisition arrangements. He also referred to the fact that the major recipient, namely M/s Tremendous Minerals and Mining Pvt. Ltd., as well as the other companies, did not respond to notices issued under section 133(6), and he treated this non-compliance as a circumstance militating against the assessee's explanation. According to the learned CIT(A), when an assessee advances substantial sums to certain entities and asserts a particular factual narrative regarding the nature and purpose of such advances, the onus lies squarely upon it to establish that narrative through documentary evidence, and the non-

cooperation of such entities only weakens the assessee's case and strengthens the inference drawn by the Assessing Officer.

12. The learned CIT(A) further observed that the assessee had not given any convincing business rationale or commercial expediency for advancing such large sums interest-free, particularly when its main line of business had not commenced and it had declared nil income. He held that the explanation that "other current liabilities" represented amounts received in connection with proposed issue of shares was not supported by contemporaneous evidence and appeared to be no more than an afterthought. In his view, the conduct of giving such large advances without charging interest, coupled with lack of proper supporting documentation, justified an inference that the assessee had so structured the transactions as to prevent interest income from surfacing in its accounts.

13. On the legal side, the learned CIT(A) dealt with the assessee's reliance on the real income theory. Referring to decisions such as *State Bank of Travancore v. CIT* and *Morvi Industries Ltd. v. CIT*, he observed that where under the mercantile system income has accrued in law, it cannot be ignored merely on the ground of non-receipt, and that the real income doctrine cannot be invoked to negate statutory accrual. He also placed reliance on *CIT v. Abhishek Industries Ltd.* to emphasise that interest-free advances given without demonstrating commercial justification may invite tax consequences, and on *McDowell & Co. Ltd. v. CTO* to

underline that colourable devices intended for tax avoidance must be looked through. On this basis, he concluded that the assessee's plea based on real income was misconceived in the present factual setting.

14. As regards quantification, the learned CIT(A) agreed with the Assessing Officer that adoption of 8% RBI MCLR as the notional rate of interest was reasonable and in consonance with prevailing lending rates and commercial practice. He took the view that where the tax authorities, faced with unexplained interest-free advances, come to the conclusion that interest income has been suppressed, they are entitled to estimate such income on a reasonable basis, and that recourse to RBI lending benchmarks is neither arbitrary nor unlawful. Summarising his conclusions, the learned CIT(A) held that: (i) the assessee had failed to discharge the onus of proving commercial expediency or genuine share acquisition-related purpose behind the advances; (ii) the non-response of recipient entities to departmental notices under section 133(6) cast a serious shadow on the assessee's version; (iii) the real income theory did not assist the assessee; and (iv) the Assessing Officer had rightly computed notional interest at 8% on the amount of ₹21,71,00,000. He thus confirmed the addition of ₹1,73,68,000 and dismissed the assessee's appeal.

15. Aggrieved, the assessee has come in further appeal before us. The learned authorised representative reiterated the factual matrix, drew our attention to the audited financials to highlight that the assessee had no interest-

bearing borrowings and had not debited any interest expenditure, and once again stressed that the advances in question were out of interest-free funds and were in the context of proposed share acquisition transactions. It was argued that the entire approach of the Assessing Officer and the learned CIT(A) proceeds on an impermissible premise that, merely because interest could hypothetically have been charged, it must be taken to have accrued, even though there is no contractual stipulation for interest and no statutory deeming provision. It was submitted that such a view is squarely contrary to the settled law laid down in *Shoorji Vallabhdas & Co.* and *A. Raman & Co.*. The learned departmental representative, on the other hand, supported the orders of the lower authorities and relied upon the reasoning of the learned CIT(A).

16. We have given our anxious and thoughtful consideration to the rival submissions and have carefully gone through the assessment order, the impugned appellate order and the material on record. At the very outset, it is necessary to emphasise that the Income-tax Act, 1961, taxes income which is real either actually received, or having legally accrued, or deemed to accrue or arise by reason of a specific statutory fiction. It does not proceed on the basis of abstract economic potential or notional opportunity. The question before us, therefore, is whether, on the facts of this case, any income by way of interest can be said to have accrued or arisen to the assessee in law.

17. The foundation of the Assessing Officer's addition is the assumption that the assessee did not have adequate interest-free funds and that the loans and advances must, therefore, have been given out of borrowed funds. This assumption is directly contradicted by the assessee's balance sheet, which clearly shows that the assessee had no secured or unsecured loans, had incurred no interest expenditure and possessed substantial interest-free funds, including share capital, reserves and surplus and amounts received in connection with share issue. In addition, the assessee had received a very substantial sum of ₹125.49 crores towards advance for purchase of shares, on which no interest was payable. Thus, not only is there no evidence of any borrowing, but the aggregate of interest-free funds far exceeds the amount of loans and advances. In such a situation, to nevertheless presume utilisation of non-existent borrowed funds is wholly unwarranted.

18. It is by now well settled that where an assessee has mixed funds, but the interest-free funds available are sufficient to cover the investments or advances in question, a presumption arises that the investments or advances have been made out of interest-free funds. This principle has repeatedly been affirmed in the context of disallowance of interest expenditure under section 36(1)(iii) and allied provisions. In the present case, the position is even clearer, inasmuch as there are virtually only interest-free funds and no borrowings at all. Thus, the entire edifice built on the supposed diversion of borrowed funds collapses.

19. Even more fundamentally, the doctrine of commercial expediency, on which considerable emphasis has been placed by the learned CIT(A), has a very specific and limited application. It comes into play when the question is whether interest expenditure on borrowed funds is allowable, i.e., whether the borrowing and the deployment of borrowed capital can be said to be for the purposes of business. If commercial expediency is not established, interest expenditure may be disallowed. That doctrine does not operate in reverse to manufacture positive income where none has accrued. The question before us is not whether any interest expenditure should be disallowed but whether any interest income has accrued. The absence of commercial expediency in giving an advance cannot, by itself, create a legal right to receive interest or a statutory deeming of accrual.

20. The reliance placed on non-compliance by recipient entities with notices under section 133(6) is also misconceived. The assessee has rightly pointed out that these entities are independent companies and that their compliance behaviour is not within the assessee's control. Non-response by such entities may justifiably invite closer scrutiny in their own assessments, but it cannot, by a process of alchemy, convert an interest-free advance into an interest-bearing one or conjure an accruing income which the assessee never had a right to receive. The burden to prove that income has accrued to an assessee lies on the Revenue; that burden

cannot be discharged merely by pointing to the silence of third parties.

21. The authorities relied upon by the learned CIT(A), such as State Bank of Travancore, Morvi Industries, Abhishek Industries and McDowell, do not, on a close reading, support the proposition for which they have been invoked. Those decisions relate to situations where income had in fact accrued under mercantile principles or where there was a question of allowability of interest expenditure on borrowed funds or where colourable devices to avoid tax were under scrutiny. None of them lay down that, in the complete absence of a contractual right to receive interest and in the absence of any statutory deeming fiction, the Revenue can still treat notional interest as having accrued merely because a prudent person might have charged it. On the contrary, the principle laid down by the Supreme Court in *Shoorji Vallabhdas & Co.* and *A. Raman & Co.* is that the concept of real income cannot be ignored; income which “could have been earned” but has not been earned is not taxable.

22. Equally untenable is the adoption of RBI’s MCLR at 8% as a benchmark for computing notional interest. The MCLR is a regulatory mechanism governing how banks price their lending products. It has no statutory force for the purpose of determining accrual of income in the hands of a non-banking assessee. Estimation of income has its place where income is otherwise found to have accrued but its exact quantum is

uncertain; it cannot be used to create an income where none exists in the first place.

23. Viewing the matter in the round, the following salient features emerge: (i) the assessee has no interest-bearing borrowings; (ii) no interest expenditure has been claimed; (iii) the assessee has substantial interest-free funds which, along with advances for purchase of shares, comfortably cover the loans and advances in question; (iv) there is no contractual stipulation or legal right in favour of the assessee to receive interest from the recipient entities; and (v) there is no provision in the Act which deems such notional interest to accrue. In such a factual and legal matrix, the addition made by the Assessing Officer and confirmed by the learned CIT(A) represents nothing but an attempt to tax a purely fictional income, which is outside the purview of the charging provisions of the Act and contrary to the binding dicta of the Supreme Court.

24. We, therefore, hold that the addition of ₹1,73,68,000 made by the Assessing Officer by way of notional interest at 8% on interest-free loans and advances of ₹21,71,00,000, and sustained by the learned CIT(A), is unsustainable in law and on facts. The same is directed to be deleted.

25. In the result, the appeal of the assessee is allowed.

Order pronounced on 11th December, 2025.

Sd/-
(VIKRAM SINGH YADAV)
ACCOUNTANT MEMBER

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Mumbai; Dated 11/12/2025
KARUNA, *sr.ps*

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai