IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH: KOLKATA
[Before Shri Aby T. Varkey, JM & Dr. A.L. Saini, AM]

I.T.A. Nos. 116 & 117/Kol/2016
Assessment Years: 2010-11 & 2011-12

DCIT, Circle 4(1), Kolkata	Vs.	M/s. Mcleod Russel India Ltd. (PAN: AAACE 6918 J)
Appellant		Respondent

Date of Hearing	10.12.2018
Date of Pronouncement	01.02.2019
For the Appellant	Shri Ajay Kumar. Singh, CIT
For the Respondent	Shri D.S. Damle, FCA

ORDER

Per Shri A.T.Varkey, JM

These appeals filed by the Revenue are against the order of Ld. CIT(A), dated 05.10.2015 for Assessment Years 2010-11 and 2011-12.

2. We first take up the appeal filed by the Revenue in ITA No. 116/Kol/2016 for AY 2010-11. Ground No. 1 raised by the Revenue relates to disallowance of deduction u/s 80IE claimed in respect of profits derived by four tea gardens on the premise that the expansion program in respect of these four tea gardens took place over a period of more than one financial year. Briefly stated facts of the case are that in the return filed the assessee had claimed deduction in respect of profits derived by twenty-eight tea gardens in which the substantial expansion was carried out by the assessee. The eligible undertakings inter alia included nine tea gardens in respect of which deduction u/s 80IE was claimed for the first time because the substantial expansion of the nine tea gardens attained completion during the relevant previous year. In the impugned order the AO admitted that the assessee had produced books of accounts and other details including fixed assets registers of these nine tea gardens in support of its contention that substantial expansion of these gardens was completed during the relevant financial year. On examination of these documents the AO

however noted that out of nine tea gardens, in respect of four tea gardens the process of substantial expansion was started in FY 2007-08 and the deduction was first claimed in AY 2010-11 on the premise that the programme for substantial expansion attained completion in the relevant previous year. According to AO since the substantial expansion was spread over more than one financial year, the criteria laid down in Section 80IE(7) for claiming the deduction was not satisfied and since the substantial expansion was conducted in more than one financial year, it could not be held that the condition of Section 80IE(7)(i) & (iii) were satisfied in FY 2009-10 relevant to AY 2010-11. Accordingly the AO denied the deduction u/s 80IE in respect of four tea gardens, namely Moran, Paneery, Mona bari and Mijicajan. Aggrieved by the assessment order, the assessee preferred an appeal before the Ld. CIT(A) who allowed the assessee's claim for deduction u/s 80IE by holding as follows:

> *"9.6 From the empirical data provided by the assessee, I find that the technical ' teams at tea gardens had devised systematic plan for expansion of production capacities at each of the 4 tea gardens. Based on the work studies carried out at the factories the bottlenecks were identified by the Technical teams. After analyzing the production process the technical teams identified the bottlenecks & then recommended additions to be made in different Sections so as to remove the sectional imbalance and increase the overall production finished tea. The technical team also estimated the overall cost of the expansion project and sought sanction for additional funds. Since the technical studies carried out at twenty eight gardens recommended need for undertaking debottlenecking processes, it was not possible for the appellant to provide requisite funds for all the gardens in one go and in one year in the circumstances it was decided that the debottlenecking exercises would be carried out in a phased manner over a period of two to three financial years by which time the production capacities would get suitably enhanced. Accordingly the four gardens namely Moran, Paneery, Monabarie & Mijicajan invested Rs. 86,13,154/-, Rs. 78,37,009/-, Rs. 2,55,48,207/- & Rs. 118,63,673/- respectively during AYs 2008-09, 2009-10 & 2010-11 in pursuance of the expansion programme formulated by the technical teams for debottlenecking of the production processes at these 4 gardens. From the information placed before me. It appeared that as a consequence the production of tea at Moran, Paneery, Monabarie & Mijicajan went up by 69660 kgs. 87810 kgs., 78020 kgs & 56829 kgs. respectively in AY 2010-11 as compared with AY 2008-09 being the year in which expansion program was conceived & commenced. This empirical data established that not only the assessee made substantial additions to plant & machineries: aggregate cost of which exceeded 25% of the actual cost of machineries at the four tea gardens but as a consequence of the expansion program undertaken, the actual production of tea at all the four gardens actually recorded increase. Had it been a case that the assessee made additions to plant & machineries in the ordinary course of its business and without there being any systematic plan for undertaking expansion of the tea undertaking then there would not have been substantial increase in the production of tea between the period 2008-09 &*

2010-11. On the contrary the documents placed on record proved that the management of the appellant had specially undertaken technical studies at the respective factories to identify the bottlenecks which were causing non-optimal utilization of the production capacities. After conducting detailed work studies, the sections causing bottlenecks were identified. To overcome the bottlenecks a systematic plan was devised on the basis of which the assessee systematically at each of the four gardens with an objective of achieving overall increase in the production. On the facts as are available it cannot therefore be said that the additions made between AYs 2008-09 to 2010-11 at four gardens did not form integral part of the program for expanding the existing undertakings. From the facts & materials on record, it appeared that the assessee had indeed devised and thereafter executed a systematic expansion of its production capacities by adding and installing plant & machineries aggregate value of which exceeded 25% of the actual cost of the plant & machinery which was existing at the time when the expansion program commenced in AY 2008-09.

9.7. In the impugned order the AO placed much reliance on the fact that the assessee had claimed depreciation on some of the items of plant & machineries installed and put to use in AYs 2008-09 and 2009-10. In the circumstances if the machineries were actually used by the appellant in the prior years, then it meant that even without the expansion of the undertaking these machineries were capable of being used and therefore for deciding whether the criteria as laid down in section 80IE was fulfilled, cost of such plant & machineries could not be taken into account. In my considered opinion the condition which the AO has read into section 80IE reads as follows:

(2) This section applies to any undertaking which has during the period beginning on the 1st day of April, 2007 and ending before the 1st day of April, 2017 begun or begins, in any of the North Eastern States –

(i) to manufacture or produce any eligible article or thing

(ii) to undertake substantial expansion to manufacture or produce any eligible article or thing

(iii) to carry on any eligible business

(7) For the purposes of this section –

(iii) 'substantial expansion' means increase in the investment in the plant and machinery by at least twenty-five per cent of the book value of plant and machinery (before taking depreciation in any year), as on the first day of the previous year in which the substantial expansion is undertaken

9.8 From the plain reading of Section 801E, it is apparent that nowhere the Section requires that the additions to the fixed assets exceeding 25% should be carried out in any one previous year. There is no bar on the assessee to conduct or carry out the expansion programs over a period of time that would exceed one financial year. The language of the Act indicates that the threshold limit concerning addition to plant & machineries exceeding 25% should be calculated with reference to the actual cost of the

plant & machinery of the relevant undertaking as on the first date of the previous year in which tire expansion of the undertaking is commenced by the assessee. If the expansion is commenced in the year 1 and the same gets completed in the year 3 then it has to be demonstrated that the additions made as a part of the expansion program exceeded 25oio of the cost of plant & machinery of that

undertaking on the first date of the first financial year The language of Section 80lE does not preclude the assessee to claim depreciation at any time during the period when the expansion is ongoing. The language employed by the Legislature nowhere provides that it is only on completion of the entire expansion project that the assessee should pass entries in its books recording the capitalization of actual costs and only thereafter the assessee should claim depreciation allowance in respect of these machineries. The language employed in Section 80IE does not prohibit the assessee from capitalizing the cost of plant & machinery forming part of the substantial expansion in its books from time to time and claim depreciation if the conditions of section 32 are fulfilled section 80IE also does not require the assessee from making the expanded undertaking operational only in one go. There is no prohibition in section 80IE of the Act if the expanded undertaking becomes operational I phases and depreciation thereon is claimed accordingly. In my opinion the interpretation of section 80IE as made by the AO is not correct since he has imposed his own restrictive conditions which are not so prescribed by the Legislature. The AO has interpreted Section 80IE in a manner by which the assessee's are precluded from capitalizing the cost of expansion in a phased manner. AO has also imposed prohibition from making the expansion program operational in phases.

9.9 I find merit in the submissions of the AR that Section B0lE is a beneficial provision of the LT. Act. lt is enacted by the Legislature to provide boost to the economic and industrial growth of the North Eastern part of India which is known to be economically backward. The intention of the Legislature in enacting Section 80lE was to encourage even the existing industrial undertaking to make additional & fresh investment in plant & machineries so that industrial growth in the North Eastern part of the country was given impetus. The intent and purpose of enacting Section 80lE was to provide profit based incentive to those assessee who made investments exceeding 25% of actual cost of their existing plant & machineries and thereby increase the production capacities. From the facts as placed before me it is evident that the assessee had undertaken substantial expansion of its production capacities at twenty eight gardens. Obviously when number of undertakings were as large as twenty eight, it was not possible for the assessee to provide funds for carrying out expansion at all twenty eight gar-dens in one year. In the circumstances as a prudent businessman the assessee had undertaken expansion at four tea estates in a phased manner over a period of three financial years. The empirical data proved that therefore the additions were made a technical study and evaluation of production processes was carried out by the technical teams of the assessee. The technical teams after conducting work studies had identified the sectional imbalances in the production capacities and suggested additions in the plant & machineries in different sections to bring about debottlenecking of the production process. In view of the constraint on the funds the exercise of debottlenecking was carried out in phases. As and when section-wise debottlenecking was carried out the newly installed machineries were put to use and thereby increase in production was

achieved in gradual and phased manner. On the conclusion of the expansion program the overall production actually recorded substantial increase. On these facts therefore I am satisfied that merely because the substantial expansion was carried out in phased manner and the assets comprised in the expansion were put to use in the earlier financial year could not negate the appellant's claim for deduction u/s 80IE of the Act, particularly when the factual matrix of the case established that the aggregate cost of acquisition of various plant & machineries in the four tea gardens exceeded threshold limit of 25% considered cumulatively over a period AYs 2008-09 to AYTs 2010-11. From the details furnished I find that the conditions specified in section 80IE of the Act were fulfilled by the assessee. On the contrary I find that the AO has read into section 80IE such conditions which were not expressly enacted by the Legislature and therefore the AO was not justified in rejecting the claim u/s 80IE."

Against the order of the Ld. CIT(A), the Revenue is in appeal before us.

3. We have heard the rival submissions of both the parties. The Ld. DR appearing on behalf of the Revenue strongly relied on the order of the AO and vehemently argued that in order to claim deduction u/s 80IE it was necessary for the assessee to demonstrate that the substantial expansion had been carried out only in one financial year. Referring to clauses (i) & (iii) of Section 80IE(7) the Ld. DR submitted that for the purpose of ascertaining whether the substantial expansion has been carried out, the comparison should necessarily be made between the gross block of plant & machinery at the completion of substantial expansion and the gross block of plant & machinery on the opening date of the relevant previous year in which substantial expansion is complete. Since in the assessee's case this crucial test was not met, the Ld. DR argued that the AO was perfectly justified in rejecting the assessee's claim for deduction in respect of these four gardens.

4. Per contra, the Ld. AR fully supported the appellate order wherein the Ld. CIT(A) had discussed all the relevant facts and material as also applicable legal provisions of Section 80IE. The Ld. AR also brought to our attention the decision of the