

आयकर अपीलिय अधीकरण, न्यायपीठ –“C(SMC)” कोलकाता,
IN THE INCOME TAX APPELLATE TRIBUNAL “A(SMC)” BENCH: KOLKATA
(समक्ष) श्री ए.टी. वर्की, न्यायिक सदस्य)
[Before Shri A. T. Varkey, JM]

ITA No. 2070/Kol/2019
Assessment Year: 2015-16

Manjit Singh Malhi PAN: AHUPM 2456P	Vs.	ACIT, Cir-2, Asansol
Appellant		Respondent

Date of Hearing	30.06.2020
Date of Pronouncement	03.07.2020
For the Appellant	Shri J.M. Thard, Advocate, Id.AR
For the Respondent	Shri Dhruba Jyoti Roy, JCIT, Id. Sr.DR

ORDER

This is an appeal preferred by the assessee against the order of Ld. CIT(A), Asansol dated 10-05-2019 for the assessment year 2015-16.

2. The effective ground no. 1, which reads as under:-

“1. For that on the facts and in the circumstances of the case the ld. CIT(A) was wrong and unjustified in treating the interest from Fixed deposits made in connection with Contract business as income from ‘Other sources’ in place of income from ‘Business’.

3. Facts pertaining to this ground are that the assessee is engaged in the business of civil contractor and returned income at Rs. 11,27,050/-. His case was selected for limited scrutiny assessment through CASS because there was mismatch (i) in respect of sales turnover (ii) mismatch on Tax credit and (iii) mismatch on contract receipts/fees. After issuing notice u/s. 142(1) of the Income-tax Act, 1961 (hereinafter referred to the ‘Act’ in short), the AO after perusal of 26AS data noted that the assessee has received total amount of Rs. 93,46,927 (Rs. 88,00,954/- as contract receipt u/s. 194C and Rs. 5,45,973/- as interest u/s. 194A). However, the AO observed that the assessee has shown his contract receipt at Rs. 91,65,482/- . Shortfall of (Rs.93,46,927 – Rs. 91,65,482)= Rs. 2,31,445/-. The

AO observed that the assessee has disclosed his interest income of Rs. 860/- only and also claimed a deduction u/s. 80TTA of the Act. The AO taking note of the aforesaid facts was of the view that the assessee has not shown the interest income of Rs. 5,45,973/- as his income and therefore, the assessee was asked to explain as to why the same should not be treated as undisclosed income/added to the total income of the assessee. The assessee replied that he has received interest amount of Rs. 5,45,973/- on FDRs and an amount of Rs. 54,630/- was deducted as TDS u/s. 194A of the Act. Before the AO, the assessee explained that his interest was paid by his bankers on different FDRs, which were solely used for business purpose (contract business). According to the assessee, these FDRs are his business asset and have been always reflected in his business balance sheet and these FDRs are made for the purpose of his contract business [Malhi Construction]. Moreover, the assessee submitted before the AO that interest earned on these FDRs are always treated as part of his business income generated from business asset and always credited in the P & L account of his proprietorship business (Malhi Construction) and in order to show that the assessee consistently was adopting this practice, he filed audited balance sheet, P & L account for the AY 2013-14, wherein also he has shown this interest receipt on this business-FDRs as his business income (by crediting in the P/L account of his business). It was also emphasized and pointed out that these FDRs were made solely for the purpose of above contract business by offering it as collateral securities to the above bank and/or as tender money i.e E/money, Security deposit and so on to different contractees, who insist on it, without which, the assessee would not got the contract. Thus, it was contended by the assessee that interest earned on these FDRs are correctly shown by him by including and treating it as his business income. However, this contention of the assessee was not accepted by the AO. According to AO, the assessee has failed to reconcile how the interest income of Rs. 5,45,973/- received from FDR for which tax was deducted by the bank u/s. 194A of the Act is reflected in contract gross receipt of Rs. 91,65,482/- which includes Rs.88,00,954/- as contract receipt for which tax was deducted u/s. 194C of the Act. The AO noted that the assessee has not maintained books of account during the year and has shown his business income on estimated basis at Rs.8,87,050/- u/s. 44AD and Rs. 90,000/- u/s. 44AE and also shown salary of Rs. 3,00,000/- from a Firm. The AO also noted that the assessee has separately shown S/B interest of Rs.860/-, which was shown as interest income **“from**

other sources”. According to the AO, the assessee had shown his income in the ITR of Rs. 12,77,910/- (Rs. 8,87,050 + Rs. 90,000 + Rs. 3,00,000/-). And, the assessee has not reflected the gross receipt of Rs. 93,46,927/- instead has shown only Rs 91,65,482/-(shortfall of Rs. 2,31,445/-). And since the assessee has not shown Rs. 5,45,973/-, therefore, the AO treated/added the same as undisclosed income to the total income of assessee u/s. 69A of the Act. Aggrieved, the assessee preferred appeal before the Id. CIT(A), who was pleased to confirm the order of the AO. Aggrieved, the assessee is before this Tribunal.

