

**IN THE INCOME TAX APPELLATE TRIBUNAL  
HYDERABAD BENCHES "A" : HYDERABAD  
(THROUGH VIDEO CONFERENCE)**

**BEFORE SHRI S.S.GODARA, JUDICIAL MEMBER  
AND  
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

**I.T.A. No. 994/HYD/2017**

Assessment Year: 2013-14

M/s.Anrak Aluminium  
Limited,  
HYDERABAD  
[PAN: AAGCA2333M]

DCIT, Circle-1(1),  
Vs HYDERABAD

(Appellant)

(Respondent)

For Assessee : Shri A.V.Raghuram, AR  
For Revenue : Smt. Anjala Sahu, DR

Date of Hearing : 21-01-2021  
Date of Pronouncement : 08-02-2021

**ORDER**

**PER BENCH :**

This assessee's appeal for AY.2013-14 arises from the CIT(A)-1, Hyderabad's order dated 17-03-2017 passed in appeal No.0016 / CIT(A)-1/ Hyd/ 2016-17/ 2016-17 involving proceedings u/s.143(3) of the Income Tax Act, 1961 [in short, 'the Act'].

Heard both the parties. Case file perused.

2. The first and foremost issue that arises for our apt adjudication in assessee's instant appeal is that of correctness of both the lower authorities' action invoking Section 14A disallowance of Rs.3,60,23,673/- in the course of assessment

and upheld in the CIT(A)'s order. The same followed Section 115JB MAT alleged consequential adjustment as well.

3. Coming to the latter part of MAT inclusion of Section 14A read with Rule 8D disallowance, there is hardly any dispute that case law ACIT Vs. Vireet Investment P. Ltd., (2017) [165 ITD 27] (Delhi) (SB) has already decided the same in assessee's favour. The assessee therefore gets relief to this limited extent at this stage.

4. We now advert to the main component of the impugned disallowance. The Assessing Officer's assessment order dt.07-03-2016 invoked Section 14A r.w. Rule 8D(2)(ii) of the Income Tax Rules in arriving proportionate interest expenditure disallowance of Rs.3,37,63,307/-. Case records and more particularly para 3.4 of the assessment order suggests that the assessee was found to have made investments of Rs.17,41,46,612/- relating to its exempt income from dividends to the tune of Rs.7,91,07,443/- in the relevant previous year. As against that, we notice that it had interest free funds of Rs.13,02,47,08,990/- representing share capital followed by Rs.7,49,10,320/- of reserves and surplus; respectively. Meaning thereby that assessee's non-interest bearing funds exceed more than its exempt income's investment. We quote CIT Vs. Reliance Utilities & Power Ltd., [313 ITR 340] and CIT Vs. HDFC Bank Limited [366 ITR 505] (Bom) that the necessary presumption that flow in such an instance is that of utilisation of non-interest bearing funds only in deriving exempt income. We go by this process reason

alone to delete proportionate interest expenditure disallowance of Rs.3,37,63,307/-.

5. This leaves us with the third limb of administrative expenditure disallowance of Rs.22,60,366/-. Learned CIT-DR fails to dispute that both the lower authorities have gone by the assessee's gross amount of investments than those yielding its exempt income only. We therefore direct the Assessing Officer to restrict the impugned disallowance to the extent of assessee's exempt income yielding investments. The assessee gets part relief to this extent. This first substantive issue is partly decided in assessee's favour. Necessary computation to follow as per law.

6. We are now left with the second issue of interest income addition of Rs.26,45,20,127/- treated as 'income from other sources' in both the lower proceedings. Ld.CIT(A) detailed discussion to this effect reads as under:

*"5.1 During the course of assessment proceedings, it is noticed by the Assessing Officer, that the assessee has not yet commenced its business activities. Further the assessee has received bank interest on fixed deposits amounting to Rs.26,45,20,127/- which was reduced from interest paid to banks.*

