

**IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH, MUMBAI
BEFORE SRI MAHAVIR SINGH, JM AND SRI RAJESH KUMAR, AM**

**ITA No.6416/Mum/2013
(A.Y:2009-10)**

M/s M. K. Industries 182, Aram Nagar Part II, Opp. Pramal Bldg, J.P. Road, Versova, Andheri (W) Mumbai-400061	Vs.	The Asst. Commissioner of Income Tax, Circle 15(2) Mumbai
Appellant	..	Respondent
PAN No.AAJFM0500A		
Assessee by	..	Shri Harsh Kothari, AR
Revenue by	..	Shri Dr. Suman Ratnam, DR
Date of hearing	..	09-02-2017
Date of pronouncement	..	28-02-2017

ORDER

PER MAHAVIR SINGH, JM:

This appeal by the assessee is arising out of the order of CIT(A)-26, Mumbai, in appeal No. CIT(A)-26/IT-62/AC.15(2)/11-12 dated 22-08-2013. The Assessment was framed by ACIT circle-15(2), Mumbai for the A.Y. 2009-10 vide order dated 25-11-2011 u/s 143(3) of the Income Tax Act, 1961 (hereinafter ‘the Act’).

2. The first issue in this appeal of assessee is against the order of CIT(A) denying deduction under section 80-IB(4) of the Act on interest earned on bank fixed deposits taken for giving margin money for letter of credit and bank guarantee taken for the purpose of business. For this assessee has raised following ground: -

“1. The learned CIT(A) erred in confirming the denial of deduction under section 80-IB(4) the Income Tax Act, 1961 (Act) on interest of Rs 2,87,874 earned on bank fixed deposits taken for giving margin for letter of credit (LC) and bank guarantee taken for the purposes of business, on the facts and circumstances of the case and in law.”

3. We have heard the rival contentions and gone through the facts and circumstances of the case. We find that the AO as well as CIT(A) both are of the consistent view that interest earned on fixed deposits (FD) used as margin money for getting letter of credits

and bank guarantee cannot be considered as business income derived from industrial undertaking for the purposes claim of deduction under section 80-IB(4) of the Act. Aggrieved now assessee is in before Tribunal.

4. Assessee before us claim that bank and FD interest of Rs.2,87,874/- received during the financial year 2008-09 relevant to the assessment year 2009-10 pertains to FD kept as margin money for issuing letter of credit and bank guarantee for carrying out general business transactions and hence interest earned as in the nature of business income. Therefore, it was argued that interest on bank deposit should be treated as normal business income.

5. We find that this issue is squarely covered in favor of assessee and against the Revenue by the decision of Hon'ble Bombay High Court in the case of CIT v. JM Joshi in Income Tax Appeal No. 639 of 2008 dated 26-06-2015, wherein Hon'ble Bombay High Court has considered the issue of interest income earned by assessee on FD that the banks has eligible for deduction under section 80IA of the Act as under: -

“5. The Revenue has formulated the following questions of law for our consideration:

Whether on the facts and in the circumstances of the case and in law, the Tribunal was right in allowing the appeal of the assessee holding that the interest income earned by the assessee on fixed deposits with the bank and other interest income are eligible for deduction u/s. 80IA of the Act?

6. *By the impugned order, the tribunal followed its own order in the case of Respondent-Assessee for the Assessment Years 1997-98 and 1998-99.*

7. *The Revenue being aggrieved by the impugned order of the Tribunal for the Assessment Years 1997-98 and 1998-99, had preferred an Appeal to this Court on an identical question of law being Income Tax Appeal Nos.46 of 2006 and 67 of 2006. This Court by an order dated 28th November, 2008, dismissed the Revenue's appeal for the Assessment Years 1997-98 and 1998-99, on the ground that, no substantial question of law involved since*

reported in CIT v/s. Jagdishprasad M. Joshi 318 ITR 420. The Revenue has preferred a Special Leave Petition (SLP) from the order of this Court dated 25th November, 2008, dismissing Revenue's Appeal for the Assessment Years 1997-98 and 1998-99 to the Hon'ble Apex Court. The SLP has been admitted on 7th March, 2011.

8. *In view of the fact that the question raised by the Revenue stands concluded by an order of this Court in the Revenue's own case for the Assessment Years 1997-98 and 1998-99 in CIT v/s. Jagdishprasad M. Joshi (supra), we do not see any reason to entertain the proposed question of law.*

9. *It may be pointed out that Mr. Suresh Kumar, learned Counsel appearing for the Revenue brings to our notice the decisions of this Court in CIT v/s. Dresser Rand India (P) Ltd. [2011] 11 Taxmann 281 and CIT v/s. Vidyut Corporation 324 ITR 221 – wherein this Court has held that interest on deposits etc. would not be allowable deduction under Section 80IB of the Act. However, both these decisions were rendered without taking into consideration the decision in Respondent-Assessee's own case in CIT v/s. Jagdishprasad M. Joshi (supra).*

10. *As question raised by the Revenue stands concluded in the Respondent-Assessee's own case for the earlier Assessment Years, we deem it appropriate to follow the same and dismiss the Revenue's appeal as not giving rise to any substantial question of law.”*

6. Respectfully following the same we allow the claim of the assessee and direct the AO to allow the claim of the assessee.

7. The next issue in this appeal of assessee is against the order of CIT(A) confirming the disallowance of 5% of canteen expense at Rs.1,22,981/-. For this assessee has raised following ground No.2: -

2. *The learned CIT(A) erred in confirming disallowance of Rs. 1,22,981/- being 5% of canteen expenses incurred wholly and exclusively for the purpose of the business on ad-hoc basis, on the facts and circumstances of the case and in law”*

8. We have heard the rival contentions and gone through the facts and circumstances of the case. We find that assessee has incurred a total canteen expense at Rs.24,59,515/- and AO disallowed the same at the rate of 10% amounting to Rs. 2,45,962/-. The CIT(A) restricted the disallowance at 5% of the expenditure. Aggrieved now assessee is in appeal before Tribunal. We find that the AO as well as CIT(A) has disallowed the expense as the same are not supported by verifiable third party vouchers. We are of the view that the CIT(A) has rightly restricted the disallowance at 5%. We confirm the same.

9. **In the result, the appeal of assessee is partly allowed.**

Order pronounced in the open court on 28-02-2017.

Sd/
(RAJESH KUMAR)
ACCOUNTANT MEMBER

Sd/-
(MAHAVIR SINGH)
JUDICIAL MEMBER

Mumbai, Dated:28-02-2017

Sudip Sarkar /Sr.PS

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