

**Anand and Co. Vs. Assistant Commissioner of**

**Anand and Co. Vs. Assistant Commissioner of**

**SooperKanoon Citation :** [sooperkanoon.com/67621](http://sooperkanoon.com/67621)

**Court :** Income Tax Appellate Tribunal ITAT Kolkata

**Decided On :** Mar-08-1995

**Reported in :** (1995)54ITD82(Kol.)

**Judge :** N Pachuau, R Easwar

**Appellant :** Anand and Co.

**Respondent :** Assistant Commissioner of

**Judgement :**

1. This appeal is by the assessee and it is directed against the order of the CIT passed under Section 263 of the Income-tax Act.
2. The assessee is a partnership firm carrying on business in export of hosiery goods as well as in knitting In respect of the export of hosiery goods the assessee is eligible for deduction under Section 80HHC of the Act While claiming the deduction, the assessee treated the interest of Rs 13,14,045 on fixed deposits with banks as its income from business and claimed deduction on that amount also The claim was allowed by the Assessing Officer when he completed the assessment under Section 143(3) of the Act.
3. On 25-7-1991, the CIT issued notice to the assessee under Section 263 He observed that the interest was taxable under the head "Other sources" and the Assessing Officer had wrongly treated the same as business income and had also allowed deduction under Section 80HHC on the same The CIT was of the view

that this action of the Assessing Officer was erroneous and prejudicial to the interests of revenue. He, therefore, proposed to revise the assessment order.

4. The assessee by letter dated 8-8-1991 brought to the notice of the CIT that the interest income was a part of the business income as the investment in the fixed deposit was made in the course of and as part of the assessee's business activity. It was pointed out that the assessee had obtained a loan of Rs 1 09 crores from Indian Overseas Bank and for that purpose the entire fixed deposits were given as security. It was contended that the making of the fixed deposits and earning of interest therefrom was an integral part of the business and, therefore, the deduction under Section 80HHC was rightly given on the same.

5. The CIT did not accept the assessee's contention. He was of the view that the assessee's business was not that of earning interest. He also noticed that all the fixed deposits were not with the Indian Overseas Bank which showed that the intention of the assessee in making the fixed deposits was not only that of giving security but the intention was also to earn interest. He was, therefore, of the view that the Assessing Officer had wrongly treated the interest as business income and had also wrongly allowed deduction under Section 80HHC on inflated income. He, therefore, directed the Assessing Officer to modify the assessment by recalculating the deduction after assessing the interest income under the head "Other sources".

6. The above direction of the CIT is challenged before us. The learned counsel for the assessee contended on the basis of the judgments of the Calcutta High Court in the cases of CIT v Tirupati Woollen Mills Ltd [1992] 193 ITR 252 and CIT v K G Roy Chowdhury [1992] 195 ITR 801 that the view of the CIT was erroneous and not legally tenable. He contended further that the earning of the interest in the facts and circumstances of the assessee's case was an integral part of the business activity and cannot be separated from the business income. He drew our attention to the balance sheet as on 30-4-1987 and pointed out that the fixed deposit with IOB was Rs 1,24,47,726 whereas the fixed deposits with other banks or companies were comparatively negligible. These deposits were as under : He further pointed out that as on 31-3-1989 the fixed deposit with I O B had increased

to Rs 1,51,09,580, the fixed deposit with other banks and other companies remained the same as in the earlier year He also drew our attention to the cash credit facility of Rs 1,09,63,977 extended by the I O B as on 30-4-1987 The "term loan" from I O B as on this date amounted to Rs 4 1 lakhs The corresponding figures as on 31-3-1989 were Rs 1 43 crores and Rs 4 43 lakhs From these facts the learned counsel for the assessee contended that the object of the assessee in making the fixed deposits was only for the purpose of the assessee's business He contended that when surplus funds of the business were invested in fixed deposits, that too as security for the purpose of obtaining loan facilities from the bank, the interest from the fixed deposits should be viewed as income from exploitation of business assets resulting in business income It was accordingly contended that the Assessing Officer had rightly allowed deduction on the interest income also under Section 80HHC.7. The learned D R besides strongly relying on the order of the CIT also cited the following judgments : 2. Madhya Pradesh State Industries Corpn Ltd v CIT[1968] 69 ITR 824 (MP).