*5.2 The assessee was asked to explain why the interest income should not be taxed under the head income from "other sources" in view of the Apex court decision in the case of Turicorin Alkali Chemicals and Fertilizers Limited Vs. CIT 227 ITR 0172, In response, the assessee stated that the company has availed term loans, which were pending for utilization, these funds were invested in mutual funds and fixed deposits. Income earned on such short term investments was reduced from the capitalization cost. This treatment was in accordance with the accounting standard 16. The Appellant took reliance of the case M/s. Neelachal Ispat Nigam Ltd vs Asst. CIT (ITAT Cuttack bench dated 31 Aug 2004). The Assessing Officer did not accept the submission of the assessee and interest received on*

*fixed deposits amounting to Rs.26,45,20,127/- was treated as income from other sources.*

*5.3 Before me, Appellant submitted that Assessing Officer assessed the interest income under the head "other sources" by relying on the decision of the Supreme Court in the case of Tuticorin Alkalis reported in 227 ITR 172. The appellant submitted that the Assessing Officer who is aware of the decision should be aware of the facts and application of such ratio to such facts. What the apex court in fact held is that where the business of the assessee has not commenced and no profit and loss account is drawn, it is required to assess the interest income separately under the head "other sources" and not in a case where a profit and loss account is drawn. In the appellant's case a profit and loss account is drawn and loss of Rs.47,43,37,983/- is claimed. Even if the interest income is assessable under the head "Other sources" once there is loss under the head business the same is permitted to be set off under the provisions of Sec.71.*

*5.4 I have considered the submissions of the appellant and the findings of the Assessing Officer. There are certain aberrations in the submission of the Appellant.*

*5.5 To begin, one has to understand the decision of the Hon'ble Apex Court in the case of Tuticorin Alkali Chemicals and Fertilizers Limited vs. CIT 227 ITR 172 (SC), wherein it was held that:*

*"interest earned 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 claimed as non-taxable on the ground that it would go to reduce interest on borrowed funds.*

*..... .. In the case before us, the company had surplus funds in its hands. In order to earn income out of the surplus funds, it invested the amount for the purpose of earning interest. The interest thus earned is clearly of revenue nature and will have to be taxed accordingly. The accountants may have taken some other view but accountancy practice is not necessarily good law. In B.S.C. Footwear Ltd. vs. Ridgway (Inspector of Taxes) (1972) 83 ITR 269 (HL), the House of Lords had no hesitation in holding that the accounting practice for calculating its profit followed by the assessee and accepted by the Revenue for 30 years could not be treated as sanctioned by law and was not acceptable for the purpose of computation of taxable income. "*

*5.6. In the case of M/s.Bokaro Steel Ltd. (supra), different assessment years were involved, however on the issue of treatment*

of interest received on the short-term deposit, the Hon'ble Supreme Court has held as under:

*"During these assessment years, the respondent assessee had invested the amounts borrowed by it for the construction work which were not immediately required, in short-term deposits and earned interest. It has been held in these proceedings that the receipt of interest amounts to income of the assessee from other sources.*

*..... In any case, this question is now concluded by a decision of this Court in Tuticorin Alkali Chemicals & Fertilizers Ltd. VS. CIT (1997) 141 CTR (SC) 387 : (1997) 227 ITR 172 (SC). Hence, we are not called upon to examine that issue."*

5.7. As far as the facts of the present case are concerned, it is not a case of the assessee where "the deposits" had any nexus with the setting up of the plant. In fact, the surplus fund which was kept with the bank on which the assessee earned interest. In my opinion, the principles laid down by the Hon'ble Supreme Court in the case of Tuticorin Alkali Chemicals & Fertilizers Ltd (supra) are squarely applicable and interest earned by the assessee even during the construction period on the short-term deposit kept with the bank is assessable as an income which the Assessing Officer has done.

