IN THE INCOME TAX APPELLATE TRIBUNAL

"E" BENCH, MUMBAI

BEFORE SHRI M. BALAGANESH, ACCOUNTANT MEMBER AND

SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA no2550/Mum./2012
(Assessment Year : 2008–09)

The Shipping Corporation of India Ltd.
Shipping House, 10th Floor
245, Madam Cama Road, Nariman Point
Mumbai 400 021 PAN AAACT1524F ……. Appellant

v/s

Addl. Commissioner of Income Tax
Large Taxpayers Unit, Mumbai .....Respondent

ITA no.2130/Mum./2012
(Assessment Year : 2008–09)

Addl. Commissioner of Income Tax
Large Taxpayers Unit, Mumbai ……. Appellant

v/s

The Shipping Corporation of India Ltd.
Shipping House, 10th Floor
245, Madam Cama Road, Nariman Point
Mumbai 400 021 PAN AAACT1524F .....Respondent

Assessee by : Shri Nitesh Joshi, Ms. Akshaya Iyer
Revenue by : Ms. Richa Gulati

Date of Hearing – 06/01/2023	Date of Order – 14/03/2023

O R D E R

PER SANDEEP SINGH KARHAIL, J.M.

The captioned cross-appeals have been filed by either party challenging the impugned order dated 06/01/2012, passed under section 250 of the

Income Tax Act, 1961 (*"the Act"*) by the learned Commissioner of Income Tax (Appeals)–24, Mumbai, [*"learned CIT(A)"*], for the assessment year 2008–09.

2. In its appeal, the assessee has raised the following grounds:–

"Ground no 1: Income under the head Prior Period Adjustments:

The CIT(A) erred in upholding the action of the A.O. in assessing the prior period income of Rs. 4,95,81,902. He failed to appreciate that the prior period income constituted profits from core activities and therefore could not be brought to tax under the Act.

Ground no 2: Additions under Sundry Receipts:

2.1 The CIT (A) has erred in holding that sundry receipts of Rs. 12.88 crore were not arising out of the core activity of operation of qualifying ships and the provisions of Tonnage Tax Scheme was not applicable to these receipts.

2.2 In the alternative and without prejudice to the above since the sundry receipts are assessed to tax as business income, The CIT (A) ought to have granted deduction in respect of expenditure laid out or expended wholly and exclusively for the purpose of its business and earning such income.

2.3 The CIT (A) failed to appreciate that the expenses Rs. 14.25 crores were incurred on account of rent to take the premises on lease which were subsequently let out to the employees from whom income by way of house rent was earned.

Ground no 3: Adjustment to calculate Turnover:

On the Facts and circumstances of the case and as per provisions of law The CIT(A) erred in confirming the A.O's action of adjusting the turnover by reducing sundry receipts Rs. 12.88 crores and profit on sale of assets of Rs. 3.49 crore from turnover to calculate excess over 0.25% of turnover.

Ground no 4: Disallowance of expenses:

4.1 On the facts and circumstances of the case and as per provisions of law, interest income of Rs. 227.68 crore and dividend income Rs. 1.92 crore constituted profits from core activities and therefore could not be assessed to tax.

4.2 In the alternative and without prejudice to the above, assuming without admitting that interest and dividend income is assessable to tax, then deduction ought to have been allowed in respect of proportionate expenditure incurred by the appellant.

4.3 The CIT (A) ought to have held that since incidental income in excess of 0.25% of the turnover from core activities was chargeable to tax, expenditure

relatable to earning such income and a reasonable apportionment of general and administrative expenditure ought to be allowed as deduction.

Ground no 5: Interest u/s.234D:

On the Facts and circumstances of the case and as per provisions of law The CIT (A) erred in upholding the levy of interest under section 234D.

Your appellant craves leave to add, amend, alter, modify, cancel and withdraw any of the ground/s of appeal before final hearing of appeal."

3. While the Revenue has raised the following grounds in its appeal:–

"1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in not deleting the addition made by the A.O. u/s 41(1) of the I.T. Act and allowing the tonnage tax provisions to the assessee on sundry credits written back to the extent of Rs 10,77,46,235/- pertaining to pre tonnage tax period, without appreciating the fact that the income arising from sundry credits written back does not fall into core activity of qualifying ship.

2. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition of Rs 19,33,92,037/- made u/s 41(1) of the I.T. Act on account of excess provisions written back, without appreciating the fact that the income arising out of excess provisions written back does not fall into the core activity of qualifying ship.

3. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition of Rs. 26,519/- made by the A.O by denying tonnage tax provisions to the prior period income under normal provisions.

4. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in allowing relief to the assessee, holding that the reimbursement of overheads for managed vessels is to be included in the turnover while working out the income as per the Tonnage Tax.

5. The appellant prays that the order of the ld. CIT(A) on the above ground be set aside and that of the Assessing Officer restored.

6. The Appellant craves leave to amend or alter any ground or add a new ground which may be necessary."

4. The brief facts of the case as emanating from the record are: The assessee is a private sector undertaking engaged in the business of merchant shipping. From the assessment year 2005-06, the assessee has opted for the Tonnage Tax Scheme, i.e., the presumptive taxation scheme provided in

Chapter XII-G of the Act. Under the scheme, the income from business of operation of qualified ships related to core activities is taxed on a presumptive basis instead of according to the provisions of section 28 to section 43C of the Act. For the year under consideration, the assessee filed its return of income on 30/09/2008 declaring a total income of Rs. 245,70,05,370. The return filed by the assessee was initially processed under section 143(1) of the Act. Thereafter, the return of income was selected for scrutiny and statutory notices under section 143(2) and section 142(1) were issued and served on the assessee. For the year under consideration, the assessee has computed the tonnage income and furnished the necessary report from the Chartered Accountant in Form No. 66 along with the certificate from the Director General of Shipping in respect of the minimum training requirement for tonnage tax company under section 115 VU(2) of the Act. The Assessing Officer vide order dated 29/12/2010 pasd under section 143(3) of the Act computed the total income of the assessee at Rs. 302,24,75,200. In further appeal, the learned CIT(A) vide impugned order granted partial relief to the assessee. Being aggrieved, both the assessee and Revenue are in appeal before us.

5. Ground No. 1 in assessee's appeal and ground No. 3 in Revenue's appeal pertains to addition on account of prior period expenses.

6. The brief facts pertaining to this issue are: During the assessment proceedings, it was observed that in the profit and loss account for the relevant financial year, the profit of Rs.823.50 crore has been reported as profit before items relating to earlier years. The assessee has further added the prior period adjustments of Rs.22.68 crores being the items relating to the

earlier year to the profit. Accordingly, the assessee was asked to show cause as to why the prior period income be not categorised as not from core shipping activity as per provisions of section 115VI(2) of the Act. The Assessing Officer did not accept the contention of the assessee that all the prior period income is from the qualified ships. The Assessing Officer categorised the prior period income as under:-

"Income From Other Sources

1.	*Interest from Bank deposits*	*–*	*Rs. 47,051/–*
2.	*Interest on Housing loans*	*–*	*Rs. 6,866/–*
3.	*Insurance & P & I claims*	*–*	*Rs.3,17,91,248/–*
4.	*Course fees*	*–*	*Rs. 15,998/–*
5.	*Interest Income–Others*	*–*	*Rs. 13,800/–*
	Total:	*–*	*Rs.3,18,74,963/–*

Excess Income Incidental Activity

1.	*Recovery of container related cost*	*–*	*Rs.1,76,21,892/–*
2.	*Sundries–Incidental Activity*	*–*	*Rs. 84,612/–*
3.	*Remuneration–Managed Vessels*	*–*	*Rs. 435/–*
	Total:	*–*	*Rs.1,77,06,939/–*

Taxable under normal provisions of the Act

1.	*THC receivable–pre tonnage*	*–*	*Rs. 8,878/–*
2.	*Commission on disbursements*	*–*	*Rs. 17,641/–*
	Total:	*–*	*Rs. 26,519/–"*

7. The Assessing Officer further held that any item belonging to pre-tonnage tax era is not income from the core activity of qualified ships and, therefore, needs to be taxed under normal provisions of the Act. Further, in the post-tonnage tax era, any income other than covered under the core activity of qualified ship is also taxable under normal provisions of the Act. The learned CIT(A) vide impugned order granted partial relief observing as under:-

"3.2 This issue is identical to the issue raised by the assessee in ground no. 4 of the grounds of appeal taken by it in the AY 2005-06. For the detailed reasons given in the appellate order for the AY 2005-06 and following the decision of the Hon'ble ITAT, I have held that the addition on account of the income under normal provisions of the prior to Tonnage tax era (before FY 2004-05) is to be deleted. The findings are contained in para 4.2 to 4.6 of the appellate order for the AY 2005-06. Following the said decision, I hold that the assessee is entitled to relief to the extent of Rs. 26,519/-. The addition of Rs. 26,519/- is directed to be deleted. The balance additions of Rs. 3,18,74,963/- and Rs. 1,77,06,939/- out of the prior period adjustment is upheld. This ground of appeal is partly allowed."

Being aggrieved, both assessee and the Revenue are in appeal before us.

8. We have considered the rival submissions and perused the material available on record. At the outset, the learned Authorised Representative ("*learned AR*") submitted that in respect of income from bank deposits of Rs.47,051, interest income-others of Rs.13,800, sundry incidental activities of Rs.84,612, and remuneration for managed vessels Rs. 435 are not pressed in view of the smallness of the amount in the year under consideration. It was further submitted that not pressing this issue should not become a precedent in respect of a similar issue arising in the later year. Accordingly, assessee's appeal qua the aforesaid items is dismissed as not pressed due to the smallness of the amount. So far as the issue on merits regarding the aforesaid items is concerned, the same is kept open.

9. As regards interest on housing loans given to employees of Rs.6,866, we find that while dealing with the interest income on loans/advances to employees for vehicles and computers, the coordinate bench of the Tribunal in assessee's own case in the Shipping Corporation of India Ltd vs ACIT, in ITA

No. 145/Mum./2011, for the assessment year 2007-08 vide order dated 29/07/2011 observed as under:-

> *"33. Applying the proposition laid down in the aforesaid case law to the facts of the present case, we uphold the contentions of the learned Sr. Counsel that the interest in question cannot be compared with the interest on surplus funds parked in a bank. Loans were advanced to the employees involved in the core activity of an organisation and when certain income is derived form such activity, in our opinion, the same is taxable under the head "Income From Business" as it is expected that the assessee does not have any other business other than business of operating qualifying ships and as it has no other activity as contemplated under chapter-XII-G, we uphold the contention of the assessee that this income cannot be brought to tax separately and it is business income from core activity. Hence this ground is allowed."*

10. Therefore, respectfully following the aforesaid decision of the coordinate bench of the Tribunal in assessee's own case, the interest income on housing loans given to the employees is held to be income from core shipping activity and thus, is not separately chargeable to tax.

11. As regards the Insurance and P & I claims of Rs.3,17,91,248, as per the assessee said receipt comprises of recovery made from Hull underwriters (property insurance)/protection and indemnity club (liability insurance). During the year, the assessee received pending claim of Rs.3,17,91,248 of insurance, which was credited in the assessee's books of account under the head prior period adjustments. These claims are related to 2 of its ships. The first one was '*Bankim Chandra Chatterjee*' which had met with an accident on 22/03/2006 and the insurance claim was partially settled around May 2007. The other ship was '*Rishikesh'* which had rudder damage in December 2006/January 2007 for which the claim was again partially settled around September 2007. As per the insurance policy, the assessee has to first incur the cost and then raise its claim for insurance proceeds. The insurance claim

for damages is restricted up to actual expenses incurred or less than the cost incurred depending on the terms of insurance. The total expenditure incurred for the ship '*Bankim Chandra Chatterjee*' was USD 6,57,202.60, while the final claim received was USD 5,77,654.60. In respect of ship '*Rishikesh'* the cost incurred was Rs.1,12,64,354, while the claim received was Rs.79,82,744 only. The Assessing Officer has treated the amount of Insurance and P & I claims credited under the head prior period adjustment as income from other sources on the basis of such item is from the pre-tonnage tax era and is non-core shipping activity.

12. It is an undisputed fact that all the ships owned and in-chartered by the assessee are qualified ships. From the aforesaid facts, it is evident that the receipt of Insurance and P & I claim by the assessee is in respect of its 2 ships, which were damaged in preceding years but post-tonnage tax era. The assessee first incurred the cost of the repair, which was thereafter claimed as per the insurance policy. Since the receipt of the Insurance and P & I claim is directly in relation to the core shipping activity of the assessee in respect of its ships, which are qualifying ships, therefore the receipt is covered under section 115VI of the Act.

13. As regards the course fees of Rs.15,998, as per the assessee though the said receipt is in incidental income in accordance with clause (iv) of Rule 11R of the Income Tax Rules, 1962, since the threshold of 0.25% of the turnover from core activities is already crossed, the said amount would be chargeable to tax. Accordingly, the same is held to be taxable under the provisions of the Act as per proviso to section 115 VI(1) of the Act.

14. As regards the recovery of the container-related cost of Rs.1,76,21,892, credited as prior period income was treated as income of the pre-tonnage tax era and taxable as income from the incidental activity. As per the assessee, in addition to the carriage of goods in its operation, it also renders services of leasing the containers. This part of the logistical service rendered is an integral part of the core activity of the tonnage tax company. The recovery of container-related costs is from the customers to whom the containers are leased out. These costs are first incurred by the assessee and then recovered. Further, the incurring of cost and its recovery may be indifferent years.

15. During the year the assessee recovered container related cost of Rs.1,76,21,892 in respect of handling expenses, transshipment handling charges, other cargo expenses, handling expenses Inland/port, container storage charges, container monitoring fees, container leasing cost and expenses for chassis for cargo. We find that while dealing with a similar issue pertaining to recovery of cost incurred by the assessee on container business, the coordinate bench of the Tribunal in assessee's own case cited supra for the assessment year 2007-08, observed as under:-

> *"35. Reading of this rule does not permit treating recovery of container related costs and detention charges as income from incidental activities for the purpose of relevant shipping income. In any event, when it is accepted that this receipt is nothing but recovery of cost, it would not be open for the Assessing Officer to bring to tax the gross receipt without eliminating the expenditure incurred for earning this income. If this receipt is to be treated as income from incidental activities, then the relatable cost is also to be excluded and only net income considered. As it is a mere reimbursement, there is no income element. In view of the above discussion, we uphold the contentions of the assessee and allow ground no.6."*

16. Since the aforesaid receipt is mere reimbursement of expenditure, therefore respectfully following the judicial precedent rendered in assessee's own case, the same is not in the nature of income.

17. As regards the terminal handling charges and commission on disbursement of Rs.26,519, the Assessing Officer treated the same as taxable under normal provisions of the Act. However, the learned CIT(A) vide impugned order deleted the addition on account of income under normal provisions of the Act of the pre-tonnage tax era. Since the terminal handling charges and commission on disbursement are essentially part of core shipping activities, therefore we find no infirmity in the impugned order on this issue.

18. As a result, ground No. 1 raised in assessee's appeal is partly allowed, while ground No. 3 raised in Revenue's appeal is dismissed.

19. The issue arising in ground No. 2, raised in assessee's appeal, is pertaining to the addition in respect of sundry receipts.

20. The brief facts pertaining to this issue are: During the assessment proceedings, the assessee was asked to show cause as to why the following sundry receipts be not taxed under the normal provisions of the Act:-

Particulars	*Core Shipping*
Commission on disbursements [receipts]	*6,05,004*
Insurance + P & I claims	*3,35,61,032*
House Rent ownerships flat	*1,21,83,784*
Rent on furniture	*30,404*
Co's bus services	*1,795*

Contribution for employee's new PRMs	*5,000*
Liquated Damages (Dry docks)	*6,65,11,332*
Profit on Bar + Shop sales	*7,83,659*
Refund of Director's fees	*7,49,819*
Sundries	*1,44,21,883*
Application Money–Right to info Act	*1,639*
Penal Charges levied on employees	*9,150*
Total Sundries	*12,88,64,501*

21. The Assessing Officer did not agree with the submissions of the assessee and held that the tonnage tax scheme is applicable for the income earned from the operation of qualified ships and that too from the activities which have been listed as the core activity of operation of ships. Further, since the aforesaid receipts are earned from sources unrelated to the qualified ships, therefore the same is taxable under the normal provisions of the Act. The Assessing Officer further held that the assessee has not given any details of expenses said to have been incurred against earning these incomes, and no such expenses are found in the statement of income and expenditure. Accordingly, the Assessing Officer allowed administrative cost @20% and taxed the balance of sundry receipts of Rs.10,30,91,601 under normal provisions of the Act. The learned CIT(A) vide impugned order and upheld the findings of the Assessing Officer. Being aggrieved, the assessee is in appeal before us.

22. We have considered the rival submissions and perused the material available on record. The assessee has taken accommodation on rent for its employees involved in the core activity of the organisation, which was further

sublet to those employees. As per the assessee, it incurred an expenditure of Rs.14,25,55,708 and recovered the house rent from his employees only to an extent of Rs.1,21,83,784. It is the plea of the assessee that the accommodation was taken on rent in respect of employees involved in the core activity of the organisation and therefore the recovery of rent is nothing but related to its core activity. Since the assessee does not have any other business other than the business of operating qualifying ships and as it has no other activity as contemplated under Chapter XII-G, we are of the considered opinion that the income cannot be brought to tax separately and it is the income from the core activity.

23. Similarly, the receipt of rent on furniture of Rs.30,404, company's bus service of Rs.1,795, contribution for employees' new post-retirement medical scheme of Rs.5,000, and penal charges levied on employees of Rs.9,150, are is in respect of employees involved in the core activity of the business of the assessee, we are of the considered opinion that same is not taxable under the normal provisions of the Act.

24. As regards the refund of Director's fees of Rs.7,49,819, as per the assessee the same is recovered from the Directors who are holding the office as Director in companies where the assessee had joint ventures etc. Such Directors are paid their remuneration and as per the terms of employment, Directors' sitting fees are recovered. Since the assessee's only business is operating the qualifying ships therefore the aforesaid refund is also related to its core activity and thus cannot be taxed under the normal provisions of the Act.

25. The receipt of Rs.6,05,004 is on account of commission on disbursement which the assessee earned over and above the disbursement amount paid to the agents, Captain, and crew of ships when the ship is abroad. As per the assessee, such disbursement was pursuant to an agreement with certain ship-owners. We have already upheld the taxability of commission on disbursement under Chapter XII-G, which was forming part of the prior period income. Since this commission is also of a similar nature and that too pertaining to the post tonnage tax era, therefore, same forms part of core shipping activity.

26. Similarly, the receipt of Insurance and P & I claims forming part of prior period income has been held to be forming part of core shipping activity. Therefore the receipt of Rs.3,35,51,032 on account of Insurance and P & I claims, which relates to the qualifying ship also forms part of the core shipping activity.

27. As regards the receipt of Rs.6,65,11,332 on account of liquidated damages (dry docks), it is the plea of the assessee that the ships are sent for drying rocks repair as it is mandated procedure to maintain the vessels seaworthy. Further, periodically vessels are sent to the shipyard or to the maintenance workshop and this process is called dry docking. The liquidated damages are recoveries from the shipyard or maintenance agencies. The entire dry-dock expenses incurred on the operation of qualifying ships are debited to the revenue account, whereas the liquidated damages are credited. Since the liquidated damages on account of delay or deficiency in service in

respect of the qualifying ships, therefore, we are of the considered opinion that such receipt is part of the core shipping activity of the assessee.

28. As regards the sundry receipts of Rs.1,44,81,883, the assessee has filed an application dated 12/02/2020 seeking admission of additional evidence. As per the assessee, the sundry receipts are in relation to volume incentives from CFS, additional free days charges, container damage/maintenance charges, documentation charges, ship-owners expenses recovery, additional terminal handling charges, non-manifested charges, and other receipts. As per the assessee, the learned DRP in the assessment year 2014-15 has held the similar receipt as integral to the core activity of the assessee on the basis of similar evidence. Further, as per the assessee, the aforesaid additional evidence could not be placed before the lower authorities due to the transition from old legacy systems to the implementation of SAP systems, and the concerned person maintaining these records in the warehouse has either retired or been transferred to different cities, therefore within the stipulated time these details could not be produced. In view of the aforesaid submissions, we allow the admission of the additional evidence filed by the assessee. Since the aforesaid evidence was not placed before the lower authorities, therefore the same could not be examined during the assessment proceedings. Accordingly, we deem it appropriate to remand this issue of taxability of sundry receipts of Rs.1,44,81,883 under Chapter XII-G to the file of the Assessing Officer for *de novo* adjudication after the necessary examination of details filed by the assessee. Since the matter is remanded to the Assessing

Officer for *de novo* adjudication, the assessee shall be at liberty to adduce any other evidence in support of its plea.

29. As regards the profit on bar plus shop sales of Rs.783,659, we find that a similar profit was held to be directly related to the incidental activity of the operation of the qualified ship by the coordinate bench of the Tribunal in assessee's own case in The Shipping Corporation of India Ltd vs ACIT, in ITA No. 3546/Mum/2013, for the assessment year 2009-10, vide order dated 19/08/2015. As per the assessee, though the receipts have been referred to as incidental in the aforesaid order, what was meant was that it is a receipt from core activity. However, no order modifying the aforesaid findings by the coordinate bench is placed on record. Thus, respectfully following the judicial precedent in assessee's own case, the profit on bar plus shop sales are held as incidental activity of the operation of the qualified ship.

30. The receipt of Rs. 1639 on account of recovery of application fee-Right to Information Act was not pressed, during the hearing, due to the smallness of the amount. Accordingly, assessee's plea qua the same is dismissed as not pressed. However, the issue on merits is kept open.

31. We may, however, clarify that the receipts which are not treated as core shipping income, the assessee should be granted a corresponding deduction of expenditure incurred. As a result, ground No. 2 raised in assessee's appeal is partly allowed for statistical purposes.

32. The issue arising in ground No. 3, raised in assessee's appeal, is pertaining to adjusting the turnover by reducing the sundry receipts and profit on sale of assets.

33. We find that the coordinate bench of the Tribunal in assessee's own case for the assessment year 2007-08 vide order dated 29/07/2011 cited supra held that the profit on the sale of assets is taxable under the head "*capital gains*" and thus the same cannot be considered as turnover in view of the provisions of section 115VA of the Act and consequently, out of the purview of chapter XII-G. The relevant findings of the coordinate bench in the aforesaid decision are as under:-

> *"39. Coming to ground no.10, as already stated, the assessee has no other sctivity which would result in income. It also does not have any other business. Thus, the income is from core activity only. Nevertheless, the income in question is taxable under the head "Capital Gains" and does not fall within the ambit of sections 28 to 43C. Thus, the receipt cannot be considered as turnover in view of the provisions of section 115VA and consequently out of the perview of Chapter-XII-G. In view of the above discussion, we uphold the finding of the Assessing Officer in this regard."*

34. Thus, respectfully following the judicial precedent in assessee's own case, the reduction of profit on sale of assets from turnover is upheld. As regards the sundry receipts, the same is to be decided in accordance with the findings in respect of ground No. 2 raised in assessee's appeal, and the receipts which are found to be from core activities, the same will be included as part of the turnover arising from such core activities.

35. The issue arising in ground No. 4, raised in assessee's appeal, is pertaining to considering income by way of interest and dividend as income from core shipping activity.

36. We have considered the rival submissions and perused the material available on record. The assessee apart from the tonnage tax income computed on a presumptive basis has separately offered for tax two streams of income being incidental income in excess of 0.25% of turnover from core shipping activity and income from other sources comprising of dividend and interest. Even before the CIT(A), no ground was raised regarding treating the income by way of interest and dividend as income from core shipping activity. Therefore, vide application dated 11/08/2022, the assessee prayed that ground No. 4, raised in the appeal, be treated as additional ground. In its aforesaid application, the assessee submitted that this issue raised in ground No. 4 could not be raised earlier as the assessee applied it is mind to this issue while preparing for the appeal to be filed before the Tribunal. It was also submitted that the asepct goes to the root of the matter and for the correct computation of tax in the hands of the assessee, the assessee prayed that ground No. 4 be treated as additional ground, and be admitted and adjudicated as per law. On the contrary, the learned Departmental Representative by placing reliance upon the decision of the Hon'ble Supreme Court in Goetze India Ltd. Vs. CIT, [2006] 284 ITR 323 (SC), submitted that such a claim cannot be made for the first time before the Tribunal as neither in its return nor in any of the proceedings before the lower authorities, the assessee sought to change the '*head of income*' under which the aforesaid receipts are to be taxed.

37. We find that Hon'ble Supreme Court in Goetze India Ltd. (supra) and Hon'ble Jurisdictional High Court in CIT Vs. Pruthvi Brokers and Shareholders

Pvt. Ltd., [2012] 349 ITR 336 (Bom.) has held that the appellate authority can entertain a fresh claim made by the assessee, even if such a claim was not made in return of income or by way of revised return of income. Therefore, the additional ground raised by the assessee is admitted for adjudication.

38. At the outset, the learned AR wishes not to press its claim in respect of dividend income. Accordingly, to this extent, ground No. 4.1 is dismissed as not pressed. As regards the interest income of Rs. 227.68 crores, the assessee submitted that the said receipt forms part of the core shipping activity of the assessee and therefore should be taxed on a presumptive basis under Chapter XII-G of the Act. As per section 115VT of the Act, tonnage tax company is required to credit to Tonnage Tax Reserve Account an amount not less than 25% of the book value derived from the activities referred to in section 115VI in each previous year. As per section 115VT(3) of the Act, the amount credited to the Tonnage Tax Reserve Account is required to be utilised by the company before the expiry of 8 years for acquiring a new ship for the purpose of the business of the company and until the acquisition of the new ship for the purpose of the business of operating qualifying ships. As per the assessee, in its Tonnage Tax Reserve, following the procedure prescribed under the aforesaid section, is Rs. 695 crores as on 31/03/2008. Further, the assessee earned interest on deposits placed with the banks and financial institutions out of the funds required for purpose of the business but temporarily lying idle. The funds are required for meeting the working capital requirement and repayment of loans earlier taken for the acquisition of ships. In support of its submission, the assessee has placed on record statements showing the

placement of surplus funds in short-term deposits on weekly basis, by way of additional evidence filed vide application dated 18/02/2021. It was submitted that factual assertion was made before the learned CIT(A), however, the underlying document in support of the same are filed for the first-time before the Tribunal. The assessee has also placed on record the details of repayment of loans taken for the acquisition of ships. Further, the month-wise weekly fund position was also filed by the assessee. In the present case, it is undisputed that the only business activity pursued by the assessee relates to shipping, and thus the entire receipts are from the shipping activity, which qualifies for computation on a presumptive basis under the tonnage tax provisions. We find that the Hon'ble jurisdictional High Court in CIT vs Varun Shipping Co Ltd, [2011] 324 ITR 263 (Bom.) held that where the assessee borrowed certain amount for its business purpose and earn interest on unutilised portion of the loan, interest income is taxable as business income. Thus, since the funds are nothing but the funds required for running the shipping business, which has been invested by the assessee, and interest income is earned, therefore, we are of the considered opinion that income by way of interest arising from the said deposits is in the nature of business income and relates to the core shipping activity. As a result, ground No. 4 is partly allowed. In view of our aforesaid findings, the other aspects raised in ground No. 4 are rendered academic and therefore require no separate adjudication.

39. The issue arising in ground No. 5, raised in assessee's appeal, is pertaining to the levy of interest under sections 234D of the Act.

40. As per the assessee, pursuant to the intimation issued under section 143(1) of the Act, the refund was determined, however, the same was not issued to the assessee and thus no interest under sections 234D of the Act is leviable. The learned AR submitted that in this regard the assessee has also filed a rectification application dated 14/02/2011 under section 154 of the Act, which is pending disposal. Therefore, in view of the above, we deem it appropriate to remand this issue to the file of the Assessing Officer for *de novo* adjudication, after verification of whether any refund was granted to the assessee. If the claim of the assessee is found to be true, the Assessing Officer is directed to delete the interest levied under section 234D of the Act. As a result, ground No. 5 raised in assessee's appeal is allowed for statistical purposes.

41. The issue arising in ground No. 1, raised in Revenue's appeal, is pertaining to allowing the tonnage tax provisions to the assessee on sundry creditors written back pertaining to pre-tonnage tax era.

42. The brief facts pertaining to this issue are: The Assessing Officer following its order rendered in assessee's own case for the assessment year 2007-08 treated the sundry creditors written back as not from operation of qualifying ships. The learned CIT(A) vide impugned order following the decision of the coordinate bench of the Tribunal rendered in assessee's own case for the assessment year 2007-08 cited supra decided the issue in favour of the assessee. Being aggrieved, the Revenue is in appeal before us.

43. We find that the coordinate bench of the Tribunal in assessee's own case for the assessment year 2007-08 vide order dated 29/07/2011 cited supra decided a similar issue in favour of the assessee by observing as under:-

> *"29. Provisions of section 115VA provides that the income from business of operating qualifying ships may be computed in accordance with the provisions of chapter XII-G, and that the income so computed shall be deemed to be the profits and Income from qualifying ships are defined in section 115VC, and there is no dispute on this aspect. Section 115VE mandates that profits from business of a company engaged in the business of operating qualifying ships shall be computed under the tonnage tax scheme. It also specifies that such business of operating qualifying ships shall be considered as a separate business distinct from all other activities or business carried on by the company. The mode of computation of tonnage income is given under section 115VG. The term "relevant shipping income" has been defined in section 115VI. It is basically classified into two categories i.e., profits from core activities referred to in sub-section 2 and profits from incidental activity referred to in sub-section 5. The issue is, whether the income by way of right back of provisions of sundry credit balances and prior period expenses can be considered as income from core activities of a tonnage tax company. In our opinion, write back of these items is to be considered as income from core activity. In a going concern, such write backs and making of supplementary provisions takes place. The Assessing Officer as well as the Commissioner (Appeals) have treated the very same income which is taxable under section 41(1) differently. The first being expenditure claimed in pre-tonnage tax scheme assessment years and the second being expenditure claimed in post tonnage tax scheme assessment years. Such a segregation is not permissible under the Act. Both the incomes are incomes from core activity and just because tax rates different, they cannot be treated as non-business income. The Assessing Officer as well as the Commissioner (Appeals) seem to have been influenced by the fact that the assessee has an income of ₹ 800 crores in its Profit & Loss account and whereas he has offered only ₹ 18 crores to tax under the tonnage tax scheme. The decision whether a particular income has to be brought to tax or not, cannot be based on such a view of the matter. The legislature in its wisdom provided the manner of computation of income under the tonnage tax scheme. In section 115VA, it is clearly provided that sections 28 to 43C would not over ride the computation of profits and gains under section 115VA. As section 41(1) falls within sections 28 to 43C, no separate addition under that section can be made. As section 41(1) seeks to bring to tax certain specified items of receipts under the head "profits and gains of business" the scheme shoul dnot be invoked while computing profits and gains of business under Chapter-XII-G. Hence, we are of the opinion that the argument of the assessee should succeed.*
>
> *30. With the introduction of chapter-XII-G, the entire methodology of taxing income from the business of operating qualifying ships has changed and recourse to the normal provisions of the Act in a peace-meal manner is not authorised by law. Though the assessee has computed other income while filing its return of income, in our opinion, the income arising from section 41(1), cannot be classified as, either income from other sources or income from*

incidental activities. When all the ships of the assessee are qualifying ships and when there is no other activity other than core activities and incidental activities, in our opinion, a third category of other business income cannot be created. As pointed out by the learned Sr. Counsel, if such introduction is allowed then, a claim of the assessee of deduction under section 43B i.e., deduction only on actual payment would be required thruogh the expenditure actuall ybelongs to pre-tonnage period. to be allowed. The Assessing Officer cannot take recourse to sections 28 to 43C, when there is no other activity or business carried on by the company, other than business of operating qualifying ships. In view of the above discussion, we allow ground no.1 of the assessee.

44. Since similar issue has already been decided in favour of the assessee by the coordinate bench of the Tribunal, which decision was followed by the learned CIT(A), therefore, we find no infirmity in the impugned order. Accordingly, ground No. 1 raised in Revenue's appeal is dismissed.

45. The issue arising in ground No. 2, raised in Revenue's appeal, is pertaining to the deletion of addition on account of excess provision written back. We find that the learned CIT(A) decided this issue in favour of the assessee by following the decision of the coordinate bench of the Tribunal in assessee's own case for assessment year 2007-08 cited supra. Therefore we find no infirmity in the impugned order passed by the learned CIT(A). Accordingly, ground No. 2 raised in Revenue's appeal is dismissed.

46. The issue arising in ground No. 4 raised in Revenue's appeal is pertaining to the taxability of reimbursement of overheads for managed vessels. Since the receipt pertains to the managed vessels, therefore, the same is from the core activity of shipping and thus will form part of the turnover for the purpose of working out incidental income in excess of 0.25% of the turnover of the core activity. As a result, ground No. 4 raised in Revenue's appeal is dismissed.

47. In the result, the appeal by the assessee is partly allowed for statistical purposes, while the appeal by the Revenue is dismissed.

Order pronounced in the open Court on 14/03/2023

Sd/-	**Sd/-**
M. BALAGANESH	**SANDEEP SINGH KARHAIL**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

MUMBAI, DATED: 14/03/2023

Copy of the order forwarded to:

(1) The Assessee;
(2) The Revenue;
(3) The CIT(A);
(4) The CIT, Mumbai City concerned;
(5) The DR, ITAT, Mumbai;
(6) Guard file.

True Copy
By Order

Pradeep J. Chowdhury
Sr. Private Secretary

Assistant Registrar
ITAT, Mumbai