IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH: BANGALORE

BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND
MS. MADHUMITA ROY, JUDICIAL MEMBER

ITA No.1540/Bang/2018
Assessment Year: 2014-15

M/s. Bellary Iron-Ores Pvt. Ltd. Mine Owners, Modi Bhavan No.60/356A, Hospet Road, Allipura Bellary 583 104 **PAN NO : AAACB7278E**	**Vs.**	ITO Ward-2 Hosapete
APPELLANT		**RESPONDENT**

ITA No.15/Bang/2019
Assessment Year: 2015-16

M/s. Bellary Iron-Ores Pvt. Ltd. Mine Owners, Modi Bhavan No.60/356A, Hospet Road, Allipura Bellary 583 104 **PAN NO : AAACB7278E**	**Vs.**	ACIT, Circle-1 Bellary
APPELLANT		**RESPONDENT**

Appellant by	:	Shri Shivprasad Reddy, A.R.
Respondent by	:	Shri D.K. Mishra, D.R.

Date of Hearing	:	14.09.2023
Date of Pronouncement	:	20.09.2023

O R D E R

PER CHANDRA POOJARI, ACCOUNTANT MEMBER:

These two appeals by assessee are directed against different orders of CIT(A) dated 23.3.2016 & 29.10.2018 for the assessment years 2014-15 & 2015-16 respectively. Certain issues in these appeals are common which are clubbed together, heard together and disposed of by this common order for the sake of convenience.

2. First common ground in these appeals is with regard to treating the interest income accrued on the fixed deposits which are under attachment by the orders of CBI Court though there was no right to receive the same by the assessee.

3. Facts of the case are that the assessee is a Private Limited company engaged in the business of extraction, processing, manufacturing and sale of iron-ore. The company also owns wind mills generating power. During the year, the company has not carried out mining activities since the mining came to be suspended by the order of Hon'ble Apex Court from the year, 2010 onwards, vide order in Writ Petition filed by the *Samaj Parivathana Samudaya in WP No. 562 of 2009.* The mines of the assessee are situated in Bellary district of Karnataka, but bordering the neighbouring State of Andhra Pradesh. The CBI, Hyderabad, filed a charge-sheet before the Hon'ble Court of Special Judge for CBI, Hyderabad under section 173 of CRPC against Shri. B. V. Sreenivasa Reddy, Managing Director of M/s. Obulapuram Mining Company Private Limited and others for illegal mining, encroachment of reserved forest area, falsification of documents, conspiracy etc. The Hon'ble CBI Court, Hyderabad has placed prohibitory orders on the following fixed deposits vide orders *u/s 102 of CRPC vide letter dated, 11-10-2009 and 13-10-2009 in case No.R.C.1)M)2009:*

Sl. No.'	**Name of the Bank**	**Amount of Fixed Deposit (In Rs.)**
1.	SBI, Kudithini Branch, Bellary.	122,55,75,375/-
2.	SBI, Kudithini Branch, Bellary.	80,71,509/-
3.	ING Vysya Bank, Bellary.	2,31,63,856/-

3.1. In pursuance of the same, the banks had informed the assessee about the restraint order of the Hon'ble Special Judge, CBI Court, Hyderabad, communicating that the assessee would not be entitled to draw any amount or interest from the said fixed deposits. The assessee filed the return of income for the subject assessment years as per the following details:

Assess-ment Year	**Date of Filing of ROI**	**Returned Income / Loss**	**Remarks**
2014-15	26-09-2014	Loss of Rs.2,61,56,380/-	Filed within the *specified due date* u/s 139(1).
2015-16	29-09-2015	Loss of Rs.3,30,55,398/-	Filed within the *specified due date* u/s 139(1).

Issue No.1

Addition of Notional Interest on FDs under Restraint Order

(Common for the both assessment yeas)

3.2. The assessee-company accounted interest as income on such fixed deposits up to 31-03-2013 i.e., assessment year, 2013-14. As the uncertainty persisted and the bank could not pay the amount either to the assessee, or even to the assessing officer who has issued Garnishee Notice u/s 226(3) of the Act, the assessee did not account for the interest income in its books of account' for the reason that there was no accrual of interest on the said deposits in view of the prohibitory orders of the Hon'ble Special Judge, CBI Court, Hyderabad. But the said banks have made TDS of Rs.1,08,76,954/- and Rs.1,14,77,226/- u/s 194A on the NOTIONAL INTEREST of Rs.11,51,66,881/- and Rs.11,47,72,093/- respectively for the

assessment years, 2014-15 and 2015-16. The banks have remitted the TDS made to the account of the assessee, even though the assessee was prohibited from operating the said FD accounts or drawing the interest or dealing with the said FDs and the interest thereon in any manner whatsoever. The assessee has recognised the income to the extent of the TDS made for the subject assessment years, 2014-15 and 2015-16. However, the learned AO disagreed with the view of the assessee and brought to tax the Notional interest on the said fixed deposits as per the following details:

Sl. No.	Assessment Year	Accrued Interest	TDS made by the Bank	Notional Interest assessed by AO
(i).	2014-15	11,51,66,881	1,08,76,954	10,42,89,927
(ii).	2015-16	11,47,72,093	1,14,77,226	10,32,94,857

3.3. The learned AO has based his decision on **the** following grounds:

(i). The assessee company has been maintaining its accounts under the mercantile system of accounting regularly and the income has been offered to tax on accrual basis up to the AY; 201314, whereas the Hon'ble CBI Court had placed the prohibitory order in AY; 2010-11 itself. Hence consistent with the method of accounting followed in the earlier assessment years up to 2013-14, the assessee, should have accounted the interest income and declared it to tax in the subject assessment year also.

(ii). The prohibitory order of the Hon'ble Court only restrains the assessee from operating the accounts, but the assessee continues to hold the right over the contents of the account.

Hence the interest income has accrued to the assessee in the subject assessment year itself and accordingly it is assessable to tax.

(iii). The bank has made TDS and the TDS is made or credited to the account of the deductee concerned only when the interest has accrued. Hence the entire interest, on which TDS is made, has accrued to the assessee in the subject assessment year and the same cannot be deferred.

PROCEEDINGS BEFORE THE LD. CIT(A).

3.4. The learned CIT(A) has referred to section .2(24), section 2(45), section 4 & section 5 of the Act and upheld the addition on the ground that:

(a). Placing of prohibitory orders over the deposits has not affected the accrual of interest and as per section 5 of the Act, and there is accrual of interest income in the subject assessment year.

(b). The prohibitory orders are in existence for more than 5 years and the fixed deposits continue to exist in the name of the assessee and are earning interest normally as any other deposit.

(c). The assessee is following the mercantile system of accounting and following the same, income to the extent of the interest on the FDs has accrued following the decision of the Hon'ble Supreme Court in the case of *M/s. Morvi Industries Limited vs. CIT [1971] 82 ITR 835 (SC).*

4. The ld. A.R. submitted that income tax is a tax on income and the definition of income in section 2(24) is still an inclusive definition, though exhaustive to a large extent. Section 4 provides for charge of income tax, whereas section 5 provides for scope of total income. The

total income is defined in section 2(45), which means *the total amount of income referred to in section 5 and computed in the manner laid down under the Act.* He submitted that section 145 provides for method of accounting of income chargeable to tax under the different heads of income. All incomes have to be categorised under the correct heads of income as specified in section 14 of the Act. As per section 145, the income is chargeable to tax either under cash basis or mercantile system of accounting as regularly employed by the assessee. Reference requires to be made to the Accounting Standard (AS) notified u/s 145(2) in No.9949 dated 25-01-1996. AS-9 deals with the timing of recognition of revenue applying the fundamental principles of recognition of income. The relevant paragraph of the said AS-9 is reproduced below for the sake of ready reference and appreciation of the facts of the case:

> *"13. Revenue arising from the use by others of enterprise resources yielding interest, royalties and dividends should only be recognised when no significant uncertainty as to measurability or collectability exists."* ***(Emphasis added)***

4.1 He submitted that as per the AS-9, interest income should not be recognised if there is significant uncertainty as to its receipt. The source of interest income are the fixed deposits and the fixed deposits itself are placed under attachment. When the source itself is attached and liable to be recovered by the orders of the Court, there is no certainty of accrual of interest income emanating from the source i.e., the fixed deposits. It is settled law that the revenue recognition is to be postponed if there is uncertainty of receipt. The Hon'ble Hyderabad Tribunal in *ACIT vs. Hill County Properties Limited in ITA No.1644/HYD/2014 (URO) cited in ACIT vs. Medravathi Agro Farms*

(P.) Ltd. [2015] 63 taxmann.com 274 (Hyderabad - Trib.) referred to AS-9 and held that:

> *"where the ability of the assessee for ultimate collection with reasonable certainty is lacking at the time of raising any claim, revenue recognition is postponed to the extent of uncertainty involved.....it is also provided that when the recognition of the revenue is postponed due to the effect of uncertainties, it is considered revenue of the period in which it is properly recognised."*

4.2 The following clauses in Accounting Standard-9 (AS-9) dealing with the revenue recognition may be referred to:

> *"9.1. Recognition of revenue requires that revenue is measurable and that at the time of sale or the rendering of the service it would not be unreasonable to expect ultimate collection.*
>
> *9.2 Where the ability to assess the ultimate collection with reasonable certainty is lacking at the time of raising any claim, e.g., for escalation of price, export incentives, interest etc., revenue recognition is postponed to the extent of uncertainty involved. In such cases, it may be appropriate to recognise revenue only when it is reasonably certain that the ultimate 132 AS 9 (issued 1985) collection will be made. Where there is no uncertainty as to ultimate collection, revenue is recognised at the time of sale or rendering of service even though payments are made by instalments.*
>
> *9.3 When the uncertainty relating to collectability arises subsequent to the time of sale or the rendering of the service, it is more appropriate to make a separate provision to reflect the uncertainty rather than to adjust the amount of revenue originally recorded.*
>
> *9.4 An essential criterion for the recognition of revenue is that the consideration receivable for the sale of goods, the rendering of services or from the use by others of enterprise resources is reasonably determinable. When such consideration is not determinable within reasonable limits, the recognition of revenue is postponed.*

9.5 When recognition of revenue is postponed due to the effect of uncertainties, it is considered as revenue of the period in which it is properly recognised."

4.3 He further submitted that the mercantile system of accounting is relevant only to determine the point of time at which tax liability is attracted and it cannot be relied to determine whether income has, in fact, resulted or materialised on the ground that the assessee is maintaining his accounts on the basis of mercantile system of accounting. Applying this basic principle, the Hon'ble High Court of Madras in the case of *CIT vs. Motor Credit Co. P. Ltd. [1981] 127 ITR 572 (Madras)* held that there was no accrual of income on the loans advanced to two Firms where even the recovery of the principal amount was in doubt and the mercantile system of accounting followed by the assessee could not be relied upon to tax the interest income. The Revenue took the matter before the Hon'ble Supreme Court in *SLP* and the same came to be dismissed vide *SLP (Civil) No.2806 of 1981*.

4.4 He referred to the decision of the Hon'ble High Court of Allahabad in the case *Rani Bhawani Devi vs. CIT [1962] 46 ITR 973 (ALL.)*. The Hon'ble High Court agreed with the view of the assessing officer that the interest on the fixed deposits was assessable only in the assessment year, 1948-49 where the dispute regarding the title on succession of the deceased person was settled by compromise decree.

4.5 He submitted that the Larger Bench of the Hon'ble Supreme Court explained the basic concept of income in its landmark decision, way-back in 1954, reported in *E.D. Sassoon & Co. [1954] 26 ITR 27 (SC)*. In summary, it held as under:

"It is clear therefore that income may accrue to the assessee without the actual receipt of the same. If the assessee acquires the right to receive the income, the income can be said to have accrued to him

> *though it may be received later on its being ascertained. The basic conception is that he must have acquired a right to receive the income. There must be a debt owed to him by somebody."*
> ***(Emphasis added)***

4.6 He submitted that the said decision of the Hon'ble Supreme Court is followed consistently over the years in order to resolve the disputes arising as to whether a particular item was taxable or not applying the concept of income.

4.7 He submitted that the Hon'ble Supreme Court as recently as in 2017, in another landmark decision in *CIT vs. Balbir Singh Maini [2017] 398 ITR 531 (SC)/2017 86 taxmann.com 94 (SC),* referred to the said decision in *E.D. Sassoon & Co. (Supra)* in deciding whether the assessee acquired any right to receive the income under the JDA as soon as it was executed or only when he was entitled to receive the built-up/developed area in lieu of transfer/exchange of land, creating a corresponding liability in the hands of the payer. The ratio of this decision, though rendered in the context of accrual of income by virtue of a Joint Development Agreement, is equally applicable to the cases where right to receive the income is obstructed & curtailed in a particular assessment year.

4.8 In the said decision, the Hon'ble Supreme Court has cited its own earlier decision in *CIT vs. Shoorji Vallabhdas & Co. (1962) 46 ITR 144 (SC)*, which in a nutshell, explains the *'concept of income'* for the purpose of charge of tax u/s 4 read with sections 5 and 145 of the Act (Para 26):

> *"……Income tax is a levy on income. No doubt, 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; but the substance of the matter is the income. If income does not result at all, there cannot be a tax, even though in bookkeeping, an entry is*

made about a 'hypothetical income', which does not materialise. Where income has, 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."

4.9 He submitted that indisputably, the assessees is not in receipt of interest income and there is no certainty whether the assessee would be entitled to receive the interest at all. If the 'source' is attached and the accrual itself is obstructed curtailing the '*right to receive*' pending a decision in the Court, there is no accrual of income. If at all the assessee acquires the right to receive the interest income in any particular assessment year, the assessee would duly recognise it in the books of account and declare it to tax. This would ensure that the income is taxed and the Revenue would receive its legitimate taxes in that year of accrual, where right to receive the income would get vested in the assessee. On the other hand, if the interest income is taxed in the subject assessment year in spite of the significant uncertainty of its accrual and receipt, the assessee would be prejudiced and put to irretrievable loss.

4.10 In the above-mentioned case i.e., *Balbir Singh Maini (Supra)*, the Hon'ble Supreme Court observed that the above passage from the decision in *Shoorji Vallabhdas & Co. (Supra)* was cited with approval in *Morvi Industries Limited (Supra)*. The observation of the Hon'ble Supreme Court in paras 15 & 16 (*Balbir Singh Maini)* are as under:

"15. The above passage was cited with approval in Morvi Industries Ltd. v. CIT [Morvi Industries Ltd. v. CIT, (1972) 4 SCC 451 : 1974 SCC (Tax) 140 : (1971) 82 ITR 835] in which this Court also considered the dictionary meaning of the word "accrue" and held that income can be said to accrue when it becomes due. It was then observed that: (SCC p. 454, para 11)

"11. … the date of payment … does not affect the accrual of income. The moment the income accrues, the assessee gets vested with the right to claim that amount even though it may not be immediately."

16. This Court further held, and in our opinion more importantly, that income accrues when there "arises a corresponding liability of the other party from whom the income becomes due to pay that amount".

17. It follows from these decisions that income accrues when it becomes due but it must also be accompanied by a corresponding liability of the other party to pay the amount. Only then can it be said that for the purposes of taxability that the income is not hypothetical and it has really accrued to the assessee.

18. Insofar as the present case is concerned, even if it is assumed that the assessee was entitled to the benefits under the advance licences as well as under the duty entitlement passbook, there was no corresponding liability on the Customs Authorities to pass on the benefit of duty-free imports to the assessee until the goods are actually imported and made available for clearance. The benefits represent, at best, a hypothetical income which may or may not materialise and its money value is, therefore, not the income of the assessee."

4.11 He submitted that based on the above facts and applying the concept of income expounded by the Honourable Supreme Court stating that income accrues only when it is due and right to receive is vested in the assessee, it would be incorrect to hold that income has accrued to the assessee in the form of interest on the fixed deposits during the subject assessment year as right to receive interest was not created. A distinction may be drawn between a case where the fixed deposits are placed under attachment for recovery of money or arrears of tax by issue of a garnishee notice, and; a case where Court has passed an order of injunction/restraint pending investigation of criminal charges. In the case of the former, there is obviously no obstruction to accrual and right to receive is not curtailed. In the case of garnishee Notice as in section 226(3) of the

Act, the assessing officer steps into the shoes of an assessee and recovers what is '*due and payable'* to the assessee by debtor/bank towards the existing liability. Reference is invited to decision of the Hon'ble Supreme Court in the case of *Administrator, UTI vs. B.M. Malani (2007) 164 Taxman 463 (SC)/(2008) 296 ITR 31 (SC),* wherein it was held that the assessing officer is entitled to recover only the amount which the assessee was otherwise entitled to receive.

4.12 As submitted earlier, the learned assessing officer has also relied on the decision in *Morvi Industries Limited (Supra)*, but arrived at a different conclusion that interest income had accrued to the assessee, who holds right over the asset even though the FDs are under the prohibitory orders, as long as it is not appropriated otherwise in pursuance of order of the Court – *Para 5.4 of page 9 of the impugned assessment order (AY 2014-15).*

4.13 In fact the learned AO has extracted the relevant portion from the decision in *Morvi Industries Limited (supra)* relied upon by him in para 5.3 of pages 8 & 9 of his order. The same is as under:

> *".....The dictionary meaning of the word "accrue" is "to come as an accession, increment, or produce: to fall to one by way of advantage: to fall due". The income can thus be said to accrue when it becomes due. The postponement of the date of payment has a bearing only in so far as the time of payment is concerned, but it does not affect the accrual of income. The moment the income accrues, the assessee gets vested with the right to claim that amount even though it may not be immediately. There also arises a corresponding liability of the other party from whom the income becomes due to pay that amount. The further fact that the amount of income is not subsequently received by the assessee would also not detract from or efface the accrual of the income, although the non-receipt may, in appropriate cases, be a valid ground for claiming deductions. The accrual of an income is not to be equated with the receipt of the income."* ***(Emphasis added)***

4.14 He further submitted that the learned AO has completely misread the ratio of the decision in *Morvi Industries Limited* as

reflected in the above summary. As seen from the relevant lines where emphasis is added, income arises only when a right to receive is created in favour of the assessee. The right to receive the income may be suspended if there is a statutory intervention by way of a restraint or by way of a prohibitory order or by way of order of the Court.

4.15 He relied on the judgement of the Hon'ble High Court of Allahabad in the case of *Jai Dei Devi, Anand Ram Jaipuria Pubic Charitable Trust (2003) 129 Taxman 846 (ALL)* wherein it was considered that whether dividend declared by a company accrued to the assessee because of the restraint order passed by Court, since neither the company could pay the dividend to the assessee nor could assessee receive till restraint order was vacated. The dispute was about a sum of Rs.1,15,326.28, which was the dividend declared by the company, Swadeshi Cotton Mills Co. Ltd., in respect of certain shares held by the assessee. The assessee had credited this amount in its books of account and accordingly it was declared to tax in the return of income filed. Subsequently, the return was revised and the said amount was excluded on the plea that in view of the restraint order of the Court, the assessee had no right to receive the dividend during the year under consideration. However the assessing officer did not accept the view of the assessee and assessed it as income of the year mainly on the ground that –

(a). the income had accrued to the assessee in spite of the restraint order of the Court, and;

(b). the assessee itself had accounted the income in its books of account and was also admitted as income in the return of income filed.

4.16 On appeal, the Appellate Commissioner upheld the addition. But on further appeal the Tribunal held that because of the restraint order of the Court, there was no right accruing to the assessee to receive the income and accordingly the amount could not be treated as its income for the assessment year under consideration. On further appeal by the Revenue, the Hon'ble Court held (para 5):

> *"Admittedly, the assessee had purchased the shares concerned from Jaipuria Brothers Limited and the restraint order was passed in an execution instituted by the receiver of the Estate of Sara Bhai Jai Singh Bhai against Jaipuria Brothers Limited and the court by an interim order dated September 29, 1967, had restrained Swadeshi Cotton Mills Ltd. from paying dividends on the said shares to any one till further orders. The restraint order continued till May 26, 1972. Thus, during the year under consideration, i.e., the accounting year ending June 30, 1970, the petitioner's right to receive dividends was under suspension because of the restraint order passed by the court. In such circumstances, the dividend declared by the company could not be said to have accrued to the assessee because neither could the company pay the same to the assessee nor could the assessee recover it till the restraint order was vacated."*

4.17 He submitted that in the case of the assessee, the right to receive the interest is under the suspension because of the restraint order passed by the Hon'ble Special Judge, CBI Court, Hyderabad. Neither the bank could pay the interest to the assessee nor could the assessee receive the interest, identical to the above said case where neither the company could pay the dividends nor the assessee shareholder could receive it because of the restraint order of the Court.

4.18 As already submitted, the assessee has filed a writ petition before the Hon'ble High Court of Karnataka, Dharwad Bench praying for a direction to the banks not to deduct TDS in view of the restraint

order of the Hon'ble CBI Court, Hyderabad. The Hon'ble High Court in WP No.112471/2019(T-IT) order dated, 09-09-2019 was pleased to pass an interim order directing the banks not to make TDS pending conclusion of the proceedings by the Hon'ble CBI Court, Hyderabad.

4.19 He submitted that in the case of *Godhra Electricity Co. Ltd. vs. CIT (1987) 225 ITR 746 (SC)*, the Hon'ble Supreme Court had an occasion to consider whether the income in respect of enhanced electricity charges collected by the assessee amounted to income or not, following the mercantile system of accounting on the basis of which the books of account were maintained, in view of Civil Suits filed by the consumers. The Civil Suits were decreed by the Trial Court, but appeals of the assessee company were allowed by the Division Bench of the High Court and the suits were dismissed consequently. Thereupon, the consumers took the matter before the Hon'ble Supreme Court challenging the enhanced electricity charges, which also came to be dismissed subsequently. In the interregnum, Under Secretary to the Government of Gujarat wrote a letter to the assessee advising it to maintain the *status quo* for the rates to the consumers for a certain period. The dispute mainly centred around whether enhanced charges already collected by the company was its income as the assessee itself had accounted for the charges in its books of account, even though litigation was pending. The Hon'ble Court vide para 14 of its order held:

> *"**14.** The question whether there was real accrual of income to the assessee- company in respect of the enhanced charges for supply of electricity has to be considered by taking the probability or improbability of realisation in a realistic manner. If the matter is considered in this light, it is not possible to hold that there was real accrual of income to the assessee-company in respect of the*

enhanced charges for supply of electricity which were added by the ITO while passing the assessment orders in respect of the assessment years under consideration. The AAC was right in deleting the said addition made by the ITO and the Tribunal had rightly held that the claim at the increased rates as made by the assessee- company on the basis of which necessary entries were made represented only hypothetical income and the impugned amounts as brought to tax by the ITO did not represent the income which had really accrued to the assessee-company during the relevant previous years. The High Court, in our opinion, was in error in upsetting the said view of the Tribunal."

4.20 He further submitted that the enhanced charges for supply of electricity were collected by the said company and the Hon'ble Supreme Court held that there was no accrual of income in view of the letter of the Government of Uttar Pradesh directing the assessee to maintain the *status quo*. The fact that the enhanced electricity charges were collected and the assessee maintained its books of account on mercantile system was not considered relevant to decide whether income accrued or not. In contrast, the assessee is neither in receipt of the disputed income nor made any entry in the books of account recognising it as income. Hence it is submitted that the case of the assessee is on a much stronger footing compared to the above mentioned relied upon case before the Hon'ble Supreme Court.

Decision in *Calcutta Investment Co. Ltd. vs. CIT (1983) 142 ITR 120 (Calcutta HC).*

4.21 He submitted that in this case, the assessee had advanced loan to Central Cotton Mills Limited and the annual interest amounted to Rs.55,000/-. The Government had taken over the management of the company by an order dated, 28-01-1972 under the West Bengal Relief Undertakings (Special Provisions) Act, 1972, by virtue of which operation of all contracts were stopped. The assessee was following mercantile system of accounting but did not

recognise the income due to the uncertainty arising out of the said Notification and taking over of the said Central Cotton Mills Ltd. The assessing officer was of the view that the assessee should have recognised the interest income as the books of account were maintained under mercantile system. The Hon'ble High Court held that there was no accrual of income in the subject assessment year in view of the uncertainty and the right to receive during the relevant year stood suspended.

4.22 He submitted that the Hon'ble High Court of Calcutta in the case of *Arrah Sararam Light Railway Co. Ltd. Vs. CIT (1995) 235 ITR 870, 873-74 (Cal.)* held that interest on fixed deposit had not accrued in view of the direction of the High Court that the assessee does not have not any enforceable right against the interest or the principal amount. In the case of the assessee, the Hon'ble Court has ordered the Bank not to deal with the fixed deposits or the interest thereon and maintain the *status quo* until further orders. In view of the IDENTICAL facts, it is submitted that there is no accrual of income and the mercantile system of accounting followed by the assessee does not mandate to recognise such income.

4.23 In view of the above, the ld. A.R. for the assessee submitted that the addition of interest as income accruing is against the concept of income and the principles of accrual of income and therefore, liable to be deleted.

5. The ld. D.R. submitted that there is no doubt that the interest income accrued in the case of assessee. That means as per the provisions of section 5 of the Act interest accrued is the income of the assessee in the year in which it is accrued. Further the deposits in the bank accounts of the assessee are placed under Prohibitory

Order. But it had not affected accruing interest. It is also clear from the submissions of the assessee that the 5 years period of prohibitory order is also completed. The said deposits continue to exist in the name of the assessee and are earning interest normally as any other deposit. Further, there is no acceptable reason as to why after offering interest income to tax in earlier year, the assessee should suddenly stop this year. The amount deposited is certainly the positive income of the assessee. Hence the income accrued is the income of the assessee in the year it is accrued. Further the assessee is following the mercantile system of accounting. Thus, the assessee has to offer the accrued interest as income in the year it is accrued.

5.1 Further, he submitted that income has been accrued to the assessee in terms of section 4 r.w.s. 2(24) of the Act and same to be treated as income in the assessment year under consideration following mercantile system of accounting. In view of the above and considering the provisions of section and following the decision of the Hon'ble supreme court in the case of M/s Morvi Industries Ltd, {82 ITR 835 (SC)}, the ld. D.R. submitted that the appeal of the assessee be dismissed.

6. We have heard the rival submissions and perused the materials available on record. The main contention of the assessee's counsel is that the assessee has not offered the interest income accrued on bank deposits for taxation on the reason that these fixed deposits with State Bank of India, Commercial branch and State Bank of India, Kudithini branch and IngVysya Bank are under prohibitory order placed by CBI, Hyderabad. The interest on these fixed deposits was kept under prohibitory order, though it was accrued by the bankers but such accrued interest has not been paid to the assessee company except the TDS portion of such accrued interest. In other words, it was submission of the ld. A.R. that the

assessee has no right to receive the said interest accrued on the FD in these banks due to prohibitory order placed by the CBI Hyderabad.

6.1 Under section 5 of the Act, the total income of the assessee in any previous year in case of resident includes all incomes, profits and gains from whatever sources derived, which are received or deemed to be received in the taxable territory in such year by or on behalf of such person, or accrue or arise or deem to accrue or arise to him in the taxable territory during such year or having accrued or arisen to him without a taxable territory before the beginning of such year. Thus, it is not necessary that the income should be received by the assessee only. However, all receipts do not constitute income and do not come within the ambit of the Act. If income not received but accrued to the assessee, then it is taxable vice-versa if the income received but not accrued it is not taxable. In other words, though there is actually or constructively received but accrued then it is deemed to be received by the assessee. Receipt or accrual itself is not sufficient to bring a receipt within the clutches of taxation. In order to bring a receipt into taxation, it should be income and it ought to have been accrued to the assessee in the relevant assessment year. The question as to when exactly an assessee is said to have received the income or profits has to be largely determined with reference to the system of accounting employed by him. Where according to the method followed by the assessee, the same was accrued during the year of account, and it seems, that it would be brought into account of the income as soon as right to receive is accrued to assessee. In these circumstances, on actual accrual should be considered only on the basis of right to receive the same. Thus, it is clear, that income accrued to the assessee, without the actual right to receive the same, cannot be brought to tax. If the assessee acquires the right to receive the income, the income can be said to have accrued to him, though

it may be received later on its being ascertained. The basic conception is that he must have acquired a right to receive the income. There must be a debt owed to him by the parties concerned with whom the assessee made deposits for interest. Unless and until there is a creation of right in favour of the assessee, debt due by somebody it cannot be said that he had acquired a right to receive the income or that income, has accrued to him (E.D. Sasoon & Co. Ltd. Vs. CIT (1954) 26 ITR 27 SC). It is no doubt that the accrual of income does not depend upon the accounts maintained by him. The accounts may be made up at a much later date. That depends upon the convenience of the assessee and also upon the exigency of the situation. The amount of the income, profits or gains may itself be ascertained later on the accounts being made up. But when the accounts are thus made up, the income, profits & gains ascertained as a result of the accounts or referred back to the chargeable accounting period during which they have accrued or arisen and the assessee is liable to tax in respect of the same during that assessment year. In other words, the treatment accorded by assessee in his books of accounts does not affect the true nature of the receipt. For this purpose, we place reliance on the judgement of Hon'ble Supreme Court in the case of CIT Vs. Shoorji Vallabhadas & Company (46 ITR 144).

6.2 While determining the income of the assessee in particular assessment year, the legal consequences of the transaction must be kept in mind and should be taken as guiding factor for arriving at a decision from the point of view of the incomes as well. This is because of fact that what is sought to be taxed under Income Tax Act is that commercial profits and not theoretical or notional income, unless the statute otherwise provides for imposing the tax on a notional basis by legislative fiction. In other words, if income does not result at all,

there cannot be a tax even though the assessee made an entry in the books of accounts with regard to hypothetical income which does not accrue to the assessee. The character of the receipt offered as a trading receipt or as an income should not be based on the name given to the amount received by the assessee in his books of accounts because in law the real nature and character of the transaction must be determined in the light of treatment of the contract and the rights and obligations of the parties flowing therefrom unguided by the nomenclature of the transaction. For this purpose, rely on the judgement of Hon'ble Supreme Court in the case of National Cement Mines Industries Ltd. Vs. CIT (42 ITR 69) (SC).

6.3 While determining the nature of the receipt as being a trading receipt taxable as income from business or profession or otherwise, one should be guided by the terms of the agreement entered into between the parties. Revenue authorities cannot ignore the genuine agreement between the assessee and the concerned parties from whom the said amount has been received. In the absence of any situation or allegation or collusion, the revenue cannot resort to any attempt to rewrite the agreement with a view to impose the levy of tax shall be when the transaction between the parties are at arm's length For this proposition we rely on the judgement of Hon'ble Delhi High Court in the case of D.S. Bist & Sons (149 ITR 276), wherein held that "The Act does not clothe the taxing authorities that any power or jurisdiction rewrite terms of agreement entered into, particularly in view of the finding of the Tribunal that "there is nothing to suggest the parties were not belong with each other at arm's length and there is no situation of any collusion, commercial expediency of the contract is to be adjusted by the contracting parties as to its terms. It was further made clear that under the taxing system it is up to the

assessee to conduct his business in his wisdom. The assessee may enter into commercial transaction with other party who has ad idem with the assessee as to the terms & conditions. In the absence of any collusion between the two, it is not possible to vary the terms." Further, Hon'ble Supreme Court in the case of National Cements Mines Ltd. Vs. CIT (42 ITR 69) held that "in assessing the true character of the receipt for the purpose of income tax, inability to ascribe to the transaction a definite category is of little consequence. It is not the nature of the receipt under the general law. But in the commerce that is material." Further, it was held by the Bombay High Court in the case of CIT Vs. Scindia Workshop Ltd. (119 ITR 526) that the revenue authorities must examine the transaction and arrive at a conclusion having regard to the nature of the receipt from the commercial point of view that the particular reference to the relevant provisions of the income tax. Further, the Hon'ble Karnataka High court in the case of Addl. CIT Vs. Mahatrashtra Apex Corporation Ltd. (116 ITR 616), wherein held that "the fact that in an earlier year, a particular receipt was not subject to tax cannot give rise to an inference that the mere receipt in the subsequent years would not also be taxable because the absence of an assessment to income tax in an earlier year is not to be equated with the decision of the subject relation to a similar amount, which is pending consideration in a subsequent year."

6.4 Further, it was held by the Hon'ble Supreme Court in the case of CIT Vs. Kamal Beharilal Singha (82 ITR 460) (SC) that "a question of assessment to income tax would arise for consideration only in the hands of the recipient and, therefore, its character as income taxable or not must be determined only to the reference of legal position of the recipient. Thus, the question whether a particular receipt is in

the nature of income or not and would be liable to tax or not, primarily for the AO to decide but having regard to the facts and circumstances f the case and in accordance with law. Further, in the case of CIT Vs. Associated Cables Pvt. Ltd.(286 ITR 596) the Bombay High Court held that--

"The question of law sought to be raised in this appeal is as to whether the retention money could be considered to be the income of the assessee in the year in which the amount was retained. The Income-tax Appellate Tribunal has referred to a judgement of the Tribunal in Associated Cables P. Ltd. V. Deputy CIT (1994) 206 ITR (AT) 48 (Bom). Mr. Sathe appearing for the respondent has, however, drawn our attention to two judgements, viz., of the Calcutta High Court and the Madras High Court. The Calcutta High court judgement is reported in CIT Vs. Simplex Concrete Piles (India) P. Ltd. (1989) 179 ITR 8. A Division Bench of the Calcutta High Court in that matter has held that the payment of retention money in the case of contract is deferred and is contingent on satisfactory completion of contract work. The right to receive the retention money is accrued only after the obligations under the contract are fulfilled and, therefore, it would not amount to an income of the assessee in the yar in which the amount is retained. The other judgement relied upon is in the case of CIT Vs. Ignifluid Boilers (I) Ltd. reported in (2006) 283 ITR 295 (Mad). In that judgement also, a Division Bench of the Madras High Court has held that the amount retained does not accrue to the assessee and, therefore, the assessee would not be liable."

6.5 Further, Madras High Court in the case of CIT Vs. East Cost Construction and Ind Ltd. (283 ITR 297), wherein held that *"the assessee was entitled to receive the retention money after completion of the contract. On the date of the bills, no enforceable liability had accrued or arisen. When the assessee had no right to receive the money by virtue of the contract between the parties and the assessee also had no right to enforce payment, it could not said that the right to receive payment of the remaining 10 percent of the value of job had accrued."* In view of the discussion, the amount has not accrued to the assessee. The right to receive will accrue only after fulfillment of condition laid down in contract entered by the respective parties only then this amount cannot be said to be accrued to the assessee. Even if it is received against bank guarantee the bank guarantee could be revoked at any time at the pleasure of the payee. In such

circumstances, this impugned amount cannot be brought to tax in the assessment year under consideration. More so, the said amount was actually offered for tax in subsequent assessment year and the department accepted the same in the subsequent assessment as income of the assessee and bringing the same amount to tax in this assessment year amount to double taxation, which cannot be permitted.

6.6 Further, Coordinate Bench of Kolkata in the case of Stewarts & Lloyds of Indi Ltd. in ITA No.1169/Kol/2017 & Others vide order dated 15.3.2019 held as under:-

> *"4. The first common issue that arises for consideration in all these appeals is the rejection by the revenue of the claim of the assessee that retention money is not income of the assessee as it has not accrued or arisen during the year. both the parties have advanced lengthy arguments on the issue. On consideration of the facts and arguments we find that the issue is covered by the decision of the Hon'ble Jurisdictional High Court in the case of Commissioner Of Income-Tax vs Simplex Concrete Piles (India) Pvt. Ltd. 1989 179 ITR 8 Gal, wherein it was held as follows:-*
>
> *"Section 5 of the Income-tax Act, 1961 - Income - Accrual of - Assessment years 1965-66 and 1966-67 - Assessee-Company was carrying on construction business and followed mercantile system of accounting - As per terms of contracts entered into with various parties assessee was entitled to get 90 per cent of payment in first instance when work was done and remaining 10 or 5 per cent, as case may be, was to be paid later on after submitting certificates from architects/engineers, removal of defects, payment of damages, etc. - Assessee was crediting 100 per cent of job value in past years but from assessment year 1965-66, it had started practice of crediting only 90 per cent value for work done after deducting retention money -Whether it could be said that on date of submission of bills assessee had no right to receive entire amount on completion of work and retention money did not accrue to it on such date but on later date in accordance with terms of contracts and ITO would be unjustified in making any addition by treating entire*

contract amount as accrued on submission of bills on completion of work - Held, yes"

5. The decision of the ITAT Mumbai 'H' Bench of the Tribunal in the case of Emerson Network Power India (P.) Ltd. v. Assistant Commissioner of Income-tax [2009] 27 SOT 593 (MUM.) relied upon by the Id. D/R is not applicable to the facts of the case, for the reason that, what was considered by the Bench was performance bank guarantee and not retention money as in the case of the assessee company.

Even otherwise, we are bound by the judgment of the Hon'ble Jurisdictional High Court in the case of Commissioner of Income-Tax vs Simplex Concrete Piles (India) Pvt. Ltd.

ITA No. 1169/Ko1/2017 Assessment Year: 2007-08 ITA No. 1170/Ko1/2017 Assessment Year: 2007-08 ITA No. 1171/Ko1/2017 Assessment Year: 2008-09 ITA No. 1172/Ko1/2017 Assessment Year: 2009-10. M/s. Stewarts & Lloyds of India Ltd 5.1. We also find that the reliance placed by the Id. D/R on the judgement in the case of E.D. Sassoon & Co. Ltd. v. Commissioner of Income-tax [1954] 26 ITR 27 (SC), is also misplaced as the Hon'ble Supreme Court was considering a case where the assessee had acquired the right to receive the income. In the case on hand, the assessee had no right to receive the income.

6. In view of the above discussion, we uphold the contention of the assessee and direct the Assessing Officer to exclude the retention money included in the sales. This retention money can be brought to tax in the year when the assessee received the same. Accordingly this ground of the assessee is allowed for all the Assessment Years."

6.7 Further, Coordinate Bench of Kolkata in the case of DCIT Vs. EMC Limited in ITA No.2149/Kol/2017 dated 27.5.2020 held as under:-

"23. Having heard both the parties and after perusal of records, we note that the assessee had filed its original return of income on 29.11.2014 showing total income of Rs.194,46,16,540/-. Thereafter the assessee's case was selected for scrutiny and notices u/s. 143(2) of the Act dated 31.08.2015 was served upon the assessee. The AO noted that the assessee thereafter had filed revised income tax return on 17.03.2016 revising its income to Rs.49,98,06,980/-. The assessee explained that when the original return was filed on

29.11.2014 it was on the basis of profit as per the P&L Account without considering the deduction made by parties (customers) on account of retention money. However, the assessee on proper application of the legal and factual position realised that company's real income is much less than the revenue booked in the account and hence, revised return was filed on 17.03.2016 claiming deduction of the retention money debited by the parties during the year amounting to Rs.142,53,74,710/-. It was also brought to the notice of the AO that as per the contract between the parties certain percentage of the bills raised as per agreement can be retained by the contractee party as retention money which would be payable only after successful completion of the entire contract after it being certified by the party and after fulfilment of certain pre-determined conditions mentioned in the contract. Thus, it was explained to the AO that as per the accounting practise followed by the party though a part of the bill amount was retained by the contractee party and would be paid afterwards on agreed conditions, the assessee in its books of account has booked the entire revenue as and when the bills were actually raised and hence, the entire amount was reflected in the revenue from the operations in the P&L Account. It was brought to the notice of the AO that due to the said practice profit before tax as per P& L Account for the year ended on 31.03.2014 is Rs.204,38,30,030/- and the said profit was arrived after taking into account entire bills raised on parties for contract work including the retention money. It was explained further that thereafter, sales was credited and the party was debited with the entire bill amount and on that basis assessee had filed the original return on 29.11.2014 without considering the actual deduction made by the parties on account of the retention money and had shown total income of Rs.194,46,16,540/-. And when the assessee realised that its real income was much less than the revenue booked in the account it filed a revised return on 17.03.2016 claiming deduction of the retention money which was deducted by the parties to the tune of Rs.142.53 cr. and thus in the revised return income to the tune of Rs.49.98 cr. was shown. This explanation of the assessee was not accepted by the AO and he disallowed the deduction claimed by the assessee in respect of retention money to the tune of Rs.142,53,74,710/- and was added back to the income of the assessee. On appeal, the Ld. CIT(A) was pleased to allow the claim of the assessee and directed the AO to exclude the retention money from the total income. However, the Ld. CIT(A) also directed that TDS claimed by the assessee relatable to such retention money should be disallowed in this assessment year and added that it may be allowed in the year in which the assessee declares the retention money as its income. Aggrieved by the aforesaid action of the Ld. CIT(A) the revenue has preferred the appeal. We note that the assessee is in the business of supplying

erection and commissioning of electricity transmission towers, line powers, sub-station etc. the assessee continued the construction job for M/s. Power Grid Corporation of India Ltd., M/s. Transmission Corporation of Andhra Pradesh Ltd., M/s. West Bengal State Electricity Distribution Corporation Ltd., M/s Maharastra Electricity Transmission Co. Ltd. The assessee had raised bills on the parties on progressive completion of particular project and credited the gross bill amount in its books of account which was reflected in the audited Balance Sheet under the head "Revenue from operations." The assessee maintained books of account on mercantile basis and the revenue was recognized on the basis of progressive partial completion of particular project and the bills were raised accordingly. As per the contract between the parties there were clauses in the contract that the contractee shall retain specified percentage of the billed amount till successful completion of the entire project. The ld. AR drew our attention to the contract with M/s. Power Grid Corporation of India Ltd. wherein it is stipulated that the balance 10% of the erection process component (excluding processed component) for survey shall be paid after successful commissioning of the transmission line and issuance of taking over certificate. So, the final payment would be given as per the contract after the successful commissioning of the transmission line and issuance of taking over certificate by the Power Grid meaning the retention money would be given only after successful commissioning and after issuance of the taking over certificate. According to the assessee, as per such duly executed contract entered into between the parties, the contractee had retained specified percentage of the bills amount as retention money and in this assessment year these parties have retained a sum of Rs.142,53,74,710/- as retention money on the bills raised during the year. In the light of the said fact, according to assessee, it was neither entitled nor it could have claimed the retention money as income accrued till the entire project was commissioned. And since the projects were not completed during the year under consideration, the retention money has not accrued as income of the assessee and, therefore, assessee claimed deduction of the same. It was also brought to our notice that retention money would be included in the respective years when the project will be completed and it was also brought to our notice that a part of the said retention money retained by the parties were disbursed to the assessee in the succeeding assessment years, and which were duly offered asincome in the assessment years 2015-16 to 2017-18 when particular projects got completed and have duly been included in the return of income during the respective assessment years from AYs 2015-16 to 2017-18 and consequently there is no revenue loss at all. However, we note that the AO has rejected the claim of the assessee on the

ground that the assessee had credited the amount of gross bill in its books of account which included the retention money in the accounts as also in the P&L Account and reflected the same in the original return of income filed by the assessee. The AO also noted that the assessee claimed TDS which was deducted on the gross bill and the assessee had claimed credit for TDS including the TDS of retention money during the year. Therefore, according to AO, the retention money has to be included as income accrued in this assessment year. We note that the Ld. CIT(A) has taken care of the TDS issue and the assessee has not preferred to challenge the action of Ld. CIT(A) which crystallizes. Therefore, the direction of the Ld. CIT(A) to the AO to disallow the TDS credit claimed in respect of the retention money not shown as income by the assessee in the revised return and to allow it in the year in which the assessee declares retention money as its income takes care of the TDS credit even if erroneously claimed by the assessee in respect of the retention money. We note from the relevant clauses of the contract that the contractees had the right to withhold certain percentage of the consideration till the conclusion of the project and only after certification of concluded projects the retained portion of the amounts are disbursed finally which may be in the succeeding assessment years and is contingent upon the terms and conditions of the contract. We also note that the AO has not disputed the amount which has been retained by the contractees. In such a scenario, merely because the assessee had booked the income in this year without actual receipt of it, cannot be chargeable to tax as per the Act. The reasons given by the AO to disallow the claim of the assessee cannot be sustained and was rightly repelled by the Ld. CIT(A) whose view to accept the claim of assessee is based on the accepted judicial precedents laid down by the Hon'ble jurisdictional High Court in CIT Vs. Simplex Concrete Piles (supra); Hon'ble Gujarat High Court in Anup Engineering Ltd. (supra); Hon'ble Bombay High court in CIT Vs. Associated Cables P. Ld. (supra) and Hon'ble Madras High Court in CIT Vs. Ignifluid Boilers (I) Ltd. (2006) 283 ITR 295 (Mad). We hold that in the factual circumstances especially as per the terms of contract between the assessee and the contractee, the retention money retained by the contractee is deferred payment and is contingent upon satisfactory completion of contract work. We hold that the right to receive the retention money is accrued only after the obligations under the contract are fulfilled and the assessee had no vested right to receive the same in this assessment year, therefore, it would not amount to an income of the assessee in the year in which it is retained. Therefore, we do not find any infirmity in the order of the Ld. CIT(A) and so, we confirm it and dismiss the appeal of the Revenue."

6.8 Further Accounting Standard (AS-9) with respect of revenue recognition clearly provides as under:

> "*Revenue from sale of rendering services should be recognized at the time of the sale or rendering of services. However, if at the time of rendering of services or sale there is significant uncertainty in ultimate collection of the revenue, then the revenue recognition is postponed and in such cases revenue should be recognized only when it becomes reasonably certain that ultimate collection will be made. It also applies to the revenue arising out of escalation of price; export incentive, interest, etc."*

6.9. Thus, it is apparent that interest income of the assessee can be recognized only when there is no uncertainty and significant scope to receive the same. Therefore, in the case of assessee, accrued interest on bank deposit on which prohibitory order placed by CBI Hyderabad cannot be treated as interest income of the assessee during these two assessment years, until the assessee has actually received it from the bank though it was subject to TDS. This view of ours is fortified by the order of Tribunal in the case of Selvi J. Jayalalitha Vs. ACIT (2016) Taxpub (DT) 4642 (Chennai-Trib) ITA No.1288/Mad/2008, WTA No.20/Mad./2008 in assessment years 2000-01 & 1997-1998 dated 30.9.2016.

6.10 Further, issue relating to the deduction of TDS u/s 194A of the Act of this impugned interest has been subject matter of dispute before the jurisdictional High Court in WP No.112471/2019 (T-IT) and the Hon'ble High Court vide order dated 21.9.2021 held as under:

> 7. *The material on record indicates that it is not in dispute that FD's lying with the respondent Nos.3 to 5/Banks have been frozen/attached pursuant to an order dated 11.09.2009 passed by the CBI and the said proceedings initiated against the petitioner are still pending adjudication. In this contest, it is relevant to quote Section 194A of the IT Act, which reads as sunder :*

"194A. Interest other than "Interest on securities". *(1) Any person, not being an individual or a Hindu undivided family, who is responsible for paying to a resident any income by way of interest other than income by way of interest on securities, shall at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon at the rates in force :*

Provided that an individual or a Hindu undivided family, whose total sales, gross receipts or turnover from the business or profession carried on by him exceed the monetary limits specified under clause (1) or clause (b) of Sections 44AB during the financial year immediately preceding the financial year in which such interest is credited or paid, shall be liable to deduct income-tax under this section.

Explanation.- For the purpose of this section, where any income by way of interest as aforesaid is credited to any account, whether called "Interest payable account" or "Suspense account" or by any other name, in the books of account of the person liable to pay such income, such crediting shall be deemed to be credit of such income to the account of the payee and the provisions of this section shall apply accordingly."

8. *A plain reading of the said provision will indicate that tax deduction at source is permissible only if the income is credited to the account of the petitioner, in the instant case, in view of the freezing/attachment of the said FDs of petitioner, it cannot be said that the petitioner is receiving income by way of interest from the said FDs for the present and entitlement or otherwise of the petitioner qua the said FDs or interest will have to be decided only after conclusion of the proceedings initiated by the CBI against the petitioner. In otherwords, for the present, the interest on the FDs which is credited to the account of the petitioner is not income for the petitioner so as to attract the TDS under Section 194Aof the IT Act, so as to enable deduction of TDS on the interest accruing on the FDs.*

9. *Under similar circumstances, in* ***UCO Bank's*** *case referred to supra, the Division Bench of the Delhi High Court has held as under :*

"17. In the present case, the controversy is regarding applicability of Section 194A of the Act which provides for deduction of tax at source in respect of any Payment/credit on account of interest, other than interest on securities. Section 194A(1) of the Act is quoted as under.

"194A Interest other than "Interest on securities" – (1) Any person, not being an individual or a Hindu undivided family, who is responsible for paying to a resident any income by way of interest other than income by way of interest on securities, shall at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon at the rates in force: Provided that an individual or a Hindu undivided family, whose total sales, gross receipts or turnover from the business or profession carried on by him exceed the monetary limits specified under clause (a) or clause (b) of section 44AB during the financial year immediately preceding the financial year in which such interest is credited or paid, shall be liable to deduct income-tax under this section.

Explanation.--For the purposes of this section, where any income by way of interest as aforesaid is credited to any account, whether called "Interest payable account" or "Suspense account" or by any other name, in the books of account of the person liable to pay such income, such crediting shall be deemed to be credit of such income to the account of the payee and the provisions of this section shall apply accordingly."

18. In terms of Section 194A of the Act, the petitioner would, in the normal course, be obliged to deduct tax at source in respect of any credit or payment of interest on deposits made with it. However, in the present case, the question that needs to be addressed is whether Section 194A of the Act contemplates deduction of tax in a situation where the assessee is not ascertainable and the person in whose name the interest is credited is also, admittedly, not a person liable to pay tax under the Act.

19. The Registrar General of this Court is, clearly, not the recipient of the income represented by interest that accrues on the deposits made in his/her name. The Registrar General is also not an assessee in respect of the deposits made with the petitioner bank pursuant to the orders of this Court. The deposits kept with the petitioner bank under the orders of this Court are, essentially, funds which are custodia legis, that is, funds in the custody of this Court. The interest on that account - although credited in the name of the Registrar General - are also funds that remain under the custody of

this Court. The credit of interest to such account is, thus, not a credit to an account of a person who is liable to be assessed to tax. In this view, the petitioner would have no obligation to deduct tax, because at the time of credit there is no person assessable in respect of that income which may be represented by the interest accrued/paid in respect of the deposits. The words "credit of such income to the account of the payee" occurring in Section 194A of the Act have to be ascribed a meaning in conformity with the scheme of the Act and that would necessarily imply that deduction of tax bears nexus with the income of an assessee.

20. In absence of an assessee, the machinery of provisions for deduction of tax to his credit are ineffective. The expression "payee" under Section 194A of the Act would mean the recipient of the income whose account is maintained by the person paying interest. In the present case, although the FD is made in the name of the Registrar General, the account represents funds which are in custody of this Court and the Registrar General is neither the recipient of the amount credited to that account nor the interest accruing thereon. Therefore, the Registrar General cannot be considered as a "payee" for the purposes of Section 194A of the Act. The credit by the petitioner bank in the name of the Registrar General would, thus, not attract the provisions of Section 194A of the Act. Although, Section 190(1) of the Act clarifies that deduction of tax can be made prior to the assessment year of regular assessment, nonetheless the same would not imply that deduction of tax is mandatory even where it is known that the payee is not the assessee and there is no other assessee.

21. It is relevant to note that there is no assessee to whom interest income from the deposits in question can be ascribed; no person can file a return claiming the interest payable by the petitioner as income. The necessary implication of this situation is recovery of tax without the corresponding income being assessed in the hands of any assessee. The ultimate recipient of the funds from the FD would also not be able to avail of the credit of TDS. It is apparent that in absence of an ascertainable assessee the machinery of recovering tax by deduction of tax at source breaks down because it does not aid the charge of tax under Section 4 of the Act but takes a form of a separate levy, independent of other provisions of the Act. This is, clearly, impermissible.

22. The impugned circular proceeds on an assumption that the litigant depositing the money is the account holder with the petitioner bank and/or is the recipient of the income represented by the interest accruing thereon. This assumption is fundamentally erroneous as the litigant who is

asked to deposit the money in Court ceases to have any control or proprietary right over those funds. The amount deposited vests with the Court and the depositor ceases to exercise any dominion over those funds. It is also not necessary that the litigant who deposits the money would be the ultimate recipient of those funds. As indicated earlier, the person who is ultimately granted the funds would be determined by orders that may be passed subsequently. And at that stage, undisputedly, tax would be required to be deducted at source to the credit of the recipient. However, the litigant who deposits the funds cannot be stated to be the recipient of income for the reasons stated above.

23. Deducting tax in the name of the litigant who deposits the funds with this Court would also create another anomaly because the amount deducted would necessarily lie to his credit with the income tax authorities. In other words, the tax deducted at source would reflect as a tax paid by that litigant/depositor. He, thus, would be entitled to claim credit in his return of income. The implications of this are that whereas this Court had removed the funds from the custody of a litigant/depositor by judicial orders, a part of the accretion thereon is received by him by way of Tax deducted at source. This is clearly impermissible because it would run contrary to the intent of judicial orders.

24. In the given circumstances, the writ petitions are allowed and the impugned notice dated 25.04.2012, the impugned circular bearing no. 8/2011 and the impugned order dated 10.03.2014 are set aside."

10. *The said decision of Delhi High Court has been reiterated and affirmed by the CBDT in its circular at Annexure-D dated 28.12.2015.*

11. *Though the decision of the Delhi High Court in **UCO Bank's** case and the aforesaid circular pursuant thereto issued by the CBDT was in respect of the Court deposits made in the name of the Registrar General, the underlying legal principle that can be discerned therefrom would be applicable to the facts of the instant case also where the petitioner would be entitled to the interest only in future and not in praesenti and the said income from the interest on the FDs of the petitioner would merely be hypothetical future income to which the petitioner would be entitled to only after conclusion of CBI proceedings. In otherwords, the entitlement of interest accruing on the FDs to the petitioner would be dependant on the result of the pending*

Court/CBI proceedings and consequently, till conclusion of the said Court proceedings, the interest accruing on the FD cannot be construed or treated as income for the purpose of deduction of TDS under Section 194A of the IT Act. Under these circumstances, I am of the view that the necessary directions in this regard are to be issued against the respondent Nos.3 to 5; it is needless to state that the directions to be issued to the respondent Nos.3 to 5-Bank not to deduct TDS on the interest on the FDs, cannot be treated as absolving petitioner of its liability to pay tax on the interest accruing on the FD if the petitioner becomes entitled to the same after conclusion of the Court proceedings.

12. In the result, I pass the following:

ORDER

The petition is hereby allowed.

ii. The respondent Nos.3 to 5/Banks are directed not to deduct the TDS in respect of the interest arising/accruing on FDs of the petitioner lying with the respondent Nos.3 to 5/Banks till conclusion of the proceedings initiated by the 6th respondent-CBI against the petitioner.

iii. It is however made clear that the alleged liability of the petitioner, if any, to pay taxes in respect of the interest accruing on the said FDs shall arise after conclusion of the said proceedings.

iv. It is made clear that the present order passed will not affect any TDS already deducted by the respondent Nos.3 to 5/Banks prior to interim order dated 09.09.2019 passed by this Court."

7. Thus, as seen from the above order of the jurisdictional High Court on the issue of deduction of TDS u/s 194A of the Act, it has been held by Hon'ble Court that **"the entitlement of interest accruing on the FDs to the assessee would be dependent on the result of the pending Court/CBI proceedings and consequently, till the conclusion of the said court proceedings, the interest**

accruing on the FD cannot be considered as income for the purpose of deduction of TDS u/s 194A of the Act and directed the bank not to deduct TDS on the interest of FDs. However, it cannot be treated as absolving the assessee of its liability to pay tax on the interest accruing on the FD if the petitioner becomes entitled to the same after conclusion of the court proceedings."
It is also brought on record by assessee that first appellate authority i.e. CIT(A) Gulbarga/NFAC in assessee's own case for AY 2017-18 vide his order dated 15.7.2023 taken a decision in this issue in appeal No.CIT(A) Gulbarga/10049/2019-20 in that assessment year as follows:

> "*The direction of the honourable High court is that till the conclusion of the proceedings by the CBI, no tax at source is required to be deducted and also the liability under income tax in respect of the interest income would arise also only on completion of the said proceedings. The said direction in the writ petition is binding and therefore, in the absence of any reversal of this decision, in a writ appeal filed, the issue is to be decided in favour of the appellant. To the extent tax credit by way of TDS availed, the appellant had already admitted the same. Therefore, the interest net of TDS brought to tax by the AO is directed to be deleted."*

7.1 Same view was taken by the first appellate authority i.e. CIT(A)/NFAC in assessee's own case for the assessment year 2018-19 in appeal No.NFAC/2017-18/10045058 dated 15.7.2023 as follows:

> *"Similar issue came for adjudication for the earlier AY 17-18. Without going into the merits of the issue whether any income by way of interest would accrue to the appellant chargeable to tax for the impugned AY, since the matter is covered by a direction of the Honourable High Court in writ proceedings, following the same stand as in last AY, the AO is directed to delete the addition by way of interest income accrued. Accordingly, this ground is allowed."*

8. Being so, in our opinion, the lower authorities has committed an error in bringing the interest accrued on FD which is subject to prohibitory order by CBI Hyderabad into tax in these assessment years under consideration and the same has to be taxed in assessment year when it was actually received by the assessee or right to receive accrued to the assessee. In other words, the assessee has to pay the tax on the same on actual accrual of right to receive this impugned interest by the assessee in any assessment year and not in these assessment years. Accordingly, this ground of appeal of the assessee is partly allowed.

9. Next ground in ITA No.15/Bang/2019 in assessment year 2015-16 is with regard to disallowance u/s 14A of the Act.

9.1 The ld. A.R. submitted that the learned AO has disallowed an amount of Rs.62,19,040/- as expenditure related to exempt income applying section 14A r.w. Rule 8D without considering that the assessee had sufficient reserves & surpluses and there was no investment cost by way of interest. It was further contended that the investments in sister concerns are made for strategic purposes only and consequently, section 14A had no application.

SURPLUS FUNDS.

9.2 He submitted that the learned AO has disallowed an amount of Rs.62,19,040/- as expenditure related to exempt income applying section 14A r.w. Rule 8D without considering that the appellant had sufficient reserves & surpluses and there was no investment cost by way of interest. It was further contended that the investments in sister concerns are made for strategic purposes only and consequently, section 14A had no application.

9.3 He submitted that the learned AO has upheld the disallowance citing the decision of the Hon'ble Supreme Court in the case of *Maxopp Investment Ltd. Vs. CIT (2018) 402 ITR 640 (SC).* It is

submitted that the ground of the assessee, that the investments were made out of surplus funds, was not considered in proper perspective either by the learned AO or by the learned Appellate Commissioner. It is submitted that the working of the availability of surplus funds for the said investments was furnished before the learned AO as well as the learned Appellate Commissioner. Reference is invited to Enclosure No. I to the written submissions dated, 09-02-2018 filed for the AY 2015-16, before the learned AO.

9.4 He submitted that While the learned AO has referred to and relied upon the decision of the Hon'ble Supreme Court in the case of *Maxopp Investment Ltd. (Supra),* he has failed to apply the principles laid down by the Hon'ble Court that recording of satisfaction by the assessing officer regarding the expenditure relatable to the exempt income, if any, is a prerequisite to invoke section 14A.

9.5 He submitted that the investment of Rs.111,98,35,311/- in Mutual Fund FMP and investment in sister concern M/s. BIOP Steels of Rs.4,00,00,000/- have been considered in disallowing the expenditure u/s 14A r.w. Rule 8D. The following Grounds of the assessee have also not been considered:

(a). Mutual Fund FMP's are subject to tax on being transferred and are not exempt u/s 10 and profit on maturity is subjected to capital gain tax. Hence the inclusion of the said amount of Rs.111,98,35,311/- in calculating the interest portion for the purpose of section 14A is an error.

(b). The investment in BIOP Steel & Power Private Ltd. is strategic investment in the sister concern which adds value to the products produced by the company. It also may be mentioned that surplus on sale of investments in private companies are subjected to capital gains. Hence section 14A is not applicable.

It is therefore submitted by the ld. A.R. that the addition is unsustainable for the reason that –

(a). Satisfaction is not recorded before applying the said section 14 and Rule 8D as is seen from the impugned assessment order.

(b). The investment is strategic and beyond the scope of section 14A, and;

(c). On merits, the investment is made out of surplus funds and there is no cost involved.

