

आयकर अपीलीय अधिकरण 'ए' न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH, CHENNAI

माननीय श्री महावीर सिंह, उपाध्यक्ष एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखक सदस्य के समक्ष।
BEFORE HON'BLE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ITA No.577/Chny/2022
(निर्धारण वर्ष / Assessment Year: 2011-12)

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आयकर अपील सं./ITA No.578/Chny/2022
(निर्धारण वर्ष / Assessment Year: 2012-13)

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आयकर अपील सं./ITA No.579/Chny/2022
(निर्धारण वर्ष / Assessment Year: 2014-15)

M/s.RKM Powergen Private Ltd. 14, Dr Giriappa Road, T. Nagar, Chennai-600 017.	बनाम/ Vs.	ACIT Central Circle-1(1), Chennai.
स्थायी लेखा सं./जी आइ आर सं./PAN/GIR No. AADCR-0301-B		
(पीलार्थी / Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से / Assessee by	:	Shri V. Ravichandran (CA)- Ld. AR
प्रत्यर्थी की ओर से / Revenue by	:	Shri R. Mohan Reddy (CIT) – Ld. DR

सुनवाई की तारीख / Date of Hearing	:	24-04-2023
घोषणा की तारीख / Date of Pronouncement	:	14-07-2023

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeals by assessee for Assessment Years (AY) 2011-12, 2012-13 & 2014-15 arises out of separate orders of learned first appellate authority. The impugned order for AY 2011-12 has been

passed by learned Commissioner of Income Tax (Appeals)-18, Chennai [CIT(A)] on 30-05-2022 in the matter of an assessment framed by Ld. Assessing Officer [AO] u/s.143(3) r.w.s 92CA(3) of the Act on 27-03-2015. The impugned order for AY 2012-13 has been passed by same authority on 30-05-2022 in the matter of similar assessment framed by Ld. AO on 10-03-2015. The impugned order for AY 2014-15 has been passed by same authority on 18-01-2017 in the matter of similar assessment framed by Ld. Assessing Officer [AO] u/s.143(3) of the Act on 20-12-2016. The facts as well as issues are stated to be common in all the years and it is admitted position that adjudication in any one year would equally apply to other appeals also. For the purpose of adjudication, facts from AY 2012-13 has been culled out wherein the ground raised by the assessee read as under: -

1. The order of the learned Commissioner of Income Tax (Appeals) is contrary to law and the facts of the case.
2. The impugned order has been passed without application of mind, without taking note of the evidence filed and the submissions made.
3. The learned Commissioner of Income Tax (Appeals) has erred in sustaining the assessment of the interest from bank deposits as income from other sources.
4. The learned Commissioner of Income Tax (Appeals) ought to have appreciated that such bank deposits had been made for project purposes and the interest therefrom should be deducted from the cost of the project.
5. The learned Commissioner of Income Tax (Appeals) erred in not following the decision of the Supreme Court in CIT vs. Bokaro Steel Ltd and the binding decision of the jurisdictional High Court in CIT vs V G R foundations.

As is evident, the sole issue that arises for our consideration is to determine the nature of interest income earned by the assessee. The assessee has reduced proportionate interest from cost of project on the basis of ratio of debt and equity whereas Ld. AO has assessed the same as 'Income from other sources'.

2. The Ld. AR, Shri V. Ravichandran (CA), has advanced arguments supporting the case of the assessee. The Ld. AR submitted that the project of the assessee was under construction stage and interest was earned during construction period. The same has been reduced from the project construction cost as per settled legal position. The assessee did not commence its business. The Ld. CIT-DR, on the other hand, submitted that deposits were out of surplus funds and the action of Ld. AO was to be upheld. Reliance has been placed on various judicial pronouncements. Having heard rival submissions and upon perusal of case records, our adjudication would be as under. The assessee being resident corporate assessee is stated to be engaged in construction and operation of power plants.

3. Assessment Proceedings

3.1 The assessee admitted loss of Rs.589.47 Lacs which was subjected to scrutiny by Ld. AO. The Ld. AO noted that assessee did not commence the business activity of power generation and the power plant was at pre-operative stage. The assessee earned interest income of Rs.309.15 Lacs out of which only Rs.137.57 Lacs was offered to tax in the Profit & Loss Account. The assessee bifurcated the interest income in proportion to debt and equity. The remaining interest portion was reduced from capital work-in-progress and not offered to tax. The assessee submitted that the deposits were made in the course of implementation of the project and the deposits were made as per mandatory requirement of project implementation. However, Ld. AO held that the said treatment was against principle laid down by Hon'ble Supreme Court in the case of **M/s Tuticorin Alkali Chemicals Ltd. (227 ITR 172)**. Accordingly Ld. AO proposed to treat the entire interest

income as 'income from other sources' and put the assessee to show-cause notice.

3.2 The assessee relied on the decision of Hon'ble Supreme Court in the case of **CIT vs. Karnal Co-operative Sugar Mills Ltd. (243 ITR 2)** as well as another decision in **CIT vs. Bokaro Steels Ltd. (236 ITR 315)**.

3.3 However, rejecting the same and applying the ratio of decision in **M/s Tuticorin Alkali Chemicals Ltd. (227 ITR 172)**, entire interest income of Rs.309.15 Lacs was brought to tax as 'income from other sources'.

Appellate Proceedings

4.1 During appellate proceedings, the assessee reiterated that it was in the process of construction of power project and the commercial production had not commenced. In the process of implementation of the project, it had to make certain deposits with the bank for the project on account of customs duty, bank guarantee etc. Therefore, the interest so earned would go on to reduce the expenditure incurred by the assessee during the construction period and the same, therefore, should be adjusted against the cost of the project.

4.2 The assessee's submissions were subjected to remand proceedings. In the remand report, Ld. AO reiterated the stand taken in the assessment order and distinguished the cited case laws as relied upon by the assessee.

4.3 The Ld. CIT(A) rendered a finding that the assessee had not commenced its business. The fact remain that the interest income arose not because of any business venture and therefore, interest income could not be considered as capital receipt. It was pure and simple

interest on deposits which had to be considered as 'income from other sources' only. The bifurcation done by the assessee was artificial distinction. Most of the deposits relate to future revenue expenses and accordingly, the action of Ld. AO was upheld against which the assessee is in further appeal before us.

Our findings and Adjudication

5. From the facts, it emerges that the assessee is engaged in power generation and its power plant was at pre-operative stage during this year. The assessee bifurcated interest income in the proportion of debt and equity and offered to tax only proportionate equity interest earned on fixed deposits on the reasoning that balance interest was relating to the project and the deposits were made in the course of implementation of the project. The deposits were made as per mandatory requirement of project implementation. The Ld. CIT(A) has rendered a finding that the assessee had not commenced its business. The interest income arose not because of any business venture and therefore, interest income could not be considered as capital receipt. It was pure and simple interest on deposits which had to be considered as 'income from other sources' only. The bifurcation done by the assessee was artificial distinction. Most of the deposits relate to future revenue expenses only.

6. We are of the considered opinion that there is a difference in set-up of business and commencement of business. Once the business is set up though it may not have yet commenced, the assessee would be eligible to claim the business expenditure as revenue expenditure. On the same very reasoning, any income arising after set-up of the business would be revenue in nature and assessable to tax. It could be seen that the interest income has accrued on fixed deposits made by the assessee

and the same has accrued after the business has been set-up. In fact, the assessee itself has offered a part of interest income to tax but claim the set-off of remaining interest from capital work-in-progress on the reasoning that deposits were linked with the project. The same is amply clear from the financial statements of the assessee as placed on record. The assessee has generated business income and claimed revenue expenditure including finance cost. However, mere fact that the deposits were linked with projects would not alter the character of the income after the business has been set-up. As rightly held by Ld. CIT(A), the said bifurcation is only an artificial bifurcation. The terms of the project may require the assessee to make fixed deposits but the same could not alter the Tax treatment of the interest income so earned by the assessee. The interest arises to the assessee only because of creation of fixed deposits which is nothing but assessable as 'income from other sources'. The ratio of case law of Hon'ble Apex Court in **M/s Tuticorin Alkali Chemicals Ltd. (227 ITR 172)** squarely applies wherein it was held that interest earned on short-term investment of funds borrowed for setting-up of factory during construction of factory before commencement of business has to be assessed as income from other sources and it cannot be said that interest income is not taxable on ground that it would go to reduce interest on borrowed amount which would be capitalized. In the present case, the business has already been set-up though it may not have commenced. This case law clearly supports the stand of the revenue.

7. The case law of **Karnal Co-operative Sugar Mills Ltd. (supra)** deal with a situation wherein the assessee did not have idle surplus funds and the deposits were directly linked with the purchase of plant

and machinery. It was thus held that earning of interest on such deposit was incidental to the acquisition of assets for the setting up of the plant and machinery and therefore, the interest was a capital receipt which would go to reduce the cost of asset. The same is not the case here. We find that in the present case, the assessee has surplus funds in the Balance Sheet. In fact, cash and cash equivalents are to the tune of Rs.372.55 Crores.

8. The case law of **CIT vs. Bokaro Steels Ltd. (236 ITR 315)** is a case where the assessee was in the process of constructing and erecting its plant and had not started any business during relevant assessment years. It received certain receipts which were intrinsically connected with construction of the assessee's plant. It was thus held that the same would be capital receipt and not income of assessee from any independent sources. However, in the present case, interest income is from independent source.

9. Similarly, the case law of Hon'ble High Court of Madras in **India Metal One Plate Processing (P.) Ltd. vs. DCIT (108 Taxmann.com 332)** is a case where the assessee received funds for specific purposes of acquiring plant and machinery. The same were kept in short term deposits and then withdrawn as and when required by the assessee. The assessee claimed that the interest was inextricably linked with process of setting up of business and therefore, the same should be treated as capital receipts. The Hon'ble Court remanded the matter back to examine these facts. Therefore, this case law renders no assistance to the case of the assessee. The other case laws, as cited by Ld. AR, are similarly distinguishable and do not apply to the facts of the present case.

10. Finally, on the facts and circumstances of the case, the adjudication of Ld. CIT(A) could not be faulted with. We order so. The appeal stand dismissed.

11. Since the facts as well as issues are similar in AY 2011-12 and 2014-15, our adjudication as above, shall mutatis mutandis, apply to both these years also. Both the appeals stand dismissed similarly.

12. In the result, all the appeals stand dismissed.

Order pronounced on 14th July, 2023

Sd/-
(MAHAVIR SINGH)
उपअध्यक्ष /VICE PRESIDENT

Sd/-
(MANOJ KUMAR AGGARWAL)
लेखासदस्य /ACCOUNTANT MEMBER

चेन्नई/ Chennai; दिनांक/ Dated :14-07-2023

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आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/Appellant 2. प्रत्यर्थी/Respondent 3. आयकरआयुक्त/CIT 4.
विभागीयप्रतिनिधि/DR 5. गार्डफाईल/GF