

In Re: Shams Tabrez Vanti

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Court : Authority for Advance Rulings

Decided On : Jan-17-2005

Reported in : (2005)193CTRAAR481

Judge : S S Quadri

Appellant : In Re: Shams Tabrez Vanti

Judgement :

Shiva Shankar Granites (P) Ltd. v. ITO, (2002) 75 TTJ (Hyd) 535, (2002) 81 ITD 106 (Hyd); Tuticorin Alkali Chemicals & Fertilizers Ltd. v. CIT, (1997) 227 ITR 172 (SC); CIT v. Pandian Chemicals Ltd., (1998) 233 LTR 497 (Mad); Pandian Chemicals Ltd. v. CIT, (2003) 129 Taxman 539 (SC), [2003] 262 ITR 78 (SC) 1. The applicant is a non-resident individual. He proposes to set up a jewellery unit in Special Economic Zone (SEZ) in Noida, UP. He says that, for purposes of his business, he has to import precious metal to India for which he is required to submit import performance guarantee/financial security/letter of credit. In that connection he has to mortgage/pledge 100 per cent security to bank in the form of FDRs. It is stated that interest accrued on the FDRs and interest charged by bank on financial securities like letter of credit (LC) and other incidental expenses of bank are compulsions of such business without which the business cannot be run in international competitive market. His contention is that interest accrued to him on the FDRs is his "business income" derived from the business of export by his SEZ unit. On these facts, this application under Section 245Q(1) of the IT Act, 1961 (for short the 'Act'), is filed by him through Shri Om Prakash Tiwary,

chartered accountant, seeking advance ruling of the Authority on the following questions : (I) It is appropriate to treat whether the abovesaid interest as an income derived from export business of SEZ unit under Section 10A. (II) Whether it is correct to set off the abovesaid interest on security/FDRs, etc. with expenses incurred on such security/FDRs. Question (B) is numbered as question No. (iii) and it is in the following terms : (III) How this income and expenses shall to be treated for assessment purpose.

The income derived from business and profession is defined under Section 14D of the Act whereas interest from FDRs and other bank deposits fall under Section 14F of the Act. They fall under different heads and they cannot be inter-mixed. The interest accrued on FDRs cannot be treated as business income as it has no direct relation with the export business which the applicant intends to carry on. The interest income is assessable under the head "Income from other sources" and not under the head "Income from business or profession".

3. On 15th Sept., 2004, the application was allowed under Sub-section (2) of Section 245R of the Act for pronouncement of ruling under Sub-section (4) thereof and the case was listed for pre-pronouncement hearing on 6th Oct., 2004. Neither the applicant nor his Authorized Representative (Mr. Om Prakash Tiwary, CA) appeared on that date. The case was adjourned from time to time to enable the applicant to represent his case but the applicant and his Authorized Representative remained absent.

4. As none appeared for the applicant even today, I am proceeding to decide the application after perusing Annex. II of the application, which contains applicant's interpretation of law and facts in respect of the said questions. The applicant's plea is that the interest on FDRs is "business income" as it has connection with his SEZ business.

He relies on Section 56(2)(id) to assert that the interest would not fall under the head "Income from other sources". He compared the provisions of Section 10A and Section 80HHC to support his plea that under s. 10A the interest would form part of his business income. He relied upon the judgment of the Tribunal in *Shiva Shankar Granites (P) Ltd. v. ITO* (2002) 75 TTJ (Hyd) 535 : (2002) 81 LTD 106

(Hyd) in support of his plea.

5. Shri S. Rahman, Addl. CIT, Noida, who appeared for the CIT, argued that the interest which accrued on the FDRs could not be treated as business income and Section 10A of the Act would not apply to such income. He also submitted that the expenditure, if any, incurred on securities/FDRs cannot be set off against the interest income accruing on the FDRs. 6. From the contentions noted above, the point that arises for consideration is whether the interest income which accrued to the applicant on the FDRs/securities, would fall under the head "Profits and gains of business or profession".

For the purpose of charge of income-tax, income has been classified under Section 14 of the Act, under the following heads : A. Salaries; B. Interest on securities (omitted); C. Income from house property; D. Profits and gains of business or profession; E. Capital gains; F. Income from other sources.

Head-B, under which interest on securities fell was omitted by Finance Act, 1988 w.e.f. 1st April, 1989. Now, interest on securities is assessable under Section 28(i) where such interest forms part of business profits; this would happen when securities are held as stock-in-trade or trading assets; otherwise it will be chargeable under Section 56(2)(id) of the Act. The applicant has endeavoured to bring interest under head 'D' on the ground that interest on security has nexus with his export business. In my view, the reasoning of the applicant is fallacious. Merely because as a requirement to import precious metal, he has to furnish import performance guarantee/financial security/LC from a nationalized bank and for that purpose he has to mortgage FDRs with the bank, the interest accrued on the FDRs does not become income derived from export business. There is no direct nexus between the interest income accrued on FDRs and the income of the export business which is yet to commence. The applicant's reliance on Section 56(2)(id) on the assumption that it is not chargeable to income-tax under the head "Profits and gains of business or profession" to support the plea that interest does not fall under the head "Income from other sources", is devoid of merit. Sec.

56(2)(id) includes income by way of interest on securities under the head "Income from other sources" where such income is not chargeable to income-tax under the

head "Profits and gains of business or profession". It has been noted above that interest on FDRs which are not held as business assets, cannot be treated as profits and gains of business or profession. Therefore, it follows the interest accrued to the applicant on FDRs which are admittedly not held as stock-in-trade/business assets, would fall under the head "Income from other sources".

It may be pointed out that Section 10A is inappropriately referred to in the first question. Sec. 10A falls in Chapter in which deals with income which do not form part of total income. It is a special provision in respect of newly established undertakings in free trade zone. It provides that profits and gains derived by an undertaking from the export of articles or things or computer software, shall be allowed as a deduction from the total income of the assessee subject to the other provisions of the said section. It does not speak of interest income from security/FDRs. It only speaks of the income derived from the export of articles or things or computer software. It has already been held above that interest accrued on FDRs cannot be said to be the business income derived from the export of any articles or things or computer software, so Section 10A has no relevance here. It would also be necessary to refer to Section 80HHC of the Act, which is relied upon by the applicant to make out a case that interest income falls under Section 10A, but not in Section 80HHC. Sec. 80HHC is included in Chapter VI-A which deals with deductions in computing total income.

Like Section 10A, the provisions of Section 80HHC provide deductions in the case of export business. It is unnecessary to refer to the comparison of Section 10A and Section 80HHC, made by the applicant in Annex, II, which is not relevant to the issue.

In support of his claim that interest on the FDRs is the income derived from his export-business, the applicant relied upon the decision of the Tribunal Hyderabad (Bench 'A') in *Shiva Shankai Granites (P) Ltd. v. ITO* (supra). In that case the question before the Tribunal was whether the income of the assessee company, which included two interest amounts on deposits-one with the State Electricity Board and the other with the bank-was exempted under Section 10B of the Act. The applicant was engaged in business of export of granites. A learned

Accountant Member of the Tribunal, Hyderabad, held that under Section 10B of the Act, profits and gains derived from 100 per cent export-oriented industrial undertaking were exempted and that interest income earned on the said deposits which were not out of surplus funds or out of idle funds but were deposits as pre-condition for the conduct of the business, (with the electricity board for obtaining the electricity connection and with the bank for obtaining bank guarantee), deserved to be treated as having been derived from export-oriented unit. It is difficult to agree with the reasoning and the result in that case both on principle as well as on authority. Furnishing of bank guarantee or obtaining the electricity connection may be requirements to commence business but they cannot be said to be activities of the business.

That apart, the order of the Tribunal was rendered in ignorance of the decision of the Hon'ble Supreme Court in *Tuticorin Alkali Chemicals & Fertilizers Ltd. v. CIT* : (1997) 227 ITR 172 (SC). In that case the question before the Hon'ble Supreme Court was whether interest derived by the assessee from the borrowed funds which were invested in short-term deposits with the banks would be chargeable to tax under the head "Income from other sources" or would go to reduce the interest payable by the assessee on the term loan secured by the assessee from the financial institutions which would be capitalized after the commencement of the commercial production. It was held that the interest derived by the assessee from the borrowed funds which were invested for short-term deposits with the bank, would be chargeable to tax under the head 'Income from other sources' and that the same could not be adjusted against the interest payable by the assessee on the term loans secured from the financial institutions.

It appears on an application made to the Tribunal, the learned Member himself rectified his earlier order, relied upon by the applicant, in view of the decision of the Madras High Court in *CIT v. Pandian Chemicals Ltd.* : (1998) 233 LTR 497 (Mad), which has been confirmed by the Hon'ble Supreme Court in *Pandian Chemicals Ltd. v. CIT* (2003) 129 Taxman 539 (SC). [2003] 262 ITR 78 (SC).

From the above discussion, it follows that in the context of Section 10A of the Act, the interest from FDRs cannot be said to be derived by the applicant from the

business of export of articles, etc.

Tuticorin Alkali Chemicals & Fertilizers Ltd. (supra) related to the asst. yr. 1983-84. However, by Finance Act, 1988 w.e.f. 1st April, 1989, "or interest on securities" is inserted in Clause (i) of Section 57 of the Act, which reads as under: "57(i)-in the case of dividends other than dividends referred to in Section 115-O (or interest on securities) any reasonable sum paid by way of commission or remuneration to a banker or any other person for the purpose of realizing such dividend or interest on behalf of the assessee".

The provision, quoted above, provides that in the case of interest on securities any reasonable sum paid by way of commission or remuneration to a banker or any other person for the purpose of realizing such interest on behalf of the assessee is an allowable deduction in computing the income under the head "Income from other sources". As the interest income in the present case is held to fall under the head "Income from other sources", the permissible deductions for computing the income charged under the said head would be as specified under Section 57. It is thus clear that in respect of interest income from FDRs, any reasonable sum paid by the applicant by way of commission or remuneration to a banker or any other person for the purpose of realizing such interest on behalf of the assessee is a permissible deduction.

(I) that the interest on FDRs cannot be treated as income derived from export business of SEZ unit; (II) that it will not be correct to set off the said interest on securities/FDRs, etc. with expenses incurred on such securities/FDRs, however, any reasonable sum paid by way of commission or remuneration to a banker or any other person for the purpose of realizing interest on securities/FDRs by way of expenses incurred by or on behalf of the applicant, may be deducted from such interest income in computing chargeable income under the head "Income from other sources"; (III) that the interest income computed after deducting reasonable sum paid by way of commission or remuneration as expenses to a banker or any other person for the purpose of realizing such interest by or on behalf of the applicant will be chargeable to tax under the head "Income from other sources" and expenses to the extent specified in Section 57(i) of the Act will be allowed as

permissible deduction.

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