

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'A' BENCH,  
NEW DELHI [THROUGH VIDEO CONFERENCE]

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND  
SHRI K.N. CHARY, JUDICIAL MEMBER

ITA No. 3704/DEL/2018 [A.Y 2010-11]

Brahmaputra Capital and  
Financial Services  
28, Najafgarh Road  
New Delhi

Vs.

The Addl. C.I.T  
Ward -5(2)  
New Delhi

PAN: AABCB 8626 K

[Appellant]

[Respondent]

Assessee by : Shri Rohit Jain, Adv  
Ms. Soumya Jain, Adv

Revenue by : Shri Satpal Gulati, CIT- DR

Date of Hearing : 26.07.2021  
Date of Pronouncement : 26.07.2021

**ORDER**

**PER N.K. BILLAIYA, ACCOUNTANT MEMBER,**

This appeal by the assessee is preferred against the order of the  
CIT(A) - 2, New Delhi, dated 19.02.2018 pertaining to A.Y 2010-11.

2. The sum and substance of the grievance of the assessee is that the ld. CIT(A) erred in confirming the addition of Rs. 66,73,286/-, alleged to be interest income of the appellant.

3. At the very outset, the ld. counsel for the assessee stated that the impugned issue has been decided in favour of the assessee and against the Revenue by the Hon'ble Jurisdictional High Court of Delhi for A.Ys 2003-04 to 2006-07. The ld. counsel for the assessee further stated that the Hon'ble Supreme Court in a consolidated order covering C.A No. 998/2013 [being assessee's appeal] have upheld the findings of the Hon'ble Delhi High Court. The ld. counsel for the assessee further brought to our notice the decision of this Tribunal in assessee's own case for A.Ys 2008-09 and 2009-10 wherein the Tribunal has considered all the judgments relating to the impugned issue.

4. The ld. DR fairly conceded to this.

5. We have carefully considered the orders of the authorities below and have also perused the decisions brought to our notice. We find force in the contention of the ld. counsel for the assessee. The Hon'ble High Court of Delhi in 335 ITR 182 has decided this issue for

A.Ys 2003-04 to 2006-07 which has been upheld by the Hon'ble Supreme Court in a bunch of appeals covering C.A No 998/2013 [belonging to the assessee] and the Tribunal in ITA No. 4791/DEL/2012 for A.Y 2008-09 and 4792/DEL/2012 for A.Y 2009-10 has considered the quarrel and followed the findings of the Hon'ble High Court [supra]. The relevant findings read as under:

"9. We have given a thoughtful consideration to the orders of the authorities below. We find force in the contention of the Ld. Counsel identical additions were made in A. Y. 2003-04 to 2006-07 and the matter travelled up to the Hon'ble Delhi High Court and the Hon'ble Delhi High Court framed the following question of law proposed by revenue.

9. "Whether Income Tax Appellate Tribunal was correct in law in deleting the additions of Rs.21553466/- made by the Assessing Officer on account of interest accrued to the assessee as per Mercantile System of accounting ?"

10. The Hon'ble High Court observed as under :-

5. Identical issue came up before this Court in batch of appeals leading case being *CIT v. Vasisth Chay Vyapar Ltd.* [2011] 196 Taxman 169/ 8 taxmann.com 145. this theory of "real income" was discussed in detail. That was also a case of NBFC where loan/advance given by the said assessee had become NPA and

keeping in view the guidelines of RBI interest was not treated as accrued. After taking note of various judgments on the subject, the question was answered in favour of the assessee and against the Revenue. The legal position is summarized in para 17 of the said judgment which reads as under "In this scenario, we have to examine the strength in the submission of learned counsel for the Revenue that whether it can still be held that income in the form of interest though not received had still accrued to the assessee under the provisions of Income-tax Act and was, therefore, exigible to tax. Our answer is in the negative and we give the following reasons in support:—

(1) First of all we would discuss the matter in the light of the provisions of Income-tax Act and to examine as to whether in the given circumstances, interest income has accrued to the assessee. It is stated at the cost of repetition that admitted position is that the assessee had not received any interest on the said ICD placed with Shaw Wallae since the assessment year 1996-97 as it had become NPAs in accordance with the Prudential norms which was entered in the books of account as well. The assessee has further successfully demonstrated that even in the succeeding assessment years, no interest was received and the position remained the same until the assessment year 2006-07. Reason was adverse financial circumstances and the financial crunch faced by Shaw Wallace. So much so, it was facing winding up petitions which were filed by many creditors. These circumstances, led to an uncertainty insofar as recovery of interest was concerned, as a result of the aforesaid precarious financial position of Shaw Wallace. What to talk of

interest, even the principal amount itself had become doubtful to recover. In this scenario it was legitimate move to infer that interest income thereupon has not "accrued". We are in agreement with the submission of Mr. Vohra on this count, supported by various decisions of different High Courts including this court which has already been referred to above.

(2) In the instant case, the assessee company being NBFC is governed by the provisions of RBI Act. In such a case, interest income cannot be said to have accrued to the assessee having regard to the provisions of section 45Q of the RBI and Prudential Norms issued by the RBI in exercise of its statutory powers. As per these norms, the ICD had become NPA and on such NPA where the interest was not received and possibility of recovery was almost *nil*, it could not be treated to have been accrued in favour of the assessee."

*6. The aforesaid judgment clearly applies to the present case as well. Following that judgment, we are of the view that no substantial question of law arises in these appeals and are accordingly dismissed.*

11. Similarly in A. Y. 2007-08 the matter travelled up to the Hon'ble High Court the relevant findings of the Hon'ble High Court read : -

12.

ITA 107/2012

Admit. The following question of law arises for consideration :

"Did the Income Tax Appellate Tribunal (ITAT) fall into error in holding that the sum of Rs.2,53,15,466/- brought to tax on account of notional interest was not justified."

Issue notice. Mr. Sanjay Kumar, Jr. Standing Counsel accepts notice.

List on 26<sup>th</sup> April, 2018.

The Court is of the opinion that facially the appeal is covered against the Revenue by the decision of the Division Bench of this Court reported as Commissioner of Income Tax Vs. Vasisth Chay Vyapar Ltd, (2011) 196 Taxman 169 (Delhi) : 330 ITR 440 (Delhi)."

13. Respectfully following the decision of the Hon'ble Jurisdictional High Court in assesses own case we decline to interfere with the finding with the finding of the CIT (A)."

6. As no distinguishing decision has been brought to our notice, respectfully following the order of the Hon'ble Supreme Court, Hon'ble Jurisdictional High Court and this Tribunal, the appeal of the assessee is allowed. The Assessing Officer is directed to delete the impugned addition.

7. In the result, the appeal of the assessee in ITA No. 3704/DEL/2018 is allowed.

The order is pronounced in the open court in the presence of both the rival representative on 26.07.2021.

**Sd/-**

**[K.N. CHARY]  
JUDICIAL MEMBER**

**Sd/-**

**[N.K. BILLAIYA]  
ACCOUNTANT MEMBER**

Dated: 26<sup>th</sup> July, 2021

VL/

Copy forwarded to:

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

Asst. Registrar,  
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	