4. I have heard both the parties and perused the records. Aforesaid facts are not repeated again for the sake of brevity. The only dispute in this case is regarding characterization of nature of receipt of Rs. 5,45,973/-. The fact is that the assessee has received interest from different FDRs. The AO has noted that the assessee received Rs. 5,45,973/- as interest from FDRs and tax was deducted at source u/s. 194A of the Act. According to AO, the assessee has not reflected this amount of interest income in his ITR. According to AO, this receipt comes under the fold of income from **‘Other Sources’**. However, according to assessee, since the FDRs are solely made for the purpose of doing his business and since the FDRs are offered as collateral securities to above bank and/or as tender money i.e. E/money, Security Deposit and so on to different contractees, this interest earned should partake the colour of the business income and not from **“Other Sources”**. According to Id. AR from the facts explained by the assessee it can be seen that interest earned from FDR’s are in-extricably linked with business/contract and since have direct nexus with the business of contract, therefore, should be characterized as contract receipt. The Id. AR of the assessee has relied on the following case laws:-

- CIT -Vs- Chinna Nachimuthu Constructions - 297-ITR-70 (Karn).
- CIT -Vs- Govinda Choudhury & Sons - 203-ITR-881 (SC).
- DCIT -Vs- Britannia Engineering Ltd.- ITA No.47SIKo112013
dtd.06.04.20 16.
- DCIT -Vs- Sri B. Diwakar - ITA No.761IBang/ 2009
dtd.31.03.2010.
- Mrs. Saroj Dassani -Vs- ACIT - ITA No.S3601Del/2004
dtd.02.12.200S.

5. It is noted that though the assessee has replied to the AO vide dated 18-12-2017 the aforesaid facts like the FDR was used as security for obtaining the contract and was

essential condition for bagging the contract, however, the assessee has not bothered to give any material/evidence to show that the interest accrued on the FDRs/deposit was incidental and that the main purpose of FDR's was it was a condition for getting the contract or to avail the bank guarantee/security deposit/ E-money/tender money etc. It is noted that the assessee only made these contentions, but failed to produce any material to substantiate his contention that the interest accrued from FDR should be treated as income from business. Moreover, it is noted that there is shortfall of (Rs.93,46,927 – Rs. 91,65,482)= Rs. 2,31,445/- because even if the contention of assessee is correct, then he should have shown the contract/business income at Rs. 88,00,954 + Rs. 5,45,973= Rs.93,46,127.80, thus there is a clear shortfall of Rs. 2,31,445/-. Therefore, in the light of aforesaid discussion, I set aside the impugned order of the Id. CIT(A) and remand the matter back to the AO with a direction to examine the matter afresh regarding the characterization/nature of receipt in the light of the above mentioned case laws as well as the facts which the assessee bring to the notice of the AO. And if the assessee brings the notice of AO the terms of contract etc and is able to show that the FDR's in question was essential/necessary for obtaining the contract, then the interest income from these FDRs to be treated as **business income** and if the assessee fails to do so, then AO is at liberty to treat it as income from **Other Sources** and assessment may be framed in accordance to law. The assessee is at liberty to file/produce necessary contracts/documents/evidences and case laws, if so advised, to substantiate that the FDR was to secure/avail directly or indirectly the contract work as discussed supra. With the above observation, the appeal of the assessee is allowed for statistical purpose.

6. In the result, the appeal of assessee is allowed for statistical purpose.

Order is pronounced in the open court on 3rd July 2020.

Sd/-
(Aby. T. Varkey)
Judicial Member

Dated :, 3rd July 2020

**PP(Sr.P.S.)

Copy of the order forwarded to:

1. Appellant –Manjit Singh Malhi B-5/37 1st Fl., Sector-5, P.O Rohini, Delhi-110085.
- 2 Respondent –A CIT-Cir-2, Asansol
3. CIT(A)-4, Kolkata (sent through e-mail)
4. CIT- , Kolkata.
5. DR, ITAT, Kolkata. (sent through e-mail)

By order,

/True Copy,

Assistant Registrar