

आयकर अपीलीय अधिकरण "बी" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, PUNE

श्री डी. करुणाकरा राव, लेखा सदस्य, एवं श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष ।
BEFORE SHRI D. KARUNAKARA RAO, AM AND SHRI VIKAS AWASTHY, JM

आयकर अपील सं. / ITA No.368/PUN/2016

निर्धारण वर्ष / Assessment Year : 1997-98

Finolex Cables Limited,
26/27, Mumbai – Pune Road,
Pimpri, Pune – 411018

PAN : AAACF2637D

.....अपीलार्थी / Appellant

बनाम / V/s.

Deputy Commissioner of Income Tax,
Central Circle – 1(2), Pune

.....प्रत्यर्थी / Respondent

Assessee by : Shri J.G. Pendse
Revenue by : Shri M.K. Gautam

सुनवाई की तारीख / Date of Hearing : 01-08-2018

घोषणा की तारीख / Date of Pronouncement : 29-10-2018

आदेश / ORDER

PER VIKAS AWASTHY, JM :

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals)-11, Pune dated 05-02-2016 for the assessment year 1997-98.

2. The assessee in appeal has raised following grounds :

“Being aggrieved by the order passed by the CIT(A), Pune-11 w.r.t. order passed by Dy. Commissioner of Income Tax, Central Circle- 1(2), Pune U/s.

143(3) rws 254 of the Income Tax Act, your appellant submits, among others, the following grounds of appeal:

On facts & in the circumstances of the case and in law, the learned CIT (A) erred in:

1. Disallowing amount of Rs9,40,919/- on account of Guest House Expenses.
2. The learned CIT(A) did not consider receipt of Rs.18,47,51,188/- which is the Part of compensation towards sale price of cables manufactured and sold by Company and compensation received in instalment as income derived from eligible unit u/s 80IA.
3. The appellant craves leave to add, alter or amend any of the grounds of Appeal at the time of appeal hearing.”

3. Shri J.G. Pendse appearing on behalf of the assessee submitted that the assessee is in second round of appeal before the Tribunal. In first round the Tribunal vide order dated 30-03-2010 had remitted both the issues; viz. :

- i. Disallowance of Guest House Expenses; and
- ii. Eligibility of compensation towards sale price of cable for claiming deduction u/s. 80IA of the Act.

to the file of Assessing Officer for re-adjudication. The Assessing Officer in second round disallowed assessee's claim in respect of both the above additions. The assessee was unsuccessful before the Commissioner of Income Tax (Appeals) as well, hence, the present appeal.

3.1 The ld. AR submitted that the assessee had claimed expenditure in respect of guest house with the following details :

A) Somerset place Co-operative Society Ltd.		
a)	Income Tax Depreciation	Rs.4,06,311/-
b)	Repairs & Maintenance	Rs.1,04,675/-
c)	Society Charges	Rs.2,520/-
d)	Telephone, Electricity & Other Expenses	Rs.3,36,216/-

	Total	Rs.8,49,722/-

B)	Antariksha Housing Complex	
a)	Income Tax Depreciation	Rs.10,361/-
b)	Repairs & Maintenance	Rs.13,446/-
c)	Society Charges	Rs.9,964/-
d)	Telephone, Electricity & Other Expenses	Rs.47,426/-

	Total	Rs.91,197/-
	Total (A) & (B)	Rs.9.40,919/-

The ld. AR fairly admitted that in the light of the decision of Hon'ble Supreme Court of India in the case of Britannia Industries Ltd. Vs. Commissioner of Income Tax reported as 278 ITR 546, the expenditure claimed in respect of items a), b) and c) are not allowable. In so far as the expenditure on telephone, electricity and other expenses are concerned the same may be allowed as these expenditures were not subject matter of dispute in the case of Britannia Industries Ltd. Vs. Commissioner of Income Tax(supra).

3.2 In respect of ground No. 2 the ld. AR submitted that the assessee had claimed compensation of Rs.18,47,51,188/- for delayed payments from the Department of Telecommunication (DOT).. In the first round the claim of assessee was rejected by Assessing Officer by passing a cryptic order. The Tribunal restored the issue back to the file of Assessing Officer for re-adjudicating the issue by passing a speaking order. In the second round the Assessing Officer disallowed assessee's claim on the ground that the compensation received by the assessee from DOT is in the nature of interest income on deferred sales. Hence, the interest income is not eligible for the purpose of computation of deduction u/s. 80IA of the Act. The Commissioner of Income Tax (Appeals) upheld the findings of Assessing Officer on both the counts. The ld. AR submitted that in the

subsequent assessment year similar interest income was considered by the Assessing Officer for computing deduction u/s. 80IA of the Act.

4. On the other hand Shri M.K. Gautam representing the Department vehemently defended the impugned order and prayed for dismissing the appeal of assessee. The ld. DR submitted that the expenditure relating to guest house is not allowable in the light of decision of Hon'ble Supreme Court of India in the case of Britannia Industries Ltd. Vs. Commissioner of Income Tax (supra).

4.1 The ld. DR further submitted that the ground No. 2 of the appeal is liable to be dismissed as interest earned by the assessee on deferred payments from DOT does not qualify the test of 'derived from business activity' for computation of deduction u/s. 80IA of the Act.

5. We have heard the submissions made by representatives of rival sides and have perused the orders of authorities below. In ground No. 1 of the appeal, the assessee has assailed disallowance of expenditure in respect of guest house. The details of the expenditure claimed have already been reproduced in the earlier part of the order. The ld. AR has fairly admitted that the guest house expenditure towards depreciation, repairs & Maintenance and society charges are not allowable. Hence, the only expenditure which the assessee is agitating is on account of telephone, electricity & other expenses Rs.3,36,216/- for Somerset place Co-operative Society Ltd. and Rs.47,426/- for Antariksha Housing Complex. The Hon'ble Supreme Court of India in the case of Britannia Industries Ltd. Vs. Commissioner of Income Tax (supra) in unambiguous term has held :

“In our view, the intention of the legislature appears to be clear and unambiguous and was intended to exclude the expenses towards rents, repairs and also maintenance of premises/ accommodation used for the purposes of a guest-house of the nature indicated in sub-s. (4) of s. 37. When the language of a statute is clear and unambiguous, the Courts are to interpret the same in its literal sense and not to give it a meaning which would cause violence to the provisions of the statute. If the legislature had intended that deduction would be allowable in respect of all types of buildings/accommodations used for the purposes of business or profession, then it would not have felt the need to amend the provisions of s. 37 so as to make a definite distinction with regard to buildings used as guest-houses as defined in sub-s. (5) of s. 37 and the provisions of ss. 31 and 32 would have been sufficient for the said purpose.”

6. We are of considered view that the expenditure in respect of telephone, electricity etc. associated with the guest house stand on the same footing as the expenditure towards rent, repairs and maintenance of the guest house. Thus, we do not find any merit in the submissions of assessee in creating distinction between the expenditure on maintenance and telephone, electricity charges in respect of guest house. Accordingly, ground No. 1 raised in the appeal is dismissed.

7. In ground No. 2 of the appeal the claim of assessee is that the compensation amounting to Rs.18,47,51,188/- qualifies for deduction u/s. 80IA of the Act as the same has been received as part of deferred payment for supply of cables to DOT. A bare perusal of section 80IA shows that the deduction is available on profits and gains ‘derived’ by undertaking from the business. To ascertain whether the compensation received by the assessee has direct nexus with the activities carried out by the assessee, it would be relevant to refer to the agreement entered into by the assessee with DOT for supply of underground cables on deferred payment basis. The relevant extract of the agreement specifying the period of payment is reproduced here-in-below :

“12.0 PERIOD OF DEFERRED PAYMENT ARRANGEMENT, INTEREST AND OTHER RELATED CHARGES.

12.1 The fixed period suppliers' credit for the supplies made under this Agreement shall be 5 (Five) years (computed from the date of completion of entire delivery of PIJF U/G Cables “at site”).

12.2 The purchaser shall pay to Supplier in 20 Installments as quarterly-in-arrears. An Equated Quarterly Amount (EQA) @ RS.61.50 (Rupees Sixty One and Paise Fifty Only) per Rs.1000/- of admitted invoice value shall be payable for second to twentieth quarter.

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12.4 As payment of EQA is payable quarterly-in-arrear, the due date of first Quarterly Amount/EQA shall be three months after the completion of entire delivery at site. For example, if entire delivery is complete on 31st December, 1996 the first QA shall be due on 31.03.1997 and shall be payable within a period of 7 days thereafter.

12.5 Invoice value per para 12.2 above in respect of PIJF U/G Cable shall be in accordance with para 5 above. The Liquidated Damages, if any, as per Clause 19 below shall be reduced from the invoice value. The cost of goods rejected at site on testing shall not be included in the invoice value for computation of QA/EQA.

12.6 As QA/EQA per Rs.1000/- per quarter includes both principal and interest, no separate interest is payable. The tax shall be deducted at source (at the applicable rates) from the interest component of the EQA.”

8. A perusal of the terms of the agreement reveal that the interest paid by DOT is imbedded in equated quarterly installments. Thus, the interest received by the assessee towards the compensation for deferred payments for supply of cables to the DOT has direct nexus with the business of the assessee. Thus, it can be safely construed that the compensation received for deferred payments is ‘derived’ from the business activities of the undertaking. Therefore, we are of considered view that the assessee is eligible to claim deduction u/s. 80IA on such interest/compensation component of the deferred payments. Accordingly, the ground No. 2 raised in the appeal by the assessee is allowed.

9. The ground No. 3 raised in the appeal is general in nature, hence, requires no adjudication.

10. In the result, the appeal of assessee is partly allowed in the terms aforesaid.

Order pronounced on Monday, the 29th day of October, 2018.

Sd/-	Sd/-
(डी. करुणाकरा राव/D. Karunakara Rao)	(विकास अवस्थी / Vikas Awasthy)
लेखा सदस्य / ACCOUNTANT MEMBER	न्यायिक सदस्य / JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 29th October, 2018
RK

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त (अपील) / The CIT(A)-11, Pune
4. The Pr. C.I.T. (Central), Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" बेंच,
पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति // True Copy//

आदेशानुसार / BY ORDER,

निजी सचिव / Private Secretary,
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune