

IN THE INCOME TAX APPELLATE TRIBUNAL
Mumbai "H" Bench, Mumbai.

Before Shri B.R. Baskaran (AM) & Shri Sandeep Singh Karhail (JM)

I.T.A. No. 3001/Mum/2023 (A.Y. 2018-19)

ACIT 535, Aayakar Bhavan M.K. Road New Marine Lines Mumbai-400 020.	Vs.	Kesar Terminals and Infrastructure Ltd. 7, Oriental House Jamshedji Tata Road Churchgate Mumbai-400 020. PAN : AADCK2945C
(Appellant)		(Respondent)

Assessee by	Shri Yogesh Thar & Shri Karan Jain
Department by	M/s. Jancy Elizabeth Rani
Date of Hearing	18.01.2024
Date of Pronouncement	08.03.2024

ORDER

Per B.R.Baskaran (AM) :-

The Revenue has filed this appeal challenging the order dated 29.6.2023 passed by the learned CIT(A), National Faceless Appeal Centre, Delhi and it relates to A.Y. 2018-19. The Revenue is aggrieved by the decision of the learned CIT(A) in deleting the addition of Rs. 2.76 crores made by the CPC, which related to the "notional interest" credited to the profit and loss account as per the requirements of Indian Accounting Standard.

2. The facts relating to the above said issue are stated in brief. The assessee is a public limited company engaged in the business of storage and handling of liquid cargo. During the year under consideration, the assessee had given interest free loan to its wholly owned subsidiary named 'Kesar Multimodal Logistic Limited'. Though no interest was due on that loan as per the agreed terms, yet, as per the requirement of Indian Accounting Standard,

the assessee accounted for “notional interest” in the books of account and credited the same in its Profit and Loss account. The notional interest income so credited was Rs.2,76,81,947/-. Since it was only a book entry and it did not really accrue to the assessee at all, it excluded the above said amount from Net profit while computing the total income for the purpose of Income tax Act.

3. While processing the return under section 143(1) of the Act, the CPC did not allow exclusion, as it was not a deduction allowed under any of the provisions of the Act. Accordingly, the total income of the assessee was enhanced by the amount of Rs. 2.76 crores mentioned above. The assessee challenged the above said addition made by CPC by filing the appeal before the learned CIT(A).

4. In the meantime the assessee also filed a rectification petition under section 154 of the Act before learned CPC. The said rectification petition was rejected by learned CPC vide its order dated 11.2.2020. Against the above said rejection, the assessee filed another appeal before the learned CIT(A).

5. The learned CIT(A) took up both the appeals together. However, he first disposed of the appeal filed by the assessee against the rectification order passed u/s 154 of the Act. The learned CIT(A) agreed with the contentions of the assessee that the above said interest income did not accrue to the assessee and hence the same is not liable for taxation. Accordingly, he deleted the disallowance made by CPC. Aggrieved by the order so passed by learned CIT(A), the Revenue has filed this appeal.

6. It is pertinent to note that the learned CIT(A) dismissed the appeal filed by the assessee against the intimation issued under section 143(1)(a) of the Act, since he had already granted relief against the very same addition in the appeal filed against the rectification order passed u/s 154 of the Act. It is

also pertinent to note that the assessee has not challenged the order so passed by the learned CIT(A) against the intimation issued u/s 143(1)(a) of the Act.

7. We heard the parties and perused the record. The only issue that arises for adjudication now is related to taxability of notional interest income credited by the assessee in his profit and loss account as per the requirement of Indian Accounting Standards. The contention of the assessee is that the income tax can be levied only on the real income and not on notional income. It is submitted that the notional interest credited to the Profit and Loss account as per the requirement of Indian Accounting Standards cannot be considered as real income as there is no contractual obligation for the debtor to pay interest. Accordingly, it was contended that the Ld CIT(A) was justified in deleting the addition of notional interest.

8. We noticed that the Chennai Bench of the Tribunal has examined an identical issue in the case of M/s. Shriram Properties Limited (ITA No. 431/Chny/2022 dated 20.3.2023). In the above said case the assessee had credited its Profit and Loss account with “notional guarantee commission” as per the requirement of Indian Accounting Standard. The question as to whether the above said Notional Guarantee Commission could be assessed to tax or not was examined by the Chennai bench of ITAT. The Tribunal accepted the contentions of the assessee that the above said income did not accrue to it. The case before the Chennai bench of ITAT was related to 263 order passed by Ld PCIT, who had passed the revision order directing the Assessing Officer to assess the notional guarantee commission. The Tribunal held as under :-

“Let us come back to each of the amount credited into P&L account and examine whether any tax implication for the impugned assessment year. The assessee has recognized income from guarantee commission of Rs. 2.06 crores and credited into P&L account. Said entry represents notional income towards guarantee commission in respect of guarantee given to

Central bank of India and Andhra bank, in terms of IND-AS standards which mandate disclosure of necessary income which effects the financial position of the appellant company. But fact remains that, as per terms of agreement between the appellant company and bankers, there is a restrictive covenant for not charging any kind of monetary benefits including commission. Therefore, although for the purpose of books the assessee recognized notional income from guarantee commission, but because it has not received any consideration for providing guarantee, the same has been reduced from the total income in the computation of income. **In our considered view, when there is a contractual obligation for not charging any commission, merely for the reason that the assessee has passed notional entries in the books for better representation of financial statements, it cannot be said that income accrues to the assessee which is chargeable to tax for the impugned assessment year.** Therefore, we are of the considered view that on this issue it cannot be said that there is an error in the order of the Assessing Officer.”

9. The Ld D.R, however, placed heavy reliance on the intimation issued under section 143(1)(a) of the Act. We noticed that the Coordinate Bench of Tribunal has held that the notional income credited to the profit and loss account cannot be said to have accrued to the assessee, when there is no contractual obligation to pay the same. In the instant case, it was not shown to us by the revenue that there existed a contractual obligation to collect interest from the debtors. Accordingly, following the decision rendered by the Chennai bench of Tribunal in the above said case, we hold that the notional interest income credited by the assessee to the profit and loss account as per the requirement of Indian Accounting Standard has not actually accrued to the assessee and hence the same is not liable for taxation under Real Income principle. Accordingly, we are of the view that the learned CIT(A) was justified in directing the Assessing Officer to exclude the same.

10. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced on 8.3.2024.

Sd/-
(Sandeep Singh Karhail)
Judicial Member

Sd/-
(B.R. Baskaran)
Accountant Member

Mumbai.; Dated : 08/03/2024

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai.
6. Guard File.

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai

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