5.8. I also rely on the Hon'ble Court decisions in the following cases:

a) CIT Vs. Autokast, (2000) [248 ITR 110] (SC) : The question that was before the High court, whether, on the facts and in the circumstances of the case, the interest income is not assessable to tax in the hands of the appellant? The Hon'ble High Court answered the question against the revenue and the department was in appeal by special leave. In reference to the Tuticorin Alkali Chemicals and Fertilizers Limited vs. CIT 227 ITR 172 (SC), the civil appeal allowed in favour of the Revenue. In other words, the interest income is assessable to tax in the hands of the assessee and held that the interest which occurred to the assessee was assessable under the head 'Income from other sources' and cannot be set off against preoperative expenses as claimed by the assessee.

b) Chandapur Sugar Company Limited vs. CIT (2004) [197 CTR 381] (Allahabad High Court): In this case, the assessee claimed that interest received should be set off against the interest payment. Hence no interest income is assessable in hands. The ITO has rejected the claim and was assessed under Income from other sources. The court held that interest earned by the appellant has rightly been held to be the income and taxable under the head 'Income from other sources'.

c) *CIT Vs. Coromandal Cements Ltd (1997) [234 ITR 412] (SC)*

d) *CIT Vs. New Central Jute Mills Co. Ltd [1979] [118 ITR 1005](Koll.);* In this case the appellant earned interest which was deposited in a bank to receive interest. The difference between interest paid and earned was claimed as revenue expenses. The Kolkata High Court, referred to the observation that in case money borrowed by d newly started company which is in the process of constructing and erecting its plant, the interest incurred before the commencement of production on such borrowed money can be capitalized and added to the cost of the fixed assets which have been created as a result of such expenditure. The Court concluded in favor of the Revenue. "The expenditure assessee has failed to establish that it was its purpose that utilized amount received on loan for earning interest. It cannot be said that the assessee has established nexus between the deposit and the loan taken.

e) *Addl.CIT Vs. Madras Fertilizers Ltd [1980] [122 ITR 139J(Mad.) :* In' this case, the issue raised was whether the interest received was wholly and exclusively in connection of business. The borrowing itself was not for the purpose of depositing the money and earning, interest, only for the purpose of putting up the plant and purchasing the capital goods. Hence, the interest paid to the loan amount cannot have any direct connection with the deposit of the amount and with the interest earned. The case also referred to *Smt. Padmavati Jaykrishna Vs. CIT (1975) 101 ITR 153 (Guj.)*

f) *M/S Traco Cable Company Limited Vs. CIT [1969] [72 ITR 503](Ker.) :* In this case, the court held that receipt of income by interest was only incidental or consequential on the deposit. It can hardly be contended, if an individual, who carries on any business other than a business of banking or dealing in money, deposits in' his surplus funds in a bank and receives interest thereon, the interest thus received, would be income from business. That is to say interest received in the bank deposits cannot be said to have connection with the business unless he is in the business of banking.

g) *M/S Madhya Pradesh State Industries Corporation Limited Vs. CIT [1968] [69 ITR 824] (MP):* The court held that newly established the claim of treating the interest income received as income from business, was obviously made for the purpose of deduction of a major portion of the expenses incurred. The court held it is not sufficient merely to look at the Memorandum of Association and to find out of the business at profits. It is also necessary to determine further whether the particular act done by the company was done in pursuance with the objects enumerated in the Memorandum or Articles of Association. In my opinion on the facts of the case, it is impossible to hold the deposit of the share, money in certain money

*was an investment made by the appellant to the objects specified by other clause. The appellant was not a banking company, hence money deposited by the company with the business was not in the ordinary course of business. Hence, income received on the deposits cannot be regarded as income under the head 'Income from Profit and gains of the business' and, this clearly is a Income from other Sources u/s. 56 of the IT Act, 1961.*

*h) In the case of CIT Vs. Seshasayee Paper & Boards Limited, Hon'ble Madras High Court held that "the interest earned by the assessee on investment of share capital in call deposits have been before production commenced should be assessed separately under the head Other sources".*

*l) CIT vs. Nagarjuna Steel, Hon'ble A.P. High court held that "interest received on short term deposits by a company prior to commencement of production could not be treated as revenue receipt",*

*j) Chalapalli sugar limited Vs. CIT [1975J [98 ITR 167J (SC) held that the Interest was not allowed as revenue expenditure in the period prior to commencement of the business of the assessee.*

