

**INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "SMC": NEW DELHI**

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER**

ITA No.4658/Del/2018  
Asstt. Year: 2015-16

Habitat Realtech P. Ltd. C-2/398, Pankha Road, Janakpuri, New Delhi – 110 058 PAN AADCH0617E	Vs.	DCIT, Circle-11(1) New Delhi.
<b>(Appellant)</b>		<b>(Respondent)</b>

Assessee by:	Shri Karamvir Singh, CA
Department by :	Shri Om Prakash, Sr. DR
Date of Hearing	22/12/2021
Date of pronouncement	19/01/2022

**ORDER**

This is an appeal by the assessee against order dated 15.5.2018 of learned Commissioner of Income Tax (Appeals)-4, New Delhi for the assessment year 2015-16.

2. The dispute arising out of the main grounds of appeal relates to assessment of interest income as income from other sources as against business income claimed by the assessee. Of course, the assessee has raised additional grounds for not allowing set off of Revenue expenses against the interest income.

3. Briefly, the facts are, the assessee is a resident Company. As stated by the Assessing Officer, assessee is engaged in the business of construction, builder and developers etc. of residential houses, commercial building etc. For the assessment year under dispute, the assessee had filed its return of income on 10.10.2015 declaring loss of Rs. 73,04,323/-. On perusal of the profit and loss account, the Assessing Officer noticed that interest earned on Fixed Deposit amounting to Rs. 11,94,395/- was credited to the profit and loss account and has been netted off against the revenue expenses. From the break up of interest income, he found that an amount of Rs. 11,74,070/- was received from Fixed Deposits with Canara Bank, amount of Rs. 18,745/- from mutual fund and Rs. 1580/- towards interest on income tax refund. The Assessing Officer observed, the assessee is following project completion method of accounting to recognise revenue from its business, whereas, no income was shown from sales/operations of the business. Since, the entire business expense was capitalised, the Assessing Officer held that the interest income cannot be netted off against the revenue expenses. Further he held that the interest income has to be taxed under the head "income from other sources". Accordingly,

he added back the amount of Rs. 11,94,395/- as income from other sources. Assessee contested the aforesaid addition before learned Commissioner (Appeals). However, learned Commissioner (Appeals) did not find merit in the submissions of the assessee. Ultimately, he upheld the decision of the Assessing Officer.

4. The learned Counsel for the assessee submitted, in course of its construction business the assessee received advances from customers which are deposited in the bank account. He submitted, the surplus available in the bank account out of the deposits made, which is not immediately required to be utilised in the business, is kept in short term deposits for periods varying between three months to nine months. He submitted, when the need arises, the assessee encashes the fixed deposits and makes payment to the contractors engaged in construction of projects. Thus, he submitted, the fixed deposits on which the assessee earned interest are from assessee's business income, hence the interest income earned thereon is inextricably linked with assessee's business. He submitted, for commercial expediency assessee has invested the idle money lying with it in short term deposits for earning better rate of interest, which in turn, goes to reduce the cost of the construction as the money invested in the

fixed deposit is ultimately utilised for making payment for the business. Thus, he submitted, since the fixed deposits are made out of business fund, the interest income is directly connected to the business of the assessee. Hence, assessable as business income. In support of such contention Ld. Counsel relied upon the following decisions :

1) S A Builders vs CIT 288 ITR 1 (SC)

2) CIT vs Lok Holdings 308 ITR 356 (BOM)

5. Without prejudice to the aforesaid contention, learned Counsel drew my attention to the additional grounds and submitted that even if the interest income is assessed under the head “income from other sources” however, it has to be set off against the revenue expenses in terms of section 71 of the Act.

6. Learned Departmental Representative while objecting to the admission of additional grounds, strongly relied upon the observations of the Assessing Officer and learned Commissioner (Appeals) in so far as the merits of the issue is concerned.

7. I have considered rival submissions and have perused the material available on record. I have also applied my mind to the

decisions cited before me. Undisputedly, the conflict between the assessee and the revenue is in relation to the head under which interest income earned by the assessee is to be assessed. It is a fact on record that the assessed is engaged in construction business as a developer and builder. It is also not in dispute that the assessee follows project completion method for recognising revenue from its construction business. It is evident, in the year under consideration the assessee has not recognised any revenue from its business operations and has capitalised the expenses incurred. It is the contention of the assessee from the assessment stage itself that the advances received from the customers are deposited in current account and the surplus fund lying idle, which is not immediately required for the purpose of business, is kept in short term deposits to earn some amount of interest income which could ultimately go to reduce the cost of the project. The fact that the assessee has made the fixed deposits out of surplus fund generated from the construction business has not been disputed by the departmental authorities. In fact, learned Commissioner (Appeals) has accepted the aforesaid factual position. However, he rejected assessee's claim of

business income on the reasoning that the assessee invested in fixed deposits only for the purpose of earning interest income.

8. When it is a fact on record that the business fund lying idle with the assessee was invested in fixed deposit for earning some income which can be utilised in the business at the time of need, it has to be held that the interest income is inextricably linked with the business of the assessee. The decision to invest the idle fund lying with the assessee in fixed deposit has to be accepted as a decision taken by a prudent businessman keeping in view the commercial expediency. It is not disputed that the assessee has temporarily parked its business fund in short term deposits varying between 3-9 months. When the need arises, assessee encashes the fixed deposits and utilises the funds for its business purpose. In the aforesaid scenario. it can not be said that the interest income is not inextricably linked with the business of the assessee. In this context I rely upon the decision of the Hon'ble Bombay High court in case of CIT vs Lok Holdings (supra). Therefore, in my view, the interest income earned on fixed deposits has to be treated as business income of the assessee. That being the case, it has to be set off against the revenue expenses. However this is only to the extent of interest income

earned on fixed deposits. As far as income earned from mutual fund and interest from income tax refund, they have to be taxed under the head income from other sources. Thus I allow assessee's claim of assessment of interest income under the head business to the extent of Rs. 11,74,070/-. Whereas, the balance amount of Rs. 20,325/- is to be taxed under the head income from other sources. In so far as the issue of set off of income from other sources against the revenue expenses in terms of section 71 of the Income Tax Act, I admit the additional grounds as they do not require fresh investigation into facts. However, considering the fact that neither the Assessing Officer nor learned Commissioner (Appeals) have given any conclusive finding on this issue, I restore it to the file of the Assessing Officer for deciding assessee's claim. Main grounds are allowed, whereas, additional grounds are allowed for statistical purposes.

9. In the result the appeal of the assessee is partly allowed.

Order pronounced in the Open Court on 19<sup>th</sup> January, 2022.

**Sd/-**

**(SAKTIJIT DEY)  
JUDICIAL MEMBER**

Dated: 19/01/2022

**Veena**

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi