

आयकर अपीलिय अधीकरण, न्यायपीठ –“C” कोलकाता,
IN THE INCOME TAX APPELLATE TRIBUNAL “C” BENCH: KOLKATA
[Before Shri P. M. Jagtap, Vice President (KZ) & Shri A. T. Varkey, Judicial Member]

I.T.A. No. 1883/Kol/2019
Assessment Year: 2013-14

M/s. PDP Steels Ltd. (PAN: AABCP6726C)	Vs	Income-tax Officer, Ward-3(3), Kolkata.
Appellant		Respondent

Date of Hearing (Virtual)	31.08.2021
Date of Pronouncement	03.09.2021
For the Appellant	Shri S. Jhajharia, FCA
For the Respondent	Shri Supriyo Pal, Addl. CIT

ORDER

Per Shri A. T. Varkey, JM:

This is an appeal preferred by the assessee against the order of the Ld. CIT(A)-16, Kolkata dated 25.04.2019 for AY 2013-14 .

2. At the outset, the Ld. AR of the assessee Shri S. Jhajharia drew our attention to the fact that the assessee had preferred additional ground of appeal wherein the assessee has raised *without prejudice to the grounds of appeal* preferred before this Tribunal that since the assessee company is eligible for deduction u/s 80IC of the of the Income-tax Act, 1961 (hereinafter referred to as the “Act”), the interest received by the assessee from the FD should have been netted off with interest paid since it is inextricably linked with the business of the eligible unit and as such only the net interest ought to have been considered for the purpose of deduction u/s. 80IC of the Act and relied up on the decision of this Tribunal in assessee’s own case for AY 2014-15 in ITA No. 2155/Kol/2018 order dated 20.03.2021. Thereafter, the Ld. AR pointed out that the Ld. CIT(A) has erred in the impugned order by observing erroneously the interest amount at Rs.2,80,01,668/- instead of correct amount of Rs.28,07,860/- and therefore, he prayed that this typographical error committed in the impugned order should be corrected. We find that this submission of the Ld. AR is correct. The AO in the assessment order has noted that the assessee had other income of Rs.28,07,860/- only and no other figure/sum is there in the assessment order dated 04.02.2016. Therefore, it is a mistake apparent on

the face of record, so we direct the AO that necessary correction of the amount should be made i.e. Rs.28,07,860/- instead of Rs.2,80,01,668/-.

3. Brief facts of the case as taken note by the AO is that assessee had set up industrial unit at Bonda Industrial Park, Assam and claimed 100% deduction of its unit u/s. 80IC of the Act on the gross total income. The AO from perusal of Note No. 18 of the Balance Sheet found that the assessee had other income of Rs.28,07,860/-. On being confronted, the assessee submitted that this other income is the interest from fixed deposit with the bank. According to the assessee, the fixed deposit are kept with the bank for margin money and it is an integral part of the business requirement and hence, eligible for deduction u/s. 80IC of the Act. However, the AO did not accept the submission of the assessee and had disallowed Rs.28,07,860/- and added the same as income of the assessee. Aggrieved, the assessee preferred an appeal before the Ld. CIT(A) who has confirmed the same.

4. At the outset, the Ld. AR drew our attention to the Tribunal's order on the very same issue in assessee's own case for AY 2014-15 (supra) wherein the Tribunal has decided the issue of netting of interest income as under:

"2. In the revised grounds of appeal, the assessee has challenged the action of Ld. CIT(A) in not granting deduction u/s 80IC of the Income Tax Act, 1961 (hereinafter referred to as the Act) on the interest income from fixed deposit of Rs. 20,37,345/-. According to the assessee, even if the interest income from Fixed Deposit does not qualify for the deduction u/s 80IC, still it being a business receipt should be given the benefit of netting.

3. The Ld. A.R Shri S. Jhajharia, FCA submitted that the revised ground no. 2 in respect of interest income survives and according to him only the net interest (i.e. interest income- interest paid-expenses) be taken out of the deduction u/s 80IC. According to Ld. A.R, the interest receipt from FD was business income, because the FD's were maintained in the bank for the purpose of issue of bank guarantee which were in-turn required for purchase of raw material from M/s SAIL. In order to substantiate this fact according to Ld. A.R, necessary documents were already placed before the AO and the same is also part of the audited accounts. And he drew our attention to page 5 of the paper book (letter dated 08.07.2016 to the AO in assessment proceedings) and pages 25 and 29 respectively of the paper book (which is the part of the audited accounts of AY 2014-15) which according to assessee reveals that the FD with the bank is for issue of bank guarantee for procurement of raw material from M/s SAIL and hence such interest income is for the purpose of business of the assessee. So, according to him, the nature of interest income being business and even if the aforesaid receipt [interest from FD] is not eligible for deduction u/s 80IC in view of the judgment of the Hon'ble Calcutta High Court in the case of Reckitt Benckiser India (P) Ltd. vs. ACIT, Kolkata (2015) 56 taxmann.com 415 (Cal) and also the judgment of Hon'ble Supreme Court in the case of Liberty India Ltd. vs. CIT (2009) 183 Taxman 349

(SC) because, it does not have first degree nexus with the profits earned from the eligible unit, still such interest should be allowed to be netted as held by the Hon'ble Gujrat High Court in the case of CIT vs. Nirma Ltd. (2014) 367 ITR 12 (Guj) and it was pointed out that the Hon'ble Gujrat High Court applied such principle in the context of section 80I, 80IA etc. and excluded only the net interest income from such deduction, so he prayed that benefit of netting should be given to assessee.

4. In the light of the aforesaid discussion, we are not repeating the same again for the sake of brevity. We note that in the revenue appeal for the same assessment year i.e. AY 2014-15 we have confirmed the action of Ld. CIT(A) in respect of claim of the assessee in respect of interest income as not eligible for deduction u/s 80IC wherein we held as under:

“3. Aggrieved the assessee preferred an appeal before the Ld. CIT(A), who in respect of the AO's action disallowing interest income of Rs. 20,37,345/- has held as under:

“In view of the above discussion and respectively following the decision of the jurisdictional High Court in the case of Reckitt Benckiser (India) Vs. Addl. Commissioner of Income Tax (supra), I am of the view that there is no infirmity in the finding of the AO in holding that the appellant was not entitled for deduction u/s 80IC of the I. T. Act, 1961 in respect of the interest income of Rs. 5,52,844/- from bank deposits under the head “other Income”.

Therefore, the interest income of Rs. 5,52,844/- is held to be not eligible for deduction under the section 80IC of the Act. Accordingly, this ground is partly allowed.”

4. Aggrieved the Revenue is before us assailing the aforesaid action of Ld. CIT(A). However, we note that the Ld. CIT(A) at page 15 of the impugned order has confirmed the action of the AO in respect of disallowance of interest income from fixed deposit. However, has mistakenly typed the figure as Rs. 5,52,844/- in place of Rs. 20,37,345/-. Since, the interest income from fixed deposit cannot be having first degree nexus with the profit and gain derived from the undertaking which is eligible for deduction u/s 80IC of the Act, we confirm the order of the Ld. CIT(A) and correct the mistake of the figures shown as Rs. 20,37,345/- in place of Rs. 5,52,844/-. And so the Revenue's appeal to this extend succeeds.”

However, the issue of netting of interest income was not before us, because the revenue appeal came up without this assessee's cross-appeal. And since this issue has come to our notice only in this appeal, in the interest of justice and fair play and as per settled principle of law, we are of the opinion that the net interest should only be brought to tax. Needless to say, the assessee in this case has claimed to have made the FDs for the purpose of procuring bank guarantee which was a condition precedent for procurement of raw material from M/s SAIL. And therefore, according to us, the interest income even if it does not qualify for deduction u/s 80IC of the Act being not having first degree nexus, still the nature of the receipt since being business in nature and not from other sources [refer CIT vs. Nirma Ltd. (supra)] needs to be treated as business receipt, if the facts are correct, which may be verified by the Ld CIT(A), since we have restored certain issues back to him, while adjudicating the Revenue Appeal for this assessment year. And if the contention of the assessee is found to be correct, then netting

should be allowed to their interest receipt as held by the Hon'ble Gujrat High Court in the case of CIT vs. Nirma Ltd.(supra). Therefore we restore this issue back to the file of the Ld. CIT(A) who shall consider this issue which considering our order in Revenue appeal and dispose of the issue in accordance to law."

5. Respectfully following the Tribunal's order cited supra, we restore this issue raised in the additional ground of appeal of the assessee to the file of Ld. CIT(A) to pass appropriate order in terms of the Tribunal's order in assessee's own case supra for AY 2014-15. Therefore, this appeal of assessee is allowed for statistical purposes.

6. In the result, the appeal of assessee is allowed for statistical purposes.

Order is pronounced in the open court on 3rd September, 2021.

Sd/-
(P. M. Jagtap)
Vice President

Sd/-
(A. T. Varkey)
Judicial Member

Dated: 3rd September, 2021

Jd, Sr. PS

Copy of the order forwarded to:

1. Appellant- M/s. PDP Steels Ltd., C/o M/s. Salarpuria Jajodia & Co., 3rd floor, 7, Chittaranjan Avenue, Kolkata-700 072.
2. Respondent – ITO, Ward-3(3), Kolkata.
3. CIT(A)-16, Kolkata (sent through e-mail)
4. CIT, Kolkata.
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Senior Private Secretary/DDO
ITAT, Kolkata Benches, Kolkata