*k) In the case of Central Travancore Specialists Hospital Ltd Vs. ACIT, Hon'ble ITAT, Cochin Bench held that "interest earned by the assessee even during the construction period on the short-term deposit kept with the bank is assessable as an income".*

*l) CIT Vs. Universal Electro Graphite Limited [1989] [197 ITR 465], wherein it related to interest on Fixed deposits and let a payment of call money prior to setting up of business showing no nexus or relation with a capital expenditure, reduction was refused.*

*m) International Marketing limited Vs. ITO & Ors. [2007] [292 ITR 504] (Del.) held that if no business had been transacted there was no question of allowing any expenses in relation thereto.*

*5.9. Based on the above decisions, I consider interest income of Rs.26, 45,20,127/- earned by the appellant is to be assessed under the head 'Income from other sources'. Having decided that, the issue of set off of business losses (interest payable on long term borrowings) against the income from "other sources" (interest received on short term deposit during pre-operative period), as contended by the Appellant, cannot be allowed u/s 72. Hence, the Assessing Officer is right in holding the interest income on short term deposits which is to be assessed under "Income from Other Sources" and not to be set off against interest payable or capitalized in works-in-progress".*

7. We have given our thoughtful consideration to the rival pleadings against and in support of the impugned disallowance. We find no merit in assessee's stand in principle since its interest income is not related to any revenue deriving business activity. The same therefore deserves to be treated as 'income from other sources' only going by the Ld.CIT(A)'s detailed discussion extracted hereinabove in the light of various judicial precedents. The fact also remains that neither of the lower authorities has proceeded on netting formula going by Hon'ble apex court's decision in ACG Associated Capsules Pvt. Ltd. Vs. CIT (2012) [343 ITR 89] (SC). We therefore direct the Assessing Officer to allow netting benefit *qua* the impugned addition vis-à-vis the corresponding expenditure incurred at the taxpayer's behest in above terms.

8. Learned counsel next invited our attention to the CIT(A)'s order in para 5 that the assessee had although pleaded set-off of its impugned interest income against business losses of Rs.3,12,49,041/-, the same has not been dealt with specifically.

9. Ld.CIT-DR, on the other hand, quoted para 5.9 of the CIT(A)'s order that the same had been duly considered. It emanates from the case records that although the CIT(A) appears to have denied the assessee the impugned intra head set-off of the two heads of income, it is not clear as to under which clause of Section 72 was invoked to decline this relief. We thus are of the opinion that this issue of set-off of interest income against business loss deserves to be considered afresh

as per law. We restore this issue back to the Assessing Officer therefore.

10. Mr.Raghuram lastly invited our attention to the assessee's ground No.5 that the CIT(A) has erred in not considering the assessee's alternate plea seeking directions to the Assessing Officer to increase the work in progress upon addition of interest income of Rs.26,45,20,127/-. We do not find any merit in the instant ground *per se*. The fact also remains that since the assessee's main issue has already been restored back to the Assessing Officer, he shall also examine and ensure that there is no double deduction/addition *qua* the same in consequential proceedings. Necessary computation to follow as per law.

11. This assessee's appeal is partly allowed in foregoing terms.

*Order pronounced in the open court on 8<sup>th</sup> February, 2021*

Sd/-  
**(LAXMI PRASAD SAHU)**  
**ACCOUNTANT MEMBER**

Sd/-  
**(S.S.GODARA)**  
**JUDICIAL MEMBER**

Hyderabad,  
Dated: 08-02-2021

*Copy to :*

*1.M/s.Anrak Aluminium Limited, C/o.K.Vasant Kumar, A.V.Raghu Ram, P.Vinod & M.Neelima Devi, Advocates, 610, Babukhan Estate, Basheerbagh, Hyderabad.*

*2.The Deputy Commissioner of Income Tax, Circle-1(1), Hyderabad.*

*3.CIT(Appeals)-1, Hyderabad.*

*4.Pr.CIT-1, Hyderabad.*

*5.D.R. ITAT, Hyderabad.*

*6.Guard File.*