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Court : Income Tax Appellate Tribunal ITAT Delhi

Decided On : Jan-01-2004

Judge : K Singhal, Jm, K Prasad

Appellant : Poysha Oxygen Private Ltd.

Respondent : Dcit

Judgement :

1. The main issue arising out of this appeal relates to the addition of Rs 30 lacs on account of interest on loan given to M/s Ganga automobiles Ltd. (In short GAL).

2. The assessee declared income of Rs. 29,37,500/- from dividend, Rs. 7,74,000/- from rent of cylinders and Rs. 3670/- as other income. It was noticed by the AO that assessee had not declared interest income on loan of Rs. 1 crore advanced to M/s GAL. It was also found that assessee had filed arbitration suit against the said company for the recovery of the aforesaid amount along with interest @ 30% p.a.

According to the AO, the interest income had accrued to the assessee and, therefore, the sum of Rs. 30 lacs was added to the total income of the assessee.

3. The matter was carried before the CIT(A) before whom it was submitted that originally the sum of Rs. 1 crore was given vide agreement dated 7.10.95 for a period of 120 days. Thereafter, it was extended from time to time. The last agreement was made on 14.2.97.

However, on the due date the said company defaulted in payment and such payment remained irrecoverable despite the arbitration suit filed by the assessee. It was also submitted that the assessee had received only Rs. 33,50,560/- as interest in financial year 1996-97 and thereafter not even a single paisa was received or could be recovered. It was also submitted that similar issue was decided in favour of the assessee by the CIT(A) in respect of assessment years 1996-97 and 1997-98 by holding that the assessee should be assessed only on the amount received by it. It was also contended that no tax could be levied on hypothetical income on the basis of theory of real income. Reliance was placed on the judgment of Punjab & Haryana High Court in the case of Firozpur Finance Ltd., 124 ITR 619 and the judgment of Supreme Court in the case of Firozpur Finance Ltd., 124 ITR 619 and the judgment of Supreme Court in the case of Godhara Electricity Co. Ltd., 225 ITR 746.

Accordingly, it was prayed that the addition of Rs. 30 lacs be deleted.

4. The CIT(A) noted (i) that loan was given on personal guarantee of Mr. Sagar Suri and Mr. Ashwani Suri as well as Corporate guarantee of Delhi Auto & General Finance P. Ltd. and their assets were also mentioned in the agreement; (ii) Clause 6 of the agreement dated 14.2.97 provided penal interest of 45% p.a. in case of default of payment; (iii) that assessee had claimed interest including penal interest in the arbitration suit filed by it; (iv) that AO was unaware of the arbitration proceedings at the time when assessments for asstt.

years 1996-97 and 1997-98 were made; (v) that system of accounting of the assessee was mercantile and accordingly, income was assessable on accrual basis; (vi) the amount advanced as loan was neither written off nor transferred to suspense account. In view of these facts it was held by him that the loan was fully backed by guarantee and the amount of interest was assessable on accrual basis. It was also observed by him that case law relied upon by the assessee were distinguishable on facts. Further, theory of real income could not be applied since income had actually accrued to the assessee. On the other hand, he relied on the Supreme Court judgment in the case of State Bank of Travancore, 2002-Taxindiaonline-110-SC-IT, judgment of Allahabad High Court in the case of

Swadeshi Cloth Traders, 187 ITR 620 and in the case of Banaras State Bank Ltd., 2003-Taxindiaonline-30-HC-UP-IT and of Calcutta High Court in the case of Allahabad Bank, 2003-Taxindiaonline-29-HC-KOL-IT. Aggrieved by the same, the assessee is in appeal before the Tribunal.

