

IN THE INCOME TAX APPELLATE TRIBUNAL “T” BENCH, MUMBAI
BEFORE SHRI SAKIJIT DEY, JM AND SHRI MANOJ KUMAR AGGARWAL, AM

ITA No. 7053/Mum/2014

(A Y: 2010-2011)

M/s IL&FS Renewable Energy Ltd. Plot No. C-22 G-Block, Bandra-Kurla Complex Bandra(E), Mumbai – 400 051.	Vs.	Dy. Commr. of Income Tax- 10(1) Room No. 455, 4 th Floor, Aaykar Bhavan, Maharshi Karve Road, Marine Lines, Mumbai – 400020.
PAN: AABCI8599N		
Appellant	..	Respondent
Revenue by	..	Shri Sridhar E (DR)
Assessee by	..	Shri Dilip V. Lakhani (AR)
Date of hearing		06-09-2016
Date of pronouncement		06-09-2016

ORDER

PER MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER:

1. The instant appeal has been filed by the assessee for assessment year 2010-11 assailing the order of Commissioner of Income tax (Appeals)-21 [in short CIT(A)], Mumbai dated 22.08.2014 on the following grounds of appeal:-

“On the facts and circumstances of the case the learned Commissioner of Income Tax (Appeals) has erred in confirming that the interest income of Rs.3,08,739/- be taxed under the head income from other sources instead of taxing the same under the head income from business and profession. The appellant prays that the interest income may be taxed under the head profit and gains of business and profession.”

2. The facts in brief, are that the assessee is a resident public company and engaged in the business of development, implementation and operation of projects and providing project consultancy and supervision services in the sector of renewable energy. It filed its return of income for assessment year 2010-11 declaring total income of Rs.79,08,443/- which was initially processed under Section 143(1) and later on taken for scrutiny assessment under Section 143(3). The assessment u/s 143(3) was completed by the Assessing Officer vide its order dated 06.03.2013 at Rs.79,62,653/- after making certain disallowances. During the impugned year, the assessee earned certain interest income of Rs.3,08,739/- and credited the same to the profit and loss account and treated the same as business income in its computation of income. The

assessing officer held that as interest income was not derived from the business activity, the same is taxable under the head 'Income from other sources'. The assessee preferred first appeal before CIT(A) which was partly allowed vide order dated 22.08.2014. Before CIT(A), the assessee contended that it has invested surplus funds out of accumulated incomes in short-term deposits and petty loans given to staff and has earned interest income of Rs. 3,08,739/- and contended that interest was earned in the course of business operations and to get maximum benefit out of surplus funds lying with the assessee. The assessee placed reliance on the decision of Bombay High Court in the case of *Commissioner of Income Tax vs. Lok Holdings (308 ITR 356)* wherein the court has held that the interest income on temporary investment of funds arising out of the business income of the assessee are to be assessed as income under that business and profession. But, CIT(A) did not agree with the contention of the assessee and dismissed the appeal of the assessee on this account.

3. Aggrieved, the assessee is in appeal before us. The Learned Authorized Representative [AR] has raised various contentions in its support and contended that the short-term deposit has been made out of project management consultancy fees earned during the year and the same is short-term in nature and the investment has been made with a view to maximize the business profits of the assessee. In support, a copy of the Balance Sheet and Profit & Loss Account has been submitted. The learned Departmental representative [DR], on the other hand has relied on the stand of the CIT(A) and contended that since investing is not part of main business activity of the assessee, the same has been correctly assessed under the head 'Income from Other Sources'.

4. We have heard the rival contentions and perused the material on record. The facts are not in dispute. A perusal of the Balance sheet shows that assessee does not have any borrowed money but its major source of funds constitute 'Advance received towards Share Application' and 'Reserves & Surplus'. Thus, the investment is made out of the accumulative profit and advances received on account of Share application money. The surplus funds generated out of Share application money and business operations are parked in short-term deposits to maximize business profits and interest income is earned there-from. The assessee has relied upon the

judgment of Bombay High Court in the case of *Commissioner of Income Tax vs. Lok Holdings (supra)* wherein the court has observed that interest earned out of money accruing from the running business of the assessee and utilized for the purpose of business constitute business income of the assessee.

5. Therefore, relying upon the observation of the jurisdiction High Court and on the facts and circumstances of the case, we are of the opinion that the interest income earned by the assessee on short term deposits was in furtherance of business interest and to maximize the profits of the business and the same being temporary in nature and hence constitute business income of the assessee. Therefore, the same is taxable under the head Profit and Gains of Business and Profession.

6. In nutshell the appeal of the assessee is allowed.

Order pronounced in the open court on 6th September, 2016.

Sd/-

(SAKTIJIT DEY)
JUDICIAL MEMBER

Sd/-

(MANOJ KUMAR AGGARWAL)
ACCOUNTANT MEMBER

Mumbai, Dated: 06-09-2016

PS:- Pooja K.

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. The CIT (A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

Assistant Registrar
ITAT, MUMBAI