

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
KOLKATA 'A' BENCH, KOLKATA**

**Before Shri P.M. Jagtap, Vice-President (KZ)  
and Shri S.S. Viswanethra Ravi, Judicial Member**

**I.T.A. No. 1626/KOL/2017  
Assessment Year: 2011-2012**

*Deputy /Assistant Commissioner of Income Tax,.....Appellant  
Circle-3(2), Gangtok, Sikkim,  
Aayakar Bhawan, Income Tax Office,  
Bhanupath, Near White Memorial Hall,  
P.O. Raj Bhawan, Gangtok-737 103, Sikkim*

**-Vs.-**

*Sikkim Industrial Development & Investment Corporation,.....Respondent  
Bhanupath, P.O. Raj Bhawan,  
Gangtok, East Sikkim-737 103  
[PAN: AAMCS 4610 H]*

**Appearances by:**

*Shri Sankar Halder, Addl. CIT, Sr. D.R., for the Appellant  
Shri Argha Kumar Mitra, FCA, for the Respondent*

Date of concluding the hearing : November 28, 2018  
Date of pronouncing the order : November 30, 2018

**O R D E R**

**Per Shri P.M. Jagtap, Vice-President (KZ):-**

This appeal is preferred by the Revenue against the order of Id. Commissioner of Income Tax (Appeals), Siliguri dated 09.05.2017 and the solitary issue involved therein relates to the deletion by the Id. CIT(Appeals) of the disallowance of Rs.1,74,16,977/- made by the Assessing Officer on account of interest.

2. The assessee in the present case is a Government of Sikkim Undertaking incorporated primarily to create industrial development in the State of Sikkim and also to provide financial support to create such industrial development. Since the return of income for the year under consideration was not filed by the assessee, a notice under section 148

was issued by the Assessing Officer on 19.05.2015, in response to which the return of income was filed by the assessee on 12.06.2015 declaring total income of Rs.1,09,25,559/-. In the Profit & Loss Account filed along with the said return, a sum of Rs.27,14,80,961/- was debited by the assessee on account of interest expenses. As noticed by the Assessing Officer during the course of assessment proceedings, substantial loans of Rs.285 crores were obtained by the assessee from consortium of Banks and the same was passed on to the Government for acquisition of land and payment of compensation. He also noticed that interest only to the extent of Rs.25,36,33,248/- was charged by the assessee to the State Government while it had paid interest of Rs.27,14,80,961/- to the consortium of Banks. He held that the balance amount of interest amounting to Rs.1,74,16,977/- paid by the assessee on the loans availed from the consortium of Banks thus did not constitute the expenditure incurred by the assessee wholly and exclusively for the purpose of its business and accordingly the same was disallowed by him in the assessment completed under section 143(3)/147 of the Act vide an order dated 23.12.2016.

3. Against the order passed by the Assessing Officer under section 143(3)/147, an appeal was preferred by the assessee before the Id. CIT(Appeals) and after considering the submissions made by the assessee as well as the material available on record, the Id. CIT(Appeals) deleted the disallowance made by the Assessing Officer on account of interest for the following reasons given in paragraph no. 5 of his impugned order:-

*"5. I perused the Assessment Order, submissions of the Ld. A/R.*

*(i) It is uncontroverted fact that the appellant corporation is a Government of Sikkim undertaking incorporated primarily to create industrial development in the State of Sikkim and to provide financial support to create such industrial development. For this purpose, it took loans from various banks and financial institutions.*

Sikkim Industrial Development & Investment Corporation

(ii) The appellant is taken a loan of Rs. 285 cr. from four nationalized banks for the purpose of land acquisition for construction of airport in Sikkim.

(iii) As per notes of accounts, the corporation has adopted a policy of charging interest to the Government of Sikkim on the above loan to the equivalent of interest charged by the consortium of four banks together with other expenses incurred in connection with said securitization loan minus the interest earned from securitization loan funds invested as term deposit.