5. The learned counsel for the assessee has been heard at length. The substance of his arguments is that no real income accrued to the assessee. In this connection, he drew out attention to various facts, namely (i) the advance cheque given by M/s. GAL was dishonoured immediately after the expiry of period of loan mentioned in the agreement on account of insufficient funds; (ii) the said company also did not pay any amount to other creditors and liquidation proceedings were started at the behest of such creditors; (iii) the Company Judge of Delhi High Court on 20.2.98 ordered for deemed liquidation if the payment was not made to the creditor by 21.5.98; (iv) the arbitration suit was filed by the assessee before initiation of liquidation proceedings by other creditors; (v) in the course of liquidation proceedings, the assessee sought the permission of the Company Judge of continuation of the arbitration proceedings and the liquidator opposed the same on the ground of lack of funds and in such circumstances, the assessee agreed to pay the arbitration fees and on such concession, the Company judge allowed the assessee to continue arbitration proceedings; (vi) through the arbitrator awarded the suit in favour of the assessee, not even a single paisa could be recovered till date. In view of these facts, it was submitted that no income could be said to accrue in real terms and tax could not be levied on hypothetical income. Heavy reliance was placed on the judgment of P&H High Court in the case of Firozpur finance Ltd. (supra), the judgment of Supreme Court in the cases of Godhara Electricity Co. (supra), Jodhmala Kuthiala, 82 ITR 570, K. Govindan & Sons, 247 ITR 192, Bokaro Steels Ltd., 236 ITR 315 and UCO Bank, 237 ITR 889. He also relied on the decision of Tribunal in the case of IRCON International Ltd., 74 ITD 117 (Del.), Further, reliance was placed on judgment of Calcutta High Court in the case of ANZ Grindlays Bank Ltd., 250 ITR 125 and of Allahabad High Court in the case of Jwala Prasad Radha Krishna, 198 ITR 415. It was also submitted that agreement expired on 14.5.97 and thereafter, it was never renewed and accordingly, there was no real income accrued after 14.5.97.

Alternatively, it was also claimed that the claim may be allowed as a business loss since the income even if accrued was business loss during the year under consideration and that is why the assessee did not make any entry in the books of account. It was also submitted that no adverse view could be taken merely from the fact that the assessee continued arbitration proceedings for recovery of its dues.

6. On the other hand, the learned Dr has strongly relied on the order of CIT(A) and submitted that the loan was originally given on 5.10.95 under tripartite agreement for 120 days which was fully secured on account of guarantee and was being extended from time to time at the request of the borrower and the assessee had received interest in the earlier years on such loan. Hence, it was argued that interest had really accrued under the terms of agreement and, therefore, question of hypothetical income does not arise. He also pointed out that penal interest of 45% was also provided in the agreement though the arbitrator has restricted the same to 30%. Hence, AO was justified in assessing the interest income for the entire year @ 30% of the loan amount. It has also been submitted that income is accrued when assessee acquires right to receive the same as observed by the Supreme Court in the case of Ashok Bhai Chiman Bhai, 56 ITR 42. Merely because interest could not be recovered, it cannot be said that there was no accrual of income. Heavy reliance was placed on the decision of Delhi High Court in the case of Saraswati Insurance Co., 252 ITR 430 and the judgments of Supreme Court in the cases of Shiv Prakash Janak Raj & Co, 222 ITR 583, State Bank of Travancore, 158 ITR 102 and Maurvi Industries 82 ITR 835. Further reliance was placed on certain High Court judgments reported as 85 ITR 448 Mysore, 147 ITR 372 Rajasthan. According to him, the judgment of Supreme Court in the case of Godhra Electricity Co.

(supra) was distinguishable on fact. Regarding the alternate claim, it was stated by him that it was neither claimed nor argued before the lower authorities.

7. In reply, it was submitted by the learned counsel for the assessee that award of 30% interest after 14.5.97 was only in the nature of damages and could not be said to accrue in the year consideration at all. The award was also not before the AO. It was also submitted that judgment of Supreme Court in the case of State Bank of

Travancore (supra) has been overruled in the case of UCO Bank (supra). Since all the right of the assessee had been abrogated, it was pleaded by the learned counsel for the assessee that there was no accrual of real income.

8. Rival submissions of the parties have been considered carefully in the light of the case law referred to and the materials placed before us. The question for consideration is whether, by applying the theory of real income, can it be said that no income resulted at all to the assessee in respect of interest on loan advanced to GAL. Therefore, it would be appropriate to discuss the case law where such theory has been dealt with. This theory was discussed in detail by the Hon'ble Supreme Court in the case of Shoorji Vallabh Das & Co., 46 ITR 144. In that case, the assessee was managing agent of two shipping companies and under the managing agency agreement, it was entitled to receive as commission @ 10% of the freight charges. Between April 1, 1947 and December 31, 1947, an amount of Rs. 1,71,885 from one company and Rs. 2,56,815 from another company became due to the assessee as commission at the rate of 10 per cent and in the books of account of the assessee these amounts were credited to itself and debited to the managed companies. In November, 1947, the assessee desired to have the managing agency transferred to two private companies and in this connection agreed in December, 1948 to accept 2-1/2% as commission, and gave up 75 per cent of its earnings. The department sought to assess the amounts of Rs. 1,36,903/- and 2,00,625/- being the 75% which the assessee had given up, on the ground that commission at 10 per cent, had already accrued to the assessee in the year of account and the agreement in December, 1948, after the close of previous year to give up a portion of that income could not save that portion from liability to income-tax.

On examination of the facts, it was held that assessee had given up its right to receive the income before the end of the previous year and, therefore, no income resulted at all to the assessee. According to their Lordships, if there was no income at all, the question of taxing the same did not arise. The relevant observations of their Lordships are produced as under.

"Income-tax is a levy on income. Though the Income-tax Act takes into account two points of time at which the liability to tax is attracted, viz., the accrual of the income or its receipt, yet the substance of the matter is the income. If income does not result at all, there cannot be a tax, even though in book-keeping, an entry is made about a "hypothetical income", which does not materialize.

Where income had, in fact, been received and is subsequently given up in such circumstances that it remains the income of the recipient, even though given up, the tax may be payable. Where, however, the income can be said not to have resulted at all, there is obviously neither accrual nor receipt of income, even though an entry to that effect might, in certain circumstances, have been made in the books of account." 9. In coming to the above conclusion, their Lordships of the Supreme Court followed its earlier decision in the case of Chaman Lal Mangla Das & Co., 39 ITR 8. In that case also, the assessee was entitled to commission of 3-1/2% on the sale price of all cotton yarn and cloth manufactured and sold by the company and also commission of 10% on the profits made by the company from its ginning or pressing operations.

On December 28, 1950, the directors of that company passed a resolution modifying the terms of the managing agency agreement in regard to the commissioning and added a proviso that for the years 1950-51, if the directors of the company, having regard to the result of working were of the opinion that a lesser remuneration than the given in the agreement should be paid to the managing agency then the directors shall have the right, in their absolute discretion to fix such lesser remuneration payable either by way of lump sum or at a reduced percentage. This resolution was accepted by the assessee on the same date. On March 17, 1951, a supplemental agreement was entered into between the company and the assessee embodying the terms of resolution.

A meeting of the Board of directors by resolution dated 8th April 1951 resolved that the managing agents should accept a commission of Rs. 1,05,575/- instead of Rs. 2,05,575/- i.e. they should be paid Rs. 1 lac less than the commission calculated at the rates mentioned in the original agreement. On these facts, a question arose whether the sum of Rs. 1 lac was the income of the assessee chargeable to tax.

The Hon'ble Supreme Court upheld the order of the High Court holding that no income really accrued to the assessee is as much the assessee had given up the right to receive the commissioner before the date of accrual.

10. At this stage it would also be appropriate to refer to another judgment of the Supreme Court in the case of Maurvi Industries (supra).

In the case also, the assessee was entitled to commission for the period ending December 31, 1955. However, the financial position of the company paying commission was bad on account of losses and, therefore, the assessee relinquished his right to receive the compensation after the date of accrual. The question arose whether the assessee could be taxed in respect of such commission. Their Lordships of Supreme Court held that commission had actually accrued to the assessee on the last day of the accounting year and relinquishment thereof after such date did not affect the accrual of income and accordingly, the assessee was liable to tax.

11. The above discussion shows that the theory of real income was applied where the assessee, on mutual understanding with the other party, gave up or surrendered its right to receive the income before its accrual. On the other hand, if the surrender of income was after its accrual then such surrender would not affect the taxability of the income.

12. Subsequently, a controversy arose before various courts about taxability of interest income on sticky or doubtful loans advanced by the assessee in the course of its business activity. The Hon'ble Bombay High Court had occasion to consider this issue in the case of Con Finance Ltd., 89 ITR 292. In the case, the assessee was engaged in the manufacturing business in the course of which it had advanced certain amount as loan to the other party. Interest could not be received by the assessee for the period ending 31st March, 1956 onwards. In respect of asstt. year 1959-60, the interest was credited to the Profits & Loss Account on account of doubtful loans. The question arose whether it could be said that on real income accrued to the assessee in respect of the interest income. Their Lordships of Bombay High Court answered the question against the assessee by holding that interest income was chargeable to tax in view of the mercantile

system of accounting followed by the assessee and merely the fact that interest was not received, could not be a ground for holding that no real income accrued to the assessee.