10. The ld. D.R. submitted that as long as an exempted income earned, the expenditure incurred was attributable to earning such exempted income had to be disallowed u/s 14A of the Act. According to the ld. D.R., assessee had made various investments in various Government Securities, Mutual Funds, Equity investments and other Bonds to the extent of Rs.128,11,67,076/- out of which income earned on investment at Rs.120,64,48,347/- was exempted. The assessee has received exempted income of Rs.94,12,976/- during the previous year, therefore, the ld. AO invoked the provisions of section 14A r.w.s. 80D of the I.T. Rules. The ld. AO after considering the working of disallowance u/s 14A of the Act pointed out that while computing the disallowance, the investments in unquoted equity shares were not considered. Hence, the ld. AO redetermined the disallowance u/s 14A of the Act at Rs.62,19,040/- and the same to be considered.

11. We have heard the rival submissions and perused the materials available on record. The main contention of the ld. A.R. is that the ld. AO while computing the disallowance u/s 14A r.w. Rule 8D of the IT. Rules has considered certain investments though it was not exempted income yielding investment. If there is any mistake on this count, same to be rectified by ld. AO while passing the fresh order on this issue. Further, the total disallowance u/s 14A r.w. Rule

8D shall not exceed the exempted income earned by the assessee. This view of ours is fortified by the order of the Tribunal in the case of GMR Enterprises in ITA No.2310/Bang/2019 dated 28.10.2021 for the AY 2015-16 wherein held as under:

"3.4 We have heard rival submissions and perused the material on record. It is settled position of law that disallowance cannot exceed the amount of dividend income earned during the relevant assessment year. In this context, the following judicial pronouncements support the stand of the assessee:-

(i) Joint Investments Pvt. Ltd. v. CIT (59 Taxmann.com 295) – it was held that disallowance u/s 14A of the Act is to be restricted to the tax exempt income.

(ii) Daga Global Chemicals Pvt. Ltd. v. ACIT [2015-ITRV-ITAT-MUM-123) – has held that disallowance u/s 14A r.w.Rule 8D cannot exceed the exempt income.

(iii) M/s.Pinnacle Brocom Pvt. Ltd. v.ACIT (ITA No.6247/M/2012) – has held that disallowance u/s 14A cannot exceed the exempt income.

(iv) DCM Ltd. v. DCIT (ITA No.4567/Del/2012) – held that the disallowance u/s 14A of the Act cannot exceed the exempt income.

3.5 In view of the above settled position, the amount of disallowance u/s 14A of the I.T.Act needs to be restricted to the extent of exempted income earned during the relevant assessment year. As would be evident that in the facts and circumstances of the present case the amount of exempted income of Rs.27,37,47,187 was earned on investment and consequently the amount of disallowance, if at all, to be made is to be restricted to Rs.27,37,47,187.

3.6 However, in this case, the assessee had made disallowance of Rs.145,02,09,668 voluntarily while filing the return of income. In this context, it is important to refer to the judgment of the Hon'ble Madras High Court in the case of M/s.Marg Limited v. CIT in Tax Case Appeal Nos.41 to 43 & 220 of 2017 (judgment dated 30.09.2020). The Hon'ble Madras High Court followed the judgment of the Hon'ble Karnataka High Court in the case of Pargathi Krishna Gramin Bank v. JCIT[(2018) 95 taxman.com 41 (Kar.)]. In the case considered by the Hon'ble Madras High Court, the assessee therein had made voluntarily disallowance u/s 14A of the I.T.Act more than the dividend income earned and the Tribunal confirmed the disallowance made u/s 14A of the I.T.Act. However, the Hon'ble Madras High Court held that the disallowance u/s 14A of the I.T.Act cannot exceed the exempt income earned during the relevant assessment year. The relevant finding of the Hon'ble Madras High Court reads as follow:-

"20. Before parting, we may also note with reference to the Table of disallowance voluntarily made by the Assessee, which is part of the Paper Book before us for the four assessment years in question. In the Table quoted in the beginning of the order, shows that the Assessee himself computed and offered the disallowance beyond the exempted income in the particular year, namely AY 2009-10, as against the dividend income of Rs.41,042/- and the Assessee himself computed disallowance under Rule 8D of the Rules to the extent of Rs.2,38,575/- , which was increased to Rs.98,16,104/- by the Assessing Authority. Similarly, for AY 2012-13, against Nil dividend income, the Assessee himself computed disallowance at Rs.8,50,000/-, which was increased to Rs.2,61,96,790/-.

21. We cannot approve even the larger disallowance proposed by the Assessee himself in the computation of disallowance under Rule 8D made by him. These facts are akin to the case of ***Pragati Krishna Gramin Bank****(2018) 95 Taxman.com 41 (Kar.) decided by Karnataka High Court. The legal position, as interpreted above by various judgments and again reiterated by us in this judgment, remains that the disallowance of expenditure incurred to earn exempted income cannot exceed exempted income itself and neither the Assessee nor the Revenue are entitled to take a deviated view of the matter. Because as already noted by us, the negative figure of disallowance cannot amount to hypothetical taxable income in the hands of the Assessee. The disallowance of expenditure incurred to earn exempted income has to be a smaller part of such income and should have a reasonable proportion to the exempted income earned by the Assessee in that year, which can be computed as per Rule 8D only after recording the satisfaction by the Assessing Authority that the apportionment of such disallowable expenditure under Section 14A made by the Assessee or his claim that no expenditure was incurred is validly rejected by the Assessing Authority by recording reasonable and cogent reasons conveyed to Assessee and after giving opportunity of hearing to the Assessee in this regard.*

22. We, therefore, dispose of the present appeal by answering question of law in favour of the Assessee and against the Revenue and by holding that the disallowance under Rule 8D of the IT Rules read with Section 14A of the Act can never exceed the exempted income earned by the Assesee during the particular assessment year and further, without recording the satisfaction by the Assessing Authority that the apportionment of such disallowable expenditure made by the Assessee with respect to the exempted income is not acceptable for reasons to be assigned the Assessing Authority, he cannot resort to

the computation method under Rule 8D of the Income Tax Rules, 1962."

(underlining supplied)

3.7 In view of the above judgment of the Hon'ble Madras High Court in the case of M/s.Marg Limited v. CIT (supra), it is clear that the disallowance u/s 14A of the I.T.Act cannot exceed the exempt income earned during the relevant assessment year irrespective whether larger amount was disallowed by the assessee u/s 14A of the I.T.Act while filing the return of income. Therefore, the AO is directed to restrict the disallowance u/s 14A of the I.T.Act to Rs.27,37,47,187.

3.8 In the result, ground No.II raised by the assessee is allowed."

11.1 In view of the above discussion, we hold that disallowance should be restricted to the amount of exempted income earned by the assessee after considering only the exempted income yielding investments, so as to apply the formula contained in Rule 8D. Accordingly, the issue is restored to the file of ld. AO for fresh consideration. This ground of assessee is partly allowed for statistical purposes.

12. Next ground in ITA No.15/Bang/2019 in assessment year 2015-16 is with regard to computation of income u/s 115JB of the Act.

13. The ld. A.R. submitted that the Ground of appeal on this issue was not taken before the learned CIT(A), and it is a legal ground arising on the same set of facts already on record and therefore, the same may be considered and adjudicated on merits. He submitted that the learned AO has also computed the liability to tax under MAT i.e., Section 115JB by adding the above said additions/disallowances to the net loss of Rs.1,98,61,008/-. The said amount of Rs.10,32,94,857/- representing interest on the said fixed deposits, which are under the prohibitory order of the Court is also added to the MAT income, without appreciating that section 115JB is a self-contained code and no addition or reduction of items not expressly

provided under the section itself is permissible. Reference is invited to the decision of the Hon'ble Supreme Court in the case of *Apollo Tyres Ltd. [2002] 122 Taxman 562 (SC) / [2002] 255 ITR 273 (SC)*.

14. The ld. D.R. submitted that this ground was not at all before the ld. CIT(A). Hence, this ground shall not be considered.

15. We have heard the rival submissions and perused the materials available on record. With regard to computation of book profit u/s 115JB of the Act, the main grievance of ld. A.R. is that he has not followed the provisions of section 115JB r.w. Explanation in proper perspective and in our opinion, this issue requires to be examined by ld. AO and to pass a fresh order in total conformity with the provisions of section 115JB r.w. all the explanations therein. This ground of appeal is partly allowed for statistical purposes.

16. In the result, the appeal of the assessee in ITA No.1540/Bang/2018 is partly allowed and the assessee's appeal in ITA No.15/Bang/2019 is partly allowed for statistical purposes.

Order pronounced in the open court on 20th Sept, 2023

Sd/-	**Sd/-**
(Madhumita Roy)	**(Chandra Poojari)**
Judicial Member	**Accountant Member**

Bangalore,
Dated 20th Sept, 2023.
VG/SPS
Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(Judicial)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar,
ITAT, Bangalore