

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN
&
THE HONOURABLE MR. JUSTICE ASHOK MENON

WEDNESDAY, THE 20TH DAY OF DECEMBER 2017/29TH AGRAHAYANA, 1939

ITA.No. 121 of 2016

AGAINST THE ORDER/JUDGMENT IN ITA 56/COCH/2016 of
I.T.A.TRIBUNAL,COCHIN BENCH DATED 13-05-2016

APPELLANT(S)/RESPONDENT/REVENUE:

THE PRINCIPAL COMMISSIONER OF INCOME TAX
KOTTAYAM.

BY ADVS.SRI.P.K.R.MENON, SR.COUNSEL, GOI (TAXES)
SRI.JOSE JOSEPH, SC, FOR INCOME TAX

RESPONDENT(S)/APPELLANT/ASSESSEE:

M/S.PLANTATION CORPORATION OF KERALA LTD.
MUTTAMBALAM P.O., KOTTAYAM-686 004.

R1 BY ADV. SRI.RAMESH CHERIAN JOHN

THIS INCOME TAX APPEAL HAVING BEEN FINALLY HEARD ON
05-12-2017, THE COURT ON 20-12-2017 DELIVERED THE FOLLOWING:

ITA.No. 121 of 2016

APPENDIX

APPELLANT(S) ANNEXURES:

ANNEXURE A: COPY OF ASSESSMENT ORDER U/S 143(3) DATED 26-02-2015.

ANNEXURE B: COPY OF ORDER OF THE HIGH COURT IN ITA NO.114, 173 & 244
OF 2010

ANNEXURE C: COPY OF ORDER OF THE ITAT IN ITA NO.217,218,219/COCH/2009
FOR ASST.YEARS 1999-2000 TO 2001-2002.

ANNEXURE D: COPY OF CIT (APPEALS) ORDER NO.K57/KTM/CIT(A)/KTM/2014-15
DATED 07-01-2016

ANNEXURE E: COPY OF ITAT'S ORDER NO.56/COCH/2016 DATED 13-05-2016.

RESPONDENT(S) ANNEXURES:

NIL

//TRUE COPY//

PA TO JUDGE

dkr

C.R.

K.VINOD CHANDRAN & ASHOK MENON, JJ.

I.T.A. No. 121 of 2016

Dated this the 20th day of December, 2017

J U D G M E N T

Ashok Menon, J.

The Revenue has come up on appeal aggrieved by the order of the Income Tax Appellate Tribunal in ITA 56/Coch/2016 dated 13-05-2016 for the assessment year 2009-10 pertaining to the assessee, Plantation Corporation of Kerala Ltd., a public sector undertaking of the Government of Kerala. The original assessment under Section 143(3) of the Income Tax Act (hereinafter referred to as 'the Act') was carried out on 21-12-2011. Thereafter, the assessment was reopened by issuing notice under Section 148 of the Act. The assessment was completed under Section 143(3) read with Section 147 vide order dated 26-02-2015 by the Deputy Commissioner of Income Tax, Circle-I, Kottayam determining the total income of the assessee as Rs.7,61,10,190/-as against the returned income of Rs.4,20,07,050/-. The assessee claimed a

difference of Rs. 3,23,91,555/- disclosed in the balance sheet as interest receivable on fixed deposits claiming that it was only a hypothetical income and the right to receive it had not accrued. The assessing officer did not accept this explanation and added the same to the income of the assessee. The Commissioner of Income Tax (Appeals) confirmed the action of the assessing officer. On appeal before the Income Tax Appellate Tribunal, it was held that income accrues only when the right to receive is accrued and the right may be said to have accrued only when the enforceable debt is credited in favour of the assessee. It was further held that by virtue of Section 194A of the Act, the person responsible for paying any income by way of interest shall at the time of credit of such income to the account of the payee, or at the time of payment thereof, whichever is earlier; deduct tax. In this case, the Bank has neither credited nor paid the interest and accordingly, no tax was deducted and the question of accrual does not arise. Therefore, the income, which has been received and not acknowledged or which has not been acknowledged as payable to the assessee, cannot be taxed. Under the circumstances, it was observed that the Commissioner of

Income Tax (Appeals) is not justified in confirming the action of the assessing officer in bringing to tax the amount of Rs.3,23,91,555/-. Accordingly, the order was reversed and the appeal was allowed. It is in this order of the Income Tax Appellate Tribunal, which stands challenged before this Court.

2. We heard the learned Senior Counsel for the Government of India (Taxes) and the Counsel appearing for the respondent.

3. The brief question that arises for consideration before us is whether the interest income from Bank deposits of the assessee, amounting to Rs.3,23,91,555/-, which was not credited to the assessee's account during the assessment year, could be assessed to tax or not. It is submitted by the learned Senior Counsel for Revenue that the tax audit report in Form No.3CD certified that the system of accounting followed by the assessee is mercantile. In such circumstances, the entire interest accrued should have been offered to tax for the assessment year in which it accrued. The

assessee having showed the amount as accrued, excluded it from taxation contending the same was not received. Since the assessee was following the mercantile system of accounting, there was no reason to exclude the interest income on the ground of its non-receipt. Nor can it be argued that it was the responsibility of the bank under Section 194 A of the Act to deduct tax at source.

4. In the decision reported in (1997) 227 ITR 172, Tuticorin Alkali Chemicals and Fertilizers Ltd. v. Commissioner of Income Tax, it is held thus:

“Whether a particular receipt is of the nature of income and falls within the charge of Section 4 of the Income Tax Act is a question of law which has to be decided by the court on the basis of the provisions of the Act and the interpretation of the term “income” given in a large number of decisions of the High Courts, the Privy Council and also this court. It is well settled that income attracts tax as soon as it accrues. The application or destination of the income has nothing to do with its accrual or taxability. It is also well settled that interest income is always of a revenue nature unless it is received by way of damages or compensation.”

This would settle the position that interest accrued is taxable income and attracts tax as soon as it accrues. The learned Counsel for the respondent has no dispute that tax is payable by the

Plantation Corporation on the interest receivable from the Bank deposits. There is also no dispute that the assessee here follows the mercantile system of accounting. In *Keshav Mills Ltd. v. Commissioner of Income Tax*, [(1953) 23 ITR 230 (SC)]; it is held thus:

"The mercantile system of accounting or what is otherwise known as the double entry system is opposed to the cash system of book keeping under which a record is kept of actual cash receipts and actual cash payments, entries being made only when money is actually collected or disbursed.

That system brings into credit what is due, immediately it becomes legally due and before it is actually received and it brings into debit expenditure the amount for which a legal liability has been incurred before it is actually disbursed.

The profits or gains of the business which are thus credited are not realised but having been earned are treated as received though in fact there is nothing more than an accrual or arising of the profits at that stages. They are book profits. Receipt being not the sole test of chargeability and profits and gains that have accrued or arisen or are deemed to have accrued or arisen being also liable to be charged for income-tax, the assessability of these profits which are thus credited in the books of account arises not because they are received but because they have accrued or arisen."

The argument of the learned Counsel for the respondent that the interest due on the deposits was not credited to their account till the end of the relevant assessment year, and therefore, the interest does not become accrued and due and hence liable to income tax for that assessment year, is not acceptable to us.

5. The learned Counsel for the assessee relies on the decision Commissioner of Income Tax v. Excel Industries Ltd., [(2013) 358 ITR 295 (SC)], where the question raised and the finding were succinctly stated so:

"The question for consideration in all these appeals is whether the benefit of an entitlement to make duty free imports of raw materials obtained by the assessee through advance licences and duty entitlement pass book issued against export obligations is income in the year in which the exports are made or in the year in which the duty free imports are made.

In our opinion, the income does not accrue in the year of export but in the year in which the imports are made."

The above cited decision of the Apex Court is clearly distinguishable on facts. In the above case, the assessee claimed deduction in respect of duty entitlement benefits receivable, only as duty free

imports, in lieu of exports made, as per the export import policy. The assessee merely gets a duty entitlement on the export made, the extent of entitlement realisable only when the imports are made. There is also no corresponding liability on the customs authorities to pass on the benefit unless the goods are actually imported. According to the assessee in the said case, the amount were excluded from its total income since the benefit could not be said to have accrued till imports are made. The benefits under the advance licences or under the duty entitlement passbook do not represent the real income of the assessee. The income does not accrue on the exports being made, or the issuance of duty entitlement pass books; which remain as a hypothetical income, till the imports are made, which alone can be brought to tax as income.

6. In the instant case, the assessee, in the books of accounts showed the interest income of Rs. 4,84,25,103/- as accrued, but returned only Rs.1,60,33,548. The computation in the return excluded Rs.3,23,91,555/- on the ground that the same was not recieved. The depositor is entitled to get interest as and when it

becomes due, which may be monthly, quarterly, half yearly, yearly or at the end of the term of deposit, which is at the option of the depositor. It is also trite that on the option being exercised, to so deffer the reciept, the Bank pays cumulative interest. The assessee, as is seen from the assessment order; produced no evidence to substantiate the claim that the interest was not payable in the assessment year, but merely asserted that the interest accrued was not entirely recieved. If at all the maturity period or the expiry date did not fall in the relevant assessment year, it cannot be said that the interest was not due. The interest that accrued in the relevant year is for the amounts that already remained in deposit with the Bank and on the depositors asking, it is payable. As was observed the period of deposit being the option of the depositor the reciept stood defferred at the behest of the assessee. As a corollary there cannot be a claim made of hypothetical income or there being no corresponding liability to pay. If the assessee chose to close the deposit prematurely on any date, then the Bank is liable to pay whatever interest that is accrued till that date. Interest for the period, in which the amounts stood in deposit, accrues on the close

of the previous year and if it so accrues, it becomes the income of that particular assessment year, liable to be taxed in that year.

7. Yet another argument of the learned Counsel for the respondent is that under Section 194A of the Act, it is the obligation of the banker to pay tax on the interest due. The failure on their part has now resulted in action against the assessee. In view of the fact that the assessee had exercised the option to let the interest accumulate to the deposit and thereby earned compound interest by the end of the deposit term, it would not mulct any liability on the bank to pay tax on periodical accrual of interest to the income tax authorities. The Bank's liability to deduct tax at source arises only when it pays the interest. The amount that is to be received as interest, is known to the assessee and was accounted, as income accrued by way of interest in the account books of the assessee following the mercantile system. The interest income that accrued cannot, by any stretch of imagination, be termed as hypothetical income.

8. The reliance placed by the assessee on an earlier decision of this Court in ITA Nos.114, 173 and 244 of 2010 dated 13-07-2010 will not in any way help the assessee. In that case, loans due to the assessee were treated as advance made for investments in equity ie., for purchase of shares. It was held that so long as the department had no case that any interest accrued to the assessee, there was no scope for assessment. In that case, the Plantation Corporation gave some advances to two other companies under the Kerala Government pursuant to Government orders and no interest was received or agreed to be paid by the loanee companies. The Plantation Corporation went by the instructions of the Government and the Board of Directors of the Plantation Corporation took a decision to convert the loan into equity shares. The situation in this case is not similar. The deposits in Bank for definite periods at definite interest rates generate interest at the agreed rates. In fact, income tax was also paid on the interest income, which was received subsequently, but not during the subject assessment year, when it accrued.

Hence, we do not agree with the findings of the Income Tax Appellate Tribunal that the interest income on Bank deposits is hypothetical income and that the assessee is entitled to get the interest excluded from assessment. The question raised is thus answered in favour of the Revenue and against the assessee. The appeal is therefore, allowed and the order of the Income Tax Appellate Tribunal is set aside and the assessment is restored. Parties left to suffer their costs.

Sd/-

K.VINOD CHANDRAN
Judge

Sd/-

ASHOK MENON
Judge

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PA to Judge