13. On the other hand, the different view was expressed by the Hon'ble P&H High Court in the case of Firozpur finance Co. Ltd. (supra) by holding that even in a mercantile system of accounting an assessee could forego the whole or part of a debt which was irrecoverable and the same could not be added to the income of the assessee. Since it was not possible for the assessee to recover the amount advanced from the debtor, the assessee was justified in not charging interest thereon and the interest was rightly foregone by it. In coming to this conclusion, their Lordships followed the Supreme Court judgment reported as 46 ITR 144 and dissented from the Bombay High Court judgment in the case of Con Finance Ltd. (supra).

14. This controversy was resolved by the Hon'ble Supreme Court in the case of State Bank of Travancore, 158 ITR 402 by approving the decision of Bombay High Court. Impliedly, the judgment of Punjab High Court was disapproved. In this case, the assessee was following mercantile system of accounting and in the course of its banking business it used to charge interest on advances including on those advanced which had become extremely doubtful of recovery. In the case of interest in sticky or doubtful advanced, instead of carrying it to the P&L account, the assessee credited interest to interest suspense account having regard to the bad and deteriorating financial conditions of the parties concerned as well as the history of their accounts and the improbability of the recovery of the principal amount. The question arose whether the interest on such loans could be charged to tax. The assessee had invoked the concept of real income. The Hon'ble Supreme Court held that the concept of real income could not be so read as to defeat the object and provisions of the statutory enactment. Even in a given circumstance, the amount might be taken to the interest suspense account for accounting purposes, but it would not affect its taxability as such. According to them, once accrual takes place and the income accrues, the same cannot be decided by the theory of real income. Such theory cannot be so used as to make accrued income as non income simply because after the event of accrual, the assessee

neither decides to treat it as bad debt nor claims deduction u/s 36(2) but still enters the same with the diminished hope of recovery in the suspense account.

Extension of the concept of real income to this filed to negate accrual, after the amount had become payable, is contrary to the postulates of the enactment.

15. This issue again came up for consideration before the Hon'ble Supreme Court in the case of Shiv Prakash Janak Raj & Co. P. Ltd., 222 ITR 553. In that case the assessee company had advanced a loan to a firm wherein directors of the company were partners. During the assessment year 1996-67, it charged interest in a sum of Rs. 25,048/- on the loan so advanced. Similarly for assessment year 1967-68, it charged interest a sum of Rs. 25,843/-. However, for subsequent asstt. years, the assessee did not charge the interest in view of the resolutions passed by the assessee company for different years. In respect of asstt. Year 1968-69 to 1971-72, the ITO took the view that in as much as the loans in question were interest bearing loans and because the assessee company had relinquished the interest without any commercial considerations and further because the directors of the assessee company were interested in the firm, it was a case of collusion between them to evade the tax liability. Accordingly, he added the amount of interest to the income of the assessee. The appeal before the Tribunal was without success. However, the High Court held that interest had accrued to the assessee. On appeal to the Supreme Court, the issue was decided against the assessee.

16. This issue has also been considered by the jurisdictional High Court in the case of Saraswati Insurance, 252 ITR 430. In that case, the assessee had advanced certain loan to its subsidiary company on interest @ 12% p.a. IN respect of asstt. Year 1977-78 and 1978-79, the assessee claimed that it had not charged interest from the subsidiary company due to financial condition. The ITO found on verification that interest had actually accrued for both the years on the basis of method of accounting followed by the assessee and the interest was waived only after the accrual. The Tribunal upheld the claim of the assessee by holding that what was waived by the assessee was income which had already accrued to it. On reference, the Hon'ble High Court held that the taxability is directed not only when

income was actually received but also when it accrues. Income accrues when it falls due, i.e. to say when it becomes legally recoverable, irrespective of whether it is actually received or not and accrued income is that which the assessee has right to receive. Therefore, the income by way of interest waived by the assessee was includible in the total income for asstt. years 1977-78 & 1978-79. According to their Lordship, the theory of real income was not applicable to such cases.

17. At this stage, it would be appropriate to refer to the judgment of Supreme Court in the case of UCO Bank, 237 ITR 889 wherein the earlier judgment in the case of State Bank of Travancore was commended upon. It was pointed out that the circular/instruction dated 8.10.94 issued by the Board was not cited before the court in that case. Had the same been brought to the notice of their Lordships, different view might have been taken. According to this circular, if the recovery of the loan could not be effected in the last three years then the interest income for such doubtful loans in respect of the fourth year onwards would not be taxable. They have such circular, which was binding on the tax authorities, their Lordship held that interest income on doubtful loans was not taxable. The legal position as expressed otherwise by their Lordships in the case of State Bank of Travancore remains unaffected.

18. To complete the picture, it would be appropriate to refer to the latest judgment of the Supreme Court in the case of Godhara electricity Co. Ltd., 225 ITR 746. It is important from the point of view that the theory of real income can be applied considering the overall facts and circumstances of the case including the subsequent events. In that case, the asstt. year involved were 1969-70 to 1972-73. The assessee company was engaged in the generation and supply of electricity to the consumers in Godhara area under a licence granted by State Government.

The State Government had fixed the charges for the supply of electricity and motive power w.e.f. February 1, 1952. After the amendment of Electricity (Supply) Act, 1948. In 1956, the assessee company increased the charges of motive power from January 1, 1963 to 35 n.p. per unit with the maximum of Rs. 7 per month for every installation. A few months thereafter on June 22, 1963, the assessee

company increased the rates for electricity supplied for lights and fans to 17 n.p. per unit with a minimum of Rs. 5 for every installation w.e.f. July 1, 1963. This unilateral increase in the rates led to the institution of two representative suits by the consumers which were decided by the trial court in favour of the consumers but the High Court held that assessee was entitled to enhance the charges unilaterally subject to the conditions prescribed. This judgment of High Court was confirmed by Supreme Court on 26th February. 69. During the pendency of litigation, the assessee was not able to realize the enhanced charges from the consumers. after the decision of the Supreme Court, some of the citizens of Godhara met the Minister of Industries with a view of persuade him to intervene and restrict the assessee company from recovering the enhanced rates from the consumes.

Thereafter, the Under Secretary to the Government of Gujarat and Industries, addressed a letter dated 19th march, 1969 to the assessee suggesting that the company may be advised t maintain status quo for the rates to the consumers. Meanwhile another suit was filed on 16th May, 69 by the consumers on the ground that decision of Supreme Court was only of academic interest as in April, 65, the assessee began to purchase in bulk electricity at 10 paisa per unit from Gujarat Electricity Board and it had to work merely as a distributing agency and had to collect charges and not generate electric energy. According to this suit, the assessee company would earn more profits even if its supplied electricity at 31 paisa per unit to the consumer of motive power and it would earn a reasonable return even on the basis of existing rates. An interim injunction was granted by the trial count and the suit was finally decreed in favour of the consumers vide judgment dated 20th June, 74 and decreee was granted to the effect that assessee shall not recover chares exceeding 31 n.p. per unit for lights and fans and 20 n.p. per unit for motive power. While the said suit was pending before the trial court, the Gujarat State Electricity Board sought to exercise its option to purchase the electrical undertaking of the assessee company by issue of notice dated 8th November 1971. The same was taken offered w.e.f. 19th November 1972. According to the AO, the assessee got he legal right to recover the increase in the rate on the basis of system of accounting followed by the assessee and, therefore, made the assessment for the years under consideration by including

various amounts which the assessee could recover on the basis of Supreme Court judgment. The additions were deleted by the AAC and the said deletion was upheld by the Tribunal. The High Court, however, held that assessee company had a legal right to recover consumption charges at the enhanced rates. On appeal to Supreme Court, it was held that no real income accrued to the assessee considering the overall circumstances of the case. According to the Supreme Court, the assessee was not in a position to recover any amount from the consumers and, therefore, the income, if any, represented income and not the real income.

19. From the combined reading of the above case law, the following legal position emerges : (1) If the income does not result at all to the assessee then it cannot be taxed even though (i) such income might have hypothetically accrued; or (ii) entries are made in the books of account of such hypothetical income.

(2) If the income, on mutual understanding is given up or surrendered by the assessee before its accrual then the income surrendered cannot be taxed on the principle of real income theory.

However, if such surrender is made after the accrual of such income then such income would be taxable though the assessee may be entitled to claim bad debt on the basis of evidence.

(3) If the income had accrued or arisen from the transactions, then its taxability cannot be postponed on the ground of improbability or recovery.

(4) The issue, whether income had resulted or not that the assessee, should be decided after considering all the facts and circumstances of the case including the subsequent events.

(5) considering the genuine hardship of the assessee, if the Board exercise its option u/s 119 and issued a circular to mitigate the hardship then the above legal position shall not be applied and the assessee would be entitled to relief in terms of the circular/instructions of the Board.

Let us now apply the above legal position with reference to the facts of the present case. We have examined the relevant material placed before us and following factual position emerges : (i) That the initial agreement was made on 7th day of October, 1995, This agreement was tripartite agreement between the assessee, described as lender, M/s. First Maruti Leasing Co. as the borrower and M/s. Ganga Automobiles Ltd. as guarantor., The amount advanced under this agreement was Rs. 1 crore in interest @ 30.5% p.a.

(ii) This arrangement was extended from time to time at the request of other parties.

(iii) Since the assessee was not able to recover the principal amount, a fresh arrangement was made where under Ganga Automobiles Ltd. became the principal borrower in lieu of the existing liability. This latest agreement was executed on 14.2.97. The rate of interest was 30% p.a. and the borrower was required to return the principal amount along with interest after a period of 90 days.

Clause 6 of this agreement provided penal interest of 45% p.a. in case of default. Through this agreement does not state that the GAL became the principal borrower on account of existing liability yet this factual position has been duly noted and found to be correct by Justice P.K. Bahri (Retired), who was the arbitrator in this case.

(iv) Prior to execution of this latest agreement, the assessee had received interest of Rs. 11,83,562/- on 2nd April 96, Rs. 5,52,329/- on 2.4.96 and Rs. 17,26,028/- on 14.2.97.

(v) The cheque issue by the borrower was dishonored. The legal notices were served but in vain. The arbitrator has taken note of this fact in his award.

(vi) Faced with this situation, the assessee invoked the arbitration clause and thus Justice P.K. Bahri (Retried) was appointed as an arbitrator.

(vii) The said borrower also did not pay outstanding dues to other creditors. One of the creditors filed application before the Company Judge in the year under

consideration for liquidation of the company. The Hon'ble Delhi High Court vide order dated 20th February, 1998 ordered for deemed liquidation if the amount was not paid within three months. Since the said company did not pay amount, the liquidator was appointed by the High court.

(viii) In the course of liquidation proceedings, the assessee approached the Company Judge of the High court seeking permission for continuing the arbitration proceedings. The liquidator opposed such request on the ground that he was not in a position to pay the arbitration fee due to bad financial position. At this stage, the assessee undertook to pay such fees. On this undertaking, the Company Judge allowed the assessee to continue with the arbitration proceedings.

(ix) The arbitrator vide order dated 31.7.2000 issued the award under which assessee was entitled to recover the sum of Rs. 1 crore along with interest @ 30% p.a. It was held by him that the clause providing 45% interest p.a. in case of default was invalid and the assessee was only entitled to interest @ 30% p.a.

(x) The learned counsel for the assessee Mr. Singhvi has made his statement at Bat that despite all efforts, till today not even a single paisa could be recovered by the assessee.

20. Considering the overall factual position mentioned above, we are of the view that no income had resulted at all to the assessee. The latest agreement dated 14.2.97 was executed under compulsion as the assessee was not able to recover any amount from the original borrower. Since M/s. GAL was the guarantor, it was replaced as the principal borrower.

However, the assessee could not recover any sum from this borrower also as the cheque was bounced. The assessee was forced to invoke the arbitration clause. The said company was also ordered for liquidation by the High Court in the year under consideration itself. Thus, the recovery was completely jeopardized. The debt did not remain even doubtful but rather became bad. If the recovery of the original debt was itself doubtful, the question of recovery of the interest income did not arise. As a prudent businessman, there was no question of crediting interest account in respect of such loan. The financial position was too bad to pay even the

arbitration fees. Ultimately, the assessee has not been able to recover even a fraction of the loan amount what to speak of interest amount. Hence, considering the totality of the facts and circumstances of the case, it is held that interest income had not resulted at all to the assessee and theory of real income can be applied to the present case. Further, the revenue's case also not prejudiced as the tax can still be levied in the years recovery, if any. Accordingly, we set aside the order of CIT(A) and delete the addition sustained by him.

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