(iv) The Assessee has (vide letter dated 09/12/2016) has informed the AO about the basis on which interest has been charged from the State Government. The calculation is as under:-

<i>Interest Charged to Govt. of Sikkim</i>			
<i>Total Loan Paid to Banks as per schedule</i>			
1	<i>16 of the Audited Accounts</i>	<i>Rs.27,10,50,225</i>	
2	<i>Total Processing Charges &amp; Guarantee Fees etc.</i>	<i>Rs.3,74,20,576</i>	
3	<i>Total Interest &amp; Bank Charges Paid to Banks</i>		<i>Rs.30,84,70,801</i>
4	<i>Interest on FDR Earned during the year 2010-11</i>	<i>Rs.6,53,38,484</i>	
	<i>Less: Interest on SIDICO's own FDR</i>	<i>Rs.1,05,00,931</i>	<i>Rs.5,48,37,553</i>
	<i>Net Interest chargeable to Govt. of Sikkim as per Schedule 13</i>		<i>Rs.25,36,33,248</i>

From the above calculation, it is evident that the Assessee has charged interest to the State Government as per its understanding/agreement. However, the AO has not made any comment on Rs.5,48,37,553/- interest earned by the Assessee on the surplus funds part for which are kept with banks. And therefore, the AO has come to the wrong conclusion that Assessee has paid more interest to the banks than it has received from State Governments.

(v) The other conclusions of the AO that the loan has not been used by the Assessee for its own business is also erroneous because it is only the surplus fund which has been parked with the State Government for which the Assessee has received due interest. Therefore, it cannot be said that loan has not been borrowed for the purpose of business of the Assessee.

In view of the above, the disallowance made of Rs.1,74,16,977/- stands deleted and all the grounds related to the same are allowed".

Aggrieved by the order of the Id. CIT(Appeals), the Revenue has preferred this appeal before the Tribunal.

4. We have heard the arguments of both the sides and also perused the relevant material available on record. As submitted on behalf of the assessee before the authorities below as well as before us, the loan of Rs.285 crores availed from the consortium of four Nationalised Banks was partly invested by the assessee in FDRs and the balance amount was provided to the Government of Sikkim as per the mutual understanding. In respect of the loan availed from the consortium of four Nationalised Banks, the assessee had paid interest of Rs.27,10,50,225/- and had also incurred processing charges and guarantee fees amounting to Rs.3,74,20,576/-. As against this total expenditure incurred in respect of the loan availed from the consortium of Banks amounting to Rs.30,84,70,801/-, the assessee had received interest on investment made in Fixed Deposits out of the said loan to the extent of Rs.5,48,37,553/ and the balance amount of Rs.25,36,33,248/- was charged to the State Government as per the mutual understanding/agreement. It was thus a case wherein the surplus funds available from the loan taken from the consortium of Banks were parked by the assessee with the State Government and since the entire expenditure incurred by the assessee in the form of interest and other charges on the loans availed from the consortium of Banks was recovered by the assessee in the form of interest on Bank deposits as well as interest charged to the State Government, we find ourselves in agreement with the Id. CIT(Appeals) that the disallowance made by the Assessing Officer on account of interest was not sustainable. Accordingly the impugned order of the Id. CIT(Appeals) giving relief to the assessee is upheld dismissing this appeal of the Revenue.

**5. In the result, the appeal of the Revenue is dismissed.**

Order pronounced in the open Court on November 30, 2018.

Sd/-  
(S.S. Viswanethra Ravi)  
Judicial Member

Sd/-  
(P.M. Jagtap)  
Vice-President (KZ)

*Kolkata, the 30<sup>th</sup> day of November, 2018*

- Copies to :
- (1) **Deputy /Assistant Commissioner of Income Tax,  
Circle-3(2), Gangtok, Sikkim,  
Aayakar Bhawan, Income Tax Office,  
Bhanupath, Near White Memorial Hall,  
P.O. Raj Bhawan, Gangtok-737 103, Sikkim**
  - (2) **Sikkim Industrial Development & Investment Corporation,  
Bhanupath, P.O. Raj Bhawan,  
Gangtok, East Sikkim-737 103**
  - (3) *Commissioner of Income Tax (Appeals), Siliguri,*
  - (4) *Commissioner of Income Tax- ,*
  - (5) *The Departmental Representative*
  - (6) *Guard File*

*By order*

*Assistant Registrar,  
Income Tax Appellate Tribunal,  
Kolkata Benches, Kolkata*

**Laha/Sr. P.S.**