8. We have carefully considered the rival contentions and we find that the contentions of the assessee have to be accepted We are concerned with the assessment year 1988-89 and Section 80HHC(3) stood as under for this year: (3) For the purposes of Sub-section (1), profits derived from the export of goods or merchandise out of India shall be, (a) in a case where the business carried on by the assessee consists exclusively of the export out of India of the goods or merchandise to which this section applies, the profits of the business as computed under the head 'Profits and gains of business or profession'; (b) in a case where the business carried on by the assessee does not consist exclusively of the export out of India of the goods or merchandise to which this section applies, the amount which bears to the profits of the business (as computed under the head 'Profits and gains of business or profession') the same proportion as the export turnover bears to the total turnover of the business carried on by the assessee.

It is common ground that the assessee was engaged both in local business as well as exports Therefore, the provisions of Clause (b) are applicable The profits of the business have to be computed under the head "Profits & gains of business or profession" which means that they have to be computed as per Sections 29 to 44

of the Act The question is whether interest on fixed deposits on the facts narrated above is assessable under this head We do not see how the interest can be brought to tax under any head other than business It is not denied that the deposit was made for the purpose of obtaining credit facilities from the bank and furnishing security therefor was part of the business activities of an assessee In the course of the business it becomes necessary for any assessee to take loans from the bank and for this purpose it has to offer some security In the present case the security has been given in the shape of fixed deposits The activity of making the fixed deposits can, therefore, be viewed as part of the business activities or as an integral part of the business The interest arising therefrom, in this view of the matter, is therefore, to be taxed only under the head "Business" The judgment of the Calcutta High Court relied on by the learned counsel for the assessee in the case of Tirupati Woollen Mills Ltd (supra) is in his favour In this case the High Court took the view that where the company utilises its commercial assets, which were lying in the form of surplus cash, for earning interest, the interest arises from the utilisation of commercial assets only and would, therefore, be business income The ratio of this decision favours the assessee in the present case.

9. The view of the CIT that the assessee's business is not that of earning interest and, therefore, the interest cannot be treated as business income cannot be sustained What is business income and what is not business income has to be determined on the facts of each case and merely because the professed business of an assessee is not that of earning interest on fixed deposit, it cannot be stated that the interest cannot be taxed under the head "Business" at all If the earning of the interest is so connected or linked with the carrying on of the assessee's business and if the fixed deposits are utilised in such a manner as to provide a sufficiently perceptible link with the business activities of the assessee, there should be no objection to treat the interest as business income Such a link or nexus is provided in the present case by the fact that the fixed deposits were offered as security for the loan facilities enjoyed by the assessee from the I.O.B.10. The decisions cited by the learned D R are distinguishable on facts In those cases the company had not commenced business and the share monies received by the assessee were not immediately required and were, therefore, deposited with banks Under such circumstances it was held that the interest on

the deposits cannot be treated as business income In the present case, the assessee had started business and was engaged both in local business as well as in exports There is also another distinction In the cases referred to by the D R , the assesseees were not required to offer the fixed deposits as security for obtaining loans from the banks There was no business at all and, therefore, the question of obtaining loans for the purpose of the business did not arise in those cases In the present case, however, we have found, and this finding has not been disputed on behalf of the department, that the assessee obtained the loans for the purpose of its business and was required to offer the fixed deposits as security for the loan facilities Thus the cases referred to by the learned D R are distinguishable on facts on two counts They are, therefore, not applicable to the present case.

11. For these reasons we set aside the order of the CIT The Assessing Officer had rightly granted the deduction under Section 80HHC The CIT is not right in his view that the action of the Assessing Officer was erroneous and prejudicial to the interests of revenue The appeal is allowed.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**