

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

**BEFORE SHRI A.K. GARODIA, ACCOUNTANT MEMBER AND  
SHRI VIJAY PAL RAO, JUDICIAL MEMBER**

I. T. A. No.755/Bang/2014 (Assessment Year : 2010-11)		
The South India Paper Mills Ltd., Chikkayana Chatra, Nanjangud, Mysore District. PAN AACT 7549J	Vs.	Joint Commissioner of Income Tax, Range 1, Mysore.
Appellant		Respondent.

Appellant By : Shri Suresh Muthukrishna, C.A. Respondent By : Dr.P.K. Srihari, Addl. CIT (D.R.)
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Date of Hearing : 18.04.2016.

Date of Pronouncement : 29.04.2016.

**ORDER**

**Per Shri Vijay Pal Rao, J.M. :**

This appeal by the assessee is directed against the order dt.2.1.2015 of Commissioner of Income Tax(Appeals), Mysore for the Asst. Year 2010-11.

2. The assessee has raised the following grounds :

*"1. The order of the learned CIT (Appeals) in so far as it is against the appellant is opposed to law, equity, weight of evidence, facts and circumstances of the appellant's case.*

2. *The learned CIT (Appeals) is not justified in upholding the denial of deduction under Section 80IA(4)(iv) of the Act in respect of the sum of Rs.30,28,412 received by the appellant as differential power tariff relating to the earlier years under the facts and in the circumstances of the appellant's case.*

2.1 *The learned CIT (Appeals) failed to appreciate that the appellant carries on the business of generation of power and the differential power tariff relating to the earlier years that was received during the year also forms part of the income derived from the eligible business carried on by the appellant and therefore, the same was eligible for deduction under Section 80IA(4)(iv) of the Act, which requires to be allowed.*

3. *The learned CIT (Appeals) is not justified in upholding disallowance of Rs.6,92,590 in respect of the Road Tax paid for acquisition of a new vehicle under the facts and in the circumstances of the appellant's case.*

4. *Without prejudice to the right to seek waiver with the Hon'ble CCIT/DG, the appellant denies itself liable to be charged to interest under Sections 234A, 234B and 234C of the Act, which under the facts and in the circumstances of the appellant's case and the levy deserves to be cancelled.*

5. *For the above and other grounds that may be urged at the time of hearing of the appeal, your appellant humbly prays that the appeal may be allowed and justice rendered and the appellant may be awarded costs in prosecuting the appeal and also order for the refund of the institution fees as part of the costs."*

3. The assessee is a company engaged in the business of manufacturing of paper, power and generation of power. The assessee is generating power for its use for manufacture of paper and surplus power generated is sold to **Karnataka Power Transmission Corporation Ltd.** (in short 'KPTCL'). The Assessing Officer has noted that in the computation the assessee has determined the profit derived from power generation division for the purpose of claiming deduction under Section 80IA of the Income Tax Act, 1961 (in short

'the Act'). It has included the amount of differential tariff received from KPTCL for the earlier year to the extent of Rs.30,28,412. Since it was included as income from the previous to the assessment year under consideration, the Assessing Officer asked the assessee as to why this amount should not be disallowed for the purpose of computation of deduction under Section 80IA. In response the assessee has submitted that the amount in question is differential tariff pertains to the earlier year and not related to the year under consideration. Accordingly, the Assessing Officer recomputed the deduction under Section 80IA of the Act by reducing the said amount of Rs.30,28,412 from the eligible income and consequently added the same to the income of the assessee. The assessee challenged the action of the Assessing Officer before the CIT (Appeals) but could not succeed.

4. Before us, the learned Authorised Representative of the assessee has submitted that this amount was received as a differential tariff charges pertaining to the earlier year however this income was crystallized during the year under consideration and it is derived from power generation activity. Therefore, the same is eligible for deduction under Section 80IA(4)(iv) of the Act. Thus the learned Authorised Representative has contended that the

authorities below have erred in disallowing the deduction under Section 80IA in respect of the income of the assessee derived from the power generation which is the differential of the tariff received from KPTCL.

5. On the other hand, the learned Departmental Representative has relied upon the orders of the authorities below and submitted that there is no dispute that this amount of Rs.30,28,412 does not represent the income of the year under consideration and therefore no deduction under Section 80IA of the Act can be allowed in respect of this amount during the year under consideration.

6. Having considered the rival submissions as well as relevant material on record, we find that this amount of Rs.30,28,412 was received by the assessee as a differential tariff charges in respect of the power sold to KPTCL in the earlier assessment year. Though this income is derived by the assessee from the sale of power to KPTCL in the earlier assessment year however, this income cannot be considered as accrued or arises in the earlier assessment year as it was beyond the control of the assessee to fix the tariff of the power sold to the KPTCL. Therefore, when there was no right to receive the said amount accrued to the assessee till the tariff was revised by the KPTCL then this amount cannot be said to be accrued in the prior year. Therefore the claim of deduction under

Section 80IA cannot be disallowed merely on the ground that this income is derived from the sale of the power in the earlier assessment year. Hence, on principle we are of the opinion that the assessee is entitled for deduction under Section 80IA in respect of the amount which represents differential tariff charges in respect of the power sold to the KPTCL in the earlier year subject to the condition that in the relevant assessment year the assessee had earned profits from the activity of generation of power and was eligible to claim deduction under Section 80IA in respect of the income earned from generation of power. In case the assessee incurred losses in any of the relevant year to which this amount or part of this amount pertains to, on account of sale of power to the KPTCL then to the extent of the loss the claim of deduction under Section 80IA would not be allowed. Accordingly, we allow the claim of the assessee subject to the verification of the fact that in the relevant assessment year the assessee has earned profits from the power generation and accordingly the Assessing Officer has to allow the claim of the assessee.

7. Another ground raised by the assessee in this appeal is regarding levy of interest under Sections 234A, 234B & 234C of the Act which are consequential in nature.

8. In the result, the appeal of the assessee is allowed for statistical purpose.

Order pronounced in the open court on 29.04.2016.

Sd/-  
**(A.K. GARODIA)**  
Accountant Member

Sd/-  
**(VIJAY PAL RAO)**  
Judicial Member

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Copy to :

1. Appellant
2. Respondent
3. C.I.T.
4. CIT(A)
5. DR, ITAT, Bangalore.
6. Guard File.

(True copy)

By Order

Asst. Registrar, ITAT, Bangalore