IN THE INCOME TAX APPELLATE TRIBUNAL
DIVISION BENCH, 'B' CHANDIGARH

BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER
AND DR. B.R.R. KUMAR, ACCOUNTANT MEMBER

ITA No. 587/CHD/2014
Assessment Year : 2010-11

The DCIT, Circle , Sangrur	Vs.	M/s Padmawati Steels Ltd., Sangrur Road, Dibra, Distt.Sangrur PAN No. AACCP3844Q
(Appellant)		(Respondent)

Appellant by : Sh. Manjit Singh, Sr.DR
Respondent by : Sh. N.K. Garg, Advocate

Date of Hearing : 01.03.2018
Date of Pronouncement : 25.05 .2018

ORDER

Per Sanjay Garg, Judicial Member:

This appeal has been preferred by the assessee order dated 31.3.2004 of the Commissioner of Income Tax(A), Patiala [hereinafter referred to as 'CIT(A)']

2. The Revenue has taken the following grounds of appeal:-

1. *The Ld. CIT(A) has erred in law on facts in deleting the addition made by the Assessing officer on the issue of VAT Deferment Rebate included under deduction under section 80IC of Income-tax Act, 1961.*

2. *In the facts and circumstances of the case, the Ld. CIT(A) has erred in allowing the relief on account of*

disallowance of interest on FDR of Rs. 1,17,594/- under Section 80IC of the Income-tax Act, 1961.

3. In the facts and circumstances of the case, the Ld. CIT(A) has erred in allowing the relief on account of disallowance of insurance claim of Rs. 90,000/- under section 80IC, without appreciating the fact that the same is not derived from business activity of the assessee company but is merely identical to company.

3. **Ground Nos. 1 & 2 :** At the outset, Ld. Counsel for the assessee has submitted that so far as Ground Nos. 1 & 2 are concerned, they are squarely covered by the decision of this Tribunal dated 23.2.2018 passed in the own case of the assessee e for assessment years 2011-12 to 2013-14 in ITA Nos. 1083, 4 & 5/Chd/2017.

The Ld. DR has also fairly agreed that the issues raised vide ground Nos. 1 & 2 are covered by the decision of the Tribunal (supra).

4. We have gone through the decision of the Tribunal dated 23.2.2018 (supra) in the case of the assessee and found that the ground Nos. 1 & 2 of this appeal are squarely covered by the aforesaid decision of the Tribunal. The relevant part of the order of the Tribunal dated 23.2.2108 passed in the own case of the assessee in ITA Nos.1083, 4 & 5/Chd/2017, is reproduced as under:-

> "9. Ground No. 2 and 3 raised by the Revenue pertain to the issue of claim of deduction under section 80IC on VAT deferment rebate and interest on FDR's. Since the issue is common and the arguments advanced were also

common, both the grounds are being taken up together. Ground No. 2 and 3 raised by the Revenue read as under:

> *2. In the facts and circumstances of the case, whether the Ld. CIT(A) has erred in deleting the addition of Rs. 1,22,57,905/- made by the AO on account of disallowance of deduction claimed u/s 80IC of the Income Tax Act, 1961 in respect of VAT deferment rebate without appreciating the judgment given by Hon'ble Punjab & Haryana High Court in the case of M/s H.M. Steels Ltd., Sangrur in ITA No. 352 of 2013 dt. 04/08/2015.*
>
> *3. In the facts and circumstances of the case, whether the Ld. CIT(A) has erred in deleting the addition of Rs. 1,27,575/- made by the AO on account of disallowance of deduction claimed u/s 80IC of the Income Tax Act, 1961 in respect of interest on FDRs without appreciating the judgment given by the Hon'ble Punjab & Haryana High Court in the case of M/s H.M. Steels Ltd. , Sangrur in ITA No. 352 of 2013 dt. 04/08/2015.*

10. Briefly stated the assessee had claimed deduction under section 80IC of the Income Tax Act (hereinafter refer to as the 'Act') on incomes shown under the head "Other Incomes" which included VAT deferment rebate amounting to Rs. 1,22,57,905/- , and interest on FDR's amounting to Rs. 1,27,575/- ,which was denied by the AO for the reason that there was no direct nexus between the industrial undertaking of the assessee and the said incomes, in the absence of which the said incomes could not be said to be derived from the industrial undertaking, which was a prerequisite for claiming deduction under the said section. The AO referred to the judgment of the Apex Court in the case of CIT Vs. Sterling Foods 237 ITR 579 in this regard.

11. Before the Ld. CIT(A) the assessee contended that there was direct nexus between the aforesaid income and the industrial undertaking of the assessee. To this effect the assessee explained that vis a vis the VAT deferment rebate the facts were that it was liable for payment of VAT on the sales made within the state of Himachal Pradesh and as per the policy of the State Government the liability of VAT payments was deferred and was required to be paid after the deferment period in equal installments. Further in continuation to the above policy the State Government had issued a notification on 28/08/2005 giving option to industrial units availing the deferment of tax to either continue with such facility for the unexpired period or opt to pay 65% of the tax liability and upon making such payments the unit would be deemed to have paid the full tax due from them accordingly. The assessee having exercised this option the VAT deferment rebate credited in its P&L Account amounting to Rs.

1,22,57,905/- related to the 35% of VAT, which was retained by it as per the said policy of the Government . The assessee contended that VAT charges are trading receipts which had been settled by the Apex Court in a number of decisions and therefore the VAT deferent rebate earned by the assessee had a direct nexus with the industrial undertaking and was thus eligible for deduction under section 80IC of the Act.

Vis a vis the claim of deduction under section 80IC on the interest received on FDR's to the tune of Rs. 1,27,575/- the assessee submitted that the FDR's were taken as security for VAT deferment and power connection and therefore the interest earned thereon was integral part of the activity of the industrial undertaking entitling it to claim deduction under section 80IC of the Act.

12. The Ld. CIT(A) allowed both the aforesaid claims of the assessee following the decision of the ITAT Chandigarh Bench in case of M/s H.M. Steel Ltd. Vs. JCIT in ITA No. 643/Chd/2011 for AY 2007-08 dt. 17/06/2013.

13. Before us, at the outset, Ld. Counsel for the assessee contended that the decision relied upon by the Ld. CIT(A) allowing the assessee's claim of deduction under section 80IC on VAT deferment rebate in the case of H.M Steel (supra) had been upheld by the Apex Court. Ld. Counsel for the assessee pointed out that the appeal filed by the assessee against the judgment of the jurisdictional High Court denying the claim of the assessee to deduction u/s 80IC on VAT deferment rebate in the said case had been allowed following the judgment of the Apex Court in the case of CIT Vs. Ponni Sugars and Chemicals Ltd. and CIT Vs. Meghalaya Steels Ltd. Copy of the order was filed before us. Ld. Counsel for the assessee alternatively contended that the said VAT subsidy received by the assessee was a capital receipt in its hand and thus not liable to tax at all. In this regard Ld. Counsel for the assessee drew our attention to the order of the jurisdictional High Court in the case of Pr. CIT Vs. Talbros Engineering Ltd. (2016) 386 ITR 154 (P&H) and pointed out therefrom that identical sales tax deferment subsidy received in the said case was held to be capital in nature by the ITAT which order was upheld by the Hon'ble High Court. Ld. Counsel for the assessee also relied upon the order of the Apex Court in the case of CIT Vs Ponni Sugars and Chemicals Ltd. reported in (2008) 306 ITR 392 which was followed by the Apex Court in CIT Vs. Shri Balaji Alloys (2016) 138 DTR 36 (SC).

14. Ld. DR fairly admitted that the appeal of the assessee against the order passed by the jurisdictional High Court had been dismissed by the Apex Court.

15. As for the deduction claimed under section 80IC on the interest earned on FDR's ,while Ld. Counsel for the assessee relied on the order of the CIT(A), the Ld. DR stated that the CIT(A) had erred in following the decision of the ITAT in the case of H.M. Steel(supra) since the facts of the said case were distinguishable with the present case. Ld. DR pointed out that while in the case of H.M. Steel the finding of fact on record was that the FDR's were made on account of margin money for In land Letter of Credit (ILC) Foreign Letter of Credit (FLC) for the raw materials which was treated as a cost to acquire raw material and hence having direct nexus with the industrial undertaking, in the present case the FDR's were taken as security for VAT deferment and power connection which had no direct nexus with the industrial undertaking and therefore Ld. DR contended that

the assessee was not entitled to claim deduction under section 80IC on the same. Ld. counsel for assessee contended that following the decision in the case of H.M. Steels (supra), benefit of netting be allowed.

16. We have heard the contention of both the parties and have carefully gone through the orders of the authorities below and the decisions relied upon before us.

17. Taking up first the issue of claim of deduction under section 80IC on VAT deferment rebate we are in agreement with the Ld. Counsel for the assessee that the issue has been decided in favour of the assessee by the Apex Court. The decision of the ITAT relied upon by the Ld. CIT(A) in the case of H.M. Steel (supra) for AY 2007-08, we find had been reversed by the jurisdictional High Court vide order dt. 04/08/2015 in ITA No. 352/2013 and subsequently the apex court after granting leave in the assessees SLP filed against the said decision in SLP(C)No.8110-8111/2016 allowed the assessees appeal vide their order in group of cases with the lead case being Commissioner of Income Tax vs M/s Vijay Steel Industries in Civil Appeal No.5107/2015 Dt.21-09-2017. The order of the apex court is as under:

> *"After hearing the learned counsel for the parties we find that the issue raised in these appeals is covered against the Revenue by the decision of this Court in " Commissioner of Income Tax, Madras Vs. Ponni Sugars and Chemicals Ltd." reported in (2008) 9 SCC 337, or in the alternate, in*

"Commissioner of Income Tax Vs. M/s. Meghalaya Steels Ltd.", reported in (2016) 3 SCALE 192.

Therefore, the appeals of the Revenue are dismissed and the appeal (s) of the assessee(s) is allowed.

However, in a particular case, if it is found that the facts or issue is different, liberty is granted to the Revenue to make an appropriate application."

18. Thus the issue stands decided in favour of the assessee. Even otherwise we are in agreement with the Ld. Counsel for the assessee that the said subsidy of VAT deferment received by the assessee qualifies as capital receipt as held by the Apex Court in Ponni Sugars(supra) and Balaji Alloys (supra) and by the jurisdictional High Court in the case of Telbros Engineering (supra). The jurisdictional High Court held as under, while dealing with the nature of Sales Tax Deferment Subsidy received in the case of Talbros Engineering(supra) at para 6 of its order:

6. The next issue was with regard to addition of? 21,68,938 on account of capital subsidy on sales tax. The assessee received a subsidy of sales tax amounting to ? 21,68,938/- which was claimed as a capital receipt not chargeable to tax. On being asked as to why the subsidy be not treated as revenue receipt, the assessee stated that it was given as per the scheme of the State Government for encouraging the industries to set up their units in rural areas and for compensating for the hardship in setting up such industries in remote rural areas. The Assessing Officer treated this amount as revenue by relying upon judgment of the Apex Court in Sahney Steel and Pass Works Limited vs. CIT, 228 ITR 253. The CIT(A) treated this amount as capital receipt holding that if the purpose of the subsidy was to help the assessee to set up its business or complete a project, the amounts must be treated to have been received for capital purpose. The Tribunal after considering the matter upheld the deletion made by the CIT(A) observing that if some subsidy is given for encouraging the industries for setting up units in the remote or rural areas etc. then such subsidy assumes the character of a capital receipt. If subsidy is given for enabling an assessee to run its business more profitably, then it would amount to an operational subsidy chargeable to tax. The relevant findings recorded by the Tribunal read thus:

"16. We have heard the rival submissions and perused the relevant material on record. The relevant factor for decision as to whether subsidy is a capital or a revenue receipt, is its nature and object. If some subsidy is given for encouraging the industries for setting up units in the remote or rural areas etc then such subsidy assumes the character of a capital receipt. On then other hand, if subsidy is given for enabling an assessee to run its business more profitably, then it would amount to an operational subsidy chargeable to tax. It is clear from the assessee's submissions reproduced in the assessment order that the subsidy was given to the assessee as a compensation for setting up its unit in remote rural areas. The nature of such subsidy has not been disputed by the AO. As the nature of subsidy in the present facts and circumstances is undisputed, being towards the setting up of unit in remote

and rural areas, the natural conclusion which therefore follows is that this subsidy is a capital receipt and not chargeable to tax. The learned DR contended that the nature of subsidy has undergone change because of the assessee itself stating that it opted for the half of the amount of the deferred sales tax by making payment for the remaining half of the amount of the deferred tax upfront. In our considered option, the exercise of option by the assessee in paying half of the amount of deferred tax upfront thereby retaining the remaining half as subsidy, cannot convert the otherwise capital subsidy into an item of revenue. The Special Bench of the Tribunal in Sulzer India Limited vs. DCIT, (2010) 134 TTJ(Mum.) (SD) 385 has held that the payment of net present value against a deferred sales tax liability cannot be considered as income under section 41(1) of the Act. This view of the Special bench has been recently upheld by the Hon'ble Bombay High Court vide its judgment dated 5.12.2014, a copy of which has been made available by the learned AR. In view of the above forgoing discussions, we are of the considered opinion that the learned CIT(A) was justified in treating sales tax subsidy as a capital receipt."

In the absence of any material to assail the findings recorded by the Tribunal on this issue, the same are also upheld.
7. The view adopted by the Tribunal is a plausible view based on appreciation of material on record and the relevant case law on the point. Learned counsel for the appellant-assessee has not been able to show any illegality or perversity in the findings recorded. Thus, no substantial question of law arises. The appeal stands dismissed.

In view of the above we uphold the order of the Ld. CIT(A) deleting the addition made on account of subsidy of VAT deferment received by the assessee. Ground of appeal no. 2 raised by the Revenue is therefore dismissed.

19. As for the claim of the assessee of deduction under section 80IC on the interest received on FDR's we hold that the assessee is not entitled to the same. Admittedly the said interest has been received on FDR's which were taken as security for VAT deferment and power connection. This is a step removed from the industrial undertaking of the assessee and is not directly related to the activity of the industrial undertaking. It therefore cannot be said to be derived from the industrial undertaking. The Hon'ble Apex Court while dealing with a claim of deduction under section 80HH of the Act in the case of Pandian Chemical Ltd. Vs. CIT 262 ITR 278 had the question raised before it as to whether interest earned on a deposit made with the electricity Board for the supply of electricity to the assessees industrial undertaking should be treated as income derived from industrial undertaking under section 80HH. The Hon'ble Court held that although ;electricity may be required for the purposes of the industrial undertaking the deposit required for its supply is a step removed from the business of the industrial undertaking. It was held that the

derivation of profits on the deposit made with the electricity board could not be said to flow directly from the industrial undertaking itself. On this basis the claim of the assessee for deduction under section 80HH on interest earned on deposit made with electricity board was denied. The issue in the present case we find is identical to that in Pandian Chemicals and the interest on FDR's taken for VAT deferment and electricity board cannot therefore be held to be derived from the industrial undertaking which is a prerequisite for claiming deduction under section 80IC of the Act. But at the same time we agree that the assessee should be allowed benefit of netting of interest as done in the case of H.M. Steels (supra) which was followed by the CIT(Appeals).

20. The ground no. 3 raised by the Revenue is therefore disposed off in above term.

In effect the appeal of the Revenue is dismissed."

5. Ground Nos. 1 & 2 of the appeal of the assessee are, therefore, decided in terms of order of the Tribunal dated 23.2.2018 (supra) that the subsidy of VAT deferment received by the assessee, therefore, held to be a capital receipt.

So far as the interest on FDR is concerned, the Ld. Assessing officer is directed to allow the benefit of netting of interest to the assessee. Thus, the grounds Nos.1 & 2 raised by the Revenue are dismissed.

6. **Ground No.3 :** So far as ground No. 3 which relates to the disallowance of insurance claim of Rs. 9,000/- u/s 80IC of the Act is concerned, it is to be noted that the insurance claim is always given as compensation in lieu of / as reimbursement of loss suffered by the insured. If the loss was a capital loss, the receipt on account of insurance claim for that loss will be capital receipt. If the loss was Revenue expenditure, then the receipt will also be treated as Revenue receipt. We, therefore, direct the Assessing officer to

examine the nature of loss in lieu of which insurance claim was received by the assessee. If the said loss / expenditure have already been deducted by the assessee out of income which was eligible for deduction u/s 80IC of the Act, then the insurance claim received in respect of such loss / expenditure will also qualify for deduction u/s 80IC of the Act. The Assessing officer is directed to examine the matter in the light of the above observations and decide accordingly.

In the result, the appeal is treated as partly allowed for statistical purposes.

Order pronounced in the Open Court on 25.05.2018.

Sd/-	Sd/-
(B.R.R.KUMAR)	**(SANJAY GARG)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Dated : 25.05.2018
Rkk
Copy to:

- *The Appellant*
- *The Respondent*
- *The CIT*
- *The CIT(A)*
- *The DR*