

**IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR.**

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER**

**I.T.A. No. 506/Asr/2019
Assessment Year: 2013-14**

Dy. Commissioner of Income Tax, Circle-I, Bathinda. (Appellant)	Vs.	M/s G.G. Continental Traders Pvt. Ltd. 2301, Bhjupindra Floor Mills. Amrik Singh, Road, Bathinda. [PAN: AAECG3090P] (Respondent)
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**I.T.A. No. 494/Asr/2019
Assessment Year: 2013-14**

M/s G.G. Oil & Fats Pvt Ltd. Shop No. 1, Aggarsain Nagar Amrik Singh, Road, Bathinda. [PAN: AADCG8857H] (Appellant)	Vs.	Dy. Commissioner of Income Tax, Circle-I, Bathinda. (Respondent)
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**I.T.A. No. 495/Asr/2019
Assessment Year: 2013-14**

M/s G.G. Continental Traders Pvt. Ltd. 2301, Bhjupindra Floor Mills. Amrik Singh, Road, Bathinda. [PAN: AAECG3090P] (Appellant)	Vs.	Dy. Commissioner of Income Tax, Circle-I, Bathinda. (Respondent)
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**I.T.A. No. 505/Asr/2019
Assessment Year: 2013-14**

Dy. Commissioner of Income Tax, Circle-I, Bathinda. (Appellant)	Vs.	M/s G.G. Oil & Fats Pvt Ltd. Shop No. 1, Aggarsain Nagar Amrik Singh, Road, Bathinda. [PAN: AADCG8857H] (Respondent)
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**I.T.A. No. 510/Asr/2019
Assessment Year: 2016-17**

Dy. Commissioner of Income Tax, Circle-I, Bathinda. (Appellant)	Vs.	M/s Gurdas Agro Pvt Ltd. 2301, Bhupindra Flour Mills, Amrik Singh, Road, Bathinda. [PAN: AAECG4383P] (Respondent)
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**I.T.A. No. 517/Asr/2019
Assessment Year: 2016-17**

M/s Gurdas Agro Pvt Ltd. 2301, Bhupindra Flour Mills, Amrik Singh, Road, Bathinda. [PAN: AAECG4383P] (Appellant)	Vs.	Dy. Commissioner of Income Tax, Circle-I, Bathinda. (Respondent)
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**I.T.A. Nos. 507 & 508/Asr/2019
Assessment Years: 2013-14 & 2016-17**

Dy. Commissioner of Income Tax, Circle-I, Bathinda. (Appellant)	Vs.	M/s Gurdas Garg, Bhupindra Flour Mills, Area Amrik Singh, Road, Bathinda. [PAN: ADUPG2359M] (Respondent)
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**I.T.A. Nos. 498 & 516/Asr/2019
Assessment Years: 2013-14 & 2016-17**

M/s Gurdas Garg, Bhupindra Flour Mills, Area Amrik Singh, Road, Bathinda. [PAN: ADUPG2359M] (Appellant)	Vs.	Dy. Commissioner of Income Tax, Circle-I, Bathinda. (Respondent)
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Appellant by	Sh. Sudhir Sehgal, & Sh. P.N. Arora, & Sh. P.K. Singla, Adv.
Respondent by	Sh. S. M. Surendranath, Sr. DR

Date of Hearing	16.05.2023
Date of Pronouncement	24.05.2023

ORDER

Per: Bench:

Batch of appeal was filed by both the revenue and the assessee against the order of the Id. Commissioner of Income Tax (Appeals), Bathinda,[in brevity the ‘CIT (A)’] order passed u/s 250(6) of the Income Tax Act 1961, [in brevity the Act] related to A.Ys. 2013-14and 2016-17.The impugned order was emanated from the order of the Id. Dy. Commissioner of Income Tax, Circle-I, Bathinda (in brevity the AO) order passed u/s 143(3)/263 of the Act.

2. At the outset all the appeals of the assessee and revenue are under a common issue and have the same factual ground. All the appeals are taken together, heard

together and adjudicated together. For the sake of convenience, we take ITA No.506/Asr/2019 of revenue and ITA No. 495/Asr/2019 of the assessee as lead case.

ITA No. 506/Asr/2019 appeal of Revenue for AY 2013-14

3. The revenue has taken the following grounds which are extracted as below:

“(i) The CIT(A) erred in holding that the interest earned on FDRs and other interest had an immediate nexus with the business of the assessee without appreciating that the assessee failed to prove how the interest earned on FDRs and other interest related to his business activities despite the fact that he was specifically required to prove it during assessment proceedings.

(ii) The CIT(A) has erred in holding that there is direct nexus between interest income and business activities without giving any clear findings as to how such nexus has been proved in the instant case.

(iii) The CIT(A) has erred in not recording whether the findings are based on additional evidence produced by the assessee and admitted by the CIT(A), which was in violation of Rule 46A of the Rules as such production of additional evidence was not covered under clause (a) to (d) of Rule 46A and no

reasons have been recorded by the CIT(A) for admitting such additional evidence.

(iv) The CIT(A) erred in not taking into consideration the findings of Hon'ble Rajasthan High Court in the case of CIT vs Bhaval Synthetics India, 81 taxmann.com 478 wherein, it was held that interest earned on FDRs kept in bank as margin money for obtaining LOC to purchase machinery was taxable as income from other sources.

(v) The CIT(A), Bathinda erred in not taking into consideration the findings of Hon'ble Supreme Court in the case of Conventional Fasteners vs CIT, 94 taxmann.com 80 wherein, the finding of the Hon'ble Uttarakhand High Court that interest income earned from FDRs kept as security and as a business pre requisite had nothing to do with carrying on business, were upheld.”

ITA No. 495/Asr/2019 appeal of Assessee for AY 2013-14

4. The assessee has taken the following grounds which are extracted as below:

“1. That the Ld. Commissioner of Income Tax (Appeals) has erred on facts and in law by upholding that business of high sea sales of edible oil is speculative in nature within the meaning of section 43(5) of the Act whereas as per the explanations furnished and material placed on record during the assessment and appellant proceedings, such business is non-speculative in

*nature. As such, addition made is unjustified and uncalled for.
The same be deleted.*

*2. That the appellant craves to add, amend or alter any
ground of appeal on or before the hearing.”*

5. Brief fact of the case is that the assessment was completed as per direction of the Id. PCIT u/s 263. The basic issue is that the assessee had treated the interest amount of Rs.7.3 crore on FDRs and 32.17 lakh as business income and had adjusted with loss of “high sea sale” of imported goods. The said interest is considered as ‘Income of Other Sources’ by the Id. AO.

In other issue, the revenue has taken the “high sea sale” of imported goods as speculative transaction U/s 43(5) & the loss is treated as speculative loss which is barred to adjust with the interest. The assessee has grievance that the entire transaction is not a speculative and also the interest derived/earned is related to the business of the assessee which is considered as business income not as ‘Income from other sources’. Aggrieved assessee filed an appeal before the Id. CIT(A). After considering the submission of the assessee the Id. CIT(A) upheld the observation of the Id. AO related to “high sea sale” of imported goods & considered as speculative transaction u/s 43(5). But in the addition of interest, the Id. CIT(A) has changed view & treated as business income. Accordingly, Id. CIT(A) has rejected the view “Income from other sources”. In this point, the Id.

CIT(A) rejected the observation of the Id. AO. Being aggrieved both revenue and assessee have filed appeal before us by challenging the appeal order.

6. The Id. DR vehemently argued and invited our attention in assessment order page 8 para 12 is reproduced as below:

“12. The assessee, vide notice u/s 142(1) dated 28.08.2018 was specifically required to Rs.32.17 lakh as other interest related to its business activities. The assessee failed to Similarly, the assessee failed to explain how interest of Rs. 7.34 crore received from FDRs was related to its business activities. Under the circumstances, the assessee failed to prove that the amount of FDR interest amounting to Rs 7.34 crore and interest of Rs. 32.17 lakh received was in any way related to its business activities and hence, the total amount of Rs 7,67,10,732/- is assessed as Income from other sources. In view of above facts, it is evident that the income earned on the account of interest at Rs. 7,67,10,732/- is not related to the business activities and required to be treated under the head "Income from other source". Assessee company deliberately credited this income in P&L account only to get it adjusted against the loss occurred in speculative business to reduce its tax incidence. Therefore, penalty proceedings u/ s 271(l)(c) are initiated simultaneously for furnishing inaccurate particulars of the income.”

7. The ld. DR vehemently argued and mentioned that the transaction related to “high sea sale” is speculative transaction and the loss earned from this transaction would be treated as speculative loss u/s 43(5) of the Act. There is no delivery of the goods from the end of the assessee. Further placed that the interest which was earned from the fixed deposits&other investment are not the business income but it would be treated as income from other sources. The ld. DR relied on the order of the Hon’ble High Courts which are reproduced as below:

High Court of Delhi in the case of **Mantola Co-Operative Thrift & Credit Society Ltd. v. Commissioner of Income-tax, [2014] 50 taxmann.com 278 (Delhi)** Issue is related to application of interest in 80P(2).

High Court of Rajasthan in the case of **Commissioner of Income-tax v. Bhawal Synthetics (India), Udaipur, [2017] 81 taxmann.com 478 (Rajasthan)**

“Interest earned on FDR kept with bank as margin money for obtaining letter of credit to purchase machinery was taxable as income from other sources

Where assessing Officer allowed assessee's claim for set off of interest earned on FDR kept with bank to obtain letter of credit against interest payable on borrowed fund without even examining under which provision of Act said set off had been claimed, Commissioner was justified in passing revisional order setting aside assessment in question”

7.1 The Id. DR respectfully relied on the order of the Hon'ble High court of Uttarakhand. The assessee's SLP is dismissed by the Hon'ble Supreme Court. The relevant paragraph is extracted here:

High Court of Uttarakhand in the case of conventional

Fastners v. Commissioner of Income-tax, Dehradun, [2017]

88 taxmann.com 163 (Uttarakhand)

“24. We are afraid that the said contention is misplaced. What the Officer has stated is only that it is treated as a business income, which means that it would be income under Section 28 of the Act, but he has been careful enough to say that the said income is not derived within the meaning of Section 80-IC. Any income, which may be derived from carrying on the business, even if it is incidental, would qualify as business income under Section 28, but that is not the something as saying that it is a business income, which is derived from the said business. Therefore, we see no merit in the said contention also.”

8. The Id. AR for the assessee relied on the order of the Id. CIT(A), page 16 para 12 and 13 are reproduced as below:

“12. In the appellant's case, it is an admitted fact that there has been no delivery of the commodity to the appellant pursuant to the purchase and the commodity has been resold. It is also not known whether the second buyer has also resold it without delivery or he is the ultimate user after taking the delivery. Mere shipment and 'goods in transit' would not, as per the Hon'ble Supreme Court's decision, constitute actual

delivery, which is contemplated in section 43 (5) to treat the transaction as non-speculative. Considered in this background, the appellant fails to successfully challenge the action of the AO in treating the appellant's business as speculative. The grounds of appeal as at SI Nos. 2 & 3 supra are, thus, decided against the appellant. It is ordered accordingly.

13. Adverting now to the grounds of appeal raised at SI Nos. 3 & 4 supra, it is noted that the appellant's business of import of oil and its resale is not in doubt. It is also not contested that for import of oil, the appellant necessarily needs to open Foreign Letters of Credit [FLCs] and for that FDRs have to be mandatorily pledged as margin with the bank, which holds a lien on the same. Such FDRs also earn interest which comes to the credit of the business of the appellant. It is, thus, apparent that the interest earned on fixed deposits and other interests have an immediate nexus with the business of the appellant i.e. import of edible oil and its resale. It is not a case of surplus and idle funds of the appellant having been invested or parked in FDRs of long or short term maturity. The landmark decision of the Hon'ble Supreme Court in the case of Tuticorin Alkali Chemicals & Fertilisers Ltd. Vs. CIT, [1997] 227 ITR 172 is very often used by the Assessing Officers to tax interest on FDR as "income from other sources". However, in the said case, the Hon'ble Supreme Court was dealing with interest earned on short term investment of funds borrowed for setting up of factory during construction of factory i.e. before

commencement of business, wherein it was held that such interest has to be assessed as "income from other sources" and that it cannot be said that interest income is not taxable on the ground that it would go to reduce interest on borrowed amount which would be capitalised. Subsequent to the said decision of the Hon'ble Supreme Court, the issue of taxation of interest on short term investments has been decided differently on the theory of nexus with the business [CIT Vs. Karnal Co-operative Sugar Mills Ltd.; CIT Vs. Bokaro Steel Ltd.]. This issue also came up for consideration before the Hon'ble High Court of Delhi in the case of CIT Vs. Shahi Export House [2010] 195 taxmann 163, where the issue for consideration was whether interest earned on FDRs had to be taken into consideration while computing the benefit under section 80HHC and netting of the interest was to be allowed by deducting the same from the interest paid by the assessee on certain guarantees made by it from banks. The appellant has already quoted the Head Notes of this decision ibid."

8.1 The ld. AR further argued & placed the brief synopsis which is reproduced as under:

"1. This is an appeal filed by the department raising various grounds of appeals. The ground of appeal in the appeal of the department is that the Ld. CIT(A) has erred in giving a finding that the interest on fixed deposit and other interest have an

immediate nexus with the business of the appellant i.e. import of edible oil and its resale and, therefore, the CIT(A) has erred in assessing the same as business income rather income from other sources as held by the Assessing Officer.

2. *That Ld. Assessing Officer has discussed this issue in para 12 of the order and has held that the assessee has failed to prove that the amount of FDR interest and other interest related to business activities of the assessee and it was income from other sources.*

3. *The Ld. CIT(A) has discussed this issue in para 13 & 14 of the order and following are the undisputed facts:-*

i). *The assessee is carrying on one business only, which is apparent from the order of Assessing Officer itself, wherein, he has mentioned in para-8 as under:-*

“The Assessee company is involved in the business of crude palm oil (CPO) trading and, thus, the assessee is carrying on only one business and no other business and it is also an undisputed fact that the FDR had to be mandatorily made and rather required to be pledged with the bank as margin and, thus, the bank holds a lien on the same and on such FDR, the interest is earned on fixed deposit and other interest have also an immediate nexus with the business of the assessee i.e. import of edible oil and its resale.”

ii) *There is also a categorical finding of the Ld. CIT(A) that there are no surplus/ideal funds having been available with the assessee or parked in the FDR and long and short term import*

and, thus, such interest income cannot be distinguished with the business of the assessee. The case of assessee is duly covered by the judgment of CIT Vs. Karnal Cooperative Sugar Mills as reported in 118 Taxmann 489.

iii) The same issue was decided by the Hon'ble ITAT Bench in the latest order in the case of G.H.Crop Sciences Pvt. Ltd. and M/s Apex Fibre India Ltd. in ITA No. 56/Asr/2020 & ITA No. 84/Asr/2020 and this has been discussed and analyzed at length from para 14 at page 23, of the order of the Hon'ble Bench, where the Ld. CIT(A) has relied upon the judgment of court CIT Vs.Karnal Cooperative Sugar Mills, on exactly the same facts and circumstances, the finding has been given in para 15.4 of the said judgment and, as such, since the facts of the case are identical, the appeal of the department be dismissed.

iv) Further, this assessment order has been passed u/s 143(3) read with section 263 by the PCIT, Amritsar and in that order in para 6.2, it has been stated by the PCIT as under:-

“The assessee has declared in his VAT return of purchase as import from outside India and sales as “High Sea’ claimed exempt under VAT and has shown net weight subject to VAT or purchase eligible for ITC as Nil.”

v). Further, the department has taken a ground of appeal No.3 with regard to alleged violation of rule 46A by the Worthy CIT(A) and it is submitted that there was no new evidence submitted before the Ld. PCIT and all the submissions are as

per the record of the department during original assessment proceedings and this issue was also there in the relied upon case of ‘M/s G.H. Crop Sciences Pvt. Ltd. and ‘M/s Apex Fibre India Ltd.’ as cited supra. The same ground was there in that case also and which is borne out from para 8 of the order of Hon’ble ITAT and the finding has been given in para 10 of the order, and thus, this ground of appeal is not borne out from the records. Hence the appeal of the department be dismissed.”

9. The Id AR placed the in the appeal two basic issues are emanated; one is treatment of “high sea sale” of imported goods which is agitated by the assessee and other is treatment of interest in the head of income which is agitated by the revenue. The Id. AR fully relied on the order of ITAT Amritsar Bench. The relevant paragraphs are reproduced as below:-

**ITAT-Amritsar Bench in the case of DCIT, Circle-1, Bathinda
vs. M/s G.H.Corp Science Pvt Ltd, ITA No. 56 &
84/Asr/2020 date of pronouncement 23.02,2023**

“15.3 It is evident from the Assessment Order that during the course of assessment proceeding, it was stated before the AO that the goods imported by it are backed up with LC [letter of credit] and that FDR made by it was not surplus FDR but as per bank’s term, it uses to make FDR as cash margin against these LCs opened against the import of goods and that the income arising out from these FDRs is its operative income and business income.

[Para Page 3 of the Assessment order].

15.4 In view of the above factual discussion, and judicial precedent, we hold that the goods imported by the assessee are backed up with LC [letter of credit] and that FDR made by it was not surplus FDR but as per bank's term and hence, the interest from these fixed deposits which were inextricably linked to the business of the assessee would be taxed as business income and not as income from other sources. Accordingly, the department ground no. 7 and 8 that interest earned on FDRs kept in bank as margin money for obtaining LOC and bank security for high Sea Business Transaction to be income from other sources as against business income are rejected.

15.5 So far as the interest from parties is concerned, the same cannot be said to be also linked to the business of the assessee. Even otherwise, since there was current year loss in the business of edible oil, the loss is liable to be adjusted against the business income derived from this year and for this reason, the Ld AR has no objection to our view that the interest from the parties would be charged to tax under the head Income from other sources."

9.1 The Id. AR respectfully relied on the order of Hon'ble High Court of Delhi the relevant paragraphs are reproduced as below:

High Court of Delhi in the case of **Commissioner of Income-tax v.**

Shahi Export House, [2010] 195 Taxman 163 (Delhi)

"11. We are, therefore, of the opinion that CIT (Appeals) as well as Income-tax Appellate Tribunal has rightly applied the principle laid down in Shri Ram Honda Power Equip's case (supra). It may be useful to mention that in Shri Ram Honda Power Equip's case (supra) this court specifically affirmed the judgment of Special Bench of the Tribunal in Lalsons Enterprises v. CIT [2004] 89 ITD 25 (Delhi) and particularly

the following observations which were extracted by this Court as under:—

"if the interest received is found to have a nexus with the business, still it remains to be excluded from the profits of the business by virtue of Explanation (baa)(1), but the claim is that the quantum of such interest income to be excluded must be determined in accordance with the computation provisions relating to business by allowing expenditure by way of interest which bears a nexus with the interest receipt. The computation provisions included section 37(1) under which any expenditure incurred or laid wholly and exclusively for the purpose of the business is to be allowed as a deduction. Therefore, any expenditure incurred which has a connection or nexus with interest receipt has to be allowed as a deduction and only the balance can be excluded from the business profits."

12. Once this position is accepted, as per the formulation of principle laid down in Shri Ram Honda Power Equip's case (supra) itself, netting has to be allowed by the adjustment of aforesaid interest received against the interest paid by the assessee to the bank on the credit facilities availed as is clear from the conclusion No. 8 in the judgment.

13. We, accordingly, concur with the aforesaid view of the ITAT and thus, answer the question in favour of the assessee and against the revenue, as a result this appeal is dismissed."

10. We heard the rival submission and considered the documents available on the record. First we adjudicate the issue related to treatment of "high sea sale" which is considered by revenue as speculative transaction as there is no end delivery. The revenue relied on the order of the **Davenport & Co. Pvt. Ltd. Vs. CIT (1975) 100 ITR 715 (SC)**. The Hon'ble Supreme Court had considered the order in the case of **Nirmal Trading Co.v.Commissioner of Income-tax, [1979] 2 Taxman 420 (SC)**

“3. It appears the assessee entered into several transactions of sale and purchase with different parties, and the transactions were settled by handing over delivery orders. There is no evidence that actual delivery of the goods was ever effected either to the assessee or to subsequent purchasers from him. All that passed were the delivery orders and payment by cheque. The High Court has taken the view that, in the absence of actual delivery, the transactions attracted Explanation 2 to section 24(1) and must be regarded as "speculative transactions". It seems to us that the High Court is right in having regard to the law laid down by this Court in Davenport & Co. Pvt. Ltd. v. CIT [1975] 100 ITR 715. It is urged on behalf of the assessee that the case falls under Raghunath Prasad Poddar v. CIT [\[1973\] 90 ITR 140](#). But that decision has been overruled by this Court in Davenport & Co. Pvt. Ltd., (supra), and in any event no question of invoking that decision arises because in the present case there has never been any suggestion that actual delivery of goods was ultimately effected. The case of the assessee throughout has been that handing over the delivery orders was sufficient as constituting actual delivery of the goods.”

It is clear that the issue is only confined related to speculative transaction is delivery of the goods. When the delivery of the goods is executed, there is no treatment of the speculative transaction. The assessee placed a written submission and mentioned the details document that the said goods are duly taken delivery by the assessee during the purchase from sellers. There is no such any paper transaction or the transfer of the goods before taken the delivery. The ld. AR submitted the chart with documentary evidence which is depicting that the ‘edible oil’ purchased from Singapore / Malaysia with

a. invoice, bill of lading, purchase and other necessary documents which are annexed APB A1 to A8,

b. copy of purchased account along with “high sea sale” accounts as per books of account. APB page A9 to A11

c. copy of invoice showing import made by the assessee from outside party as per purchase account and “high sea sale” made on imported edible oil as per sale account along with evidence of custom clearance to whom the “high sea sale” has been made APB page 1 to 290.

11. We respectfully followed the order of the Hon’ble Apex Court and Hon’ble High Court it is clear view that when the goods are not taken by the delivery the entire issue is treated as speculative transaction. But in assessee’s case the entire transaction is going through by proper delivery of the goods during purchase and the documents are provided for evidence of delivery of goods related to high sea sale. We find that the observation of the Id. CIT(A) is not accepted and liable to be dismissed.

11.1 In discussion related to interest which was treated as business income by the assessee and adjusted in the profit and loss account. The revenue has relied on the order of the Hon’ble Delhi High Court in the case of **Mantola Cooperative Thrift and credit society ltd**, (supra) and in case of **Bhagwati Synthetics** (supra) both are factually not similar with the assessee’s issues. We respectfully relied on the order of Hon’ble Apex Court in the case of **Shahi Export House**, (supra)

Where the interest was taken as expenses. Not as an income from other sources.

The investment in fixed deposit of the assessee were duly utilized for formation of letter of credit in relation to the foreign transaction. In the export and import, the

investments are utilised in short term investment and there is no such any fix time of investment related to generation of the interest out of the said investment. We also relied on the order of the ITAT, Amritsar Bench. Accordingly, the order passed by the Id. CIT(A) is not required for any intervention related interest issue. Accordingly, ground taken for the issue of interest by the revenue is dismissed.

11.2 The Id. AR further placed that the revenue appeal was adjudicated there is no need to separate adjudication for determination of the transaction of “high sea sale” related to imported goods. Accordingly, the ground of the assessee was withdrawn.

12. In the result, all the appeals of the revenue are dismissed and all the appeals of the assessee are also dismissed as withdrawn.

Order pronounced in the open court on 24.05.2023

Sd/-

(Dr. M. L. Meena)
Accountant Member

Sd/-

(ANIKESH BANERJEE)
Judicial Member

AKV

Copy of the order forwarded to:

- (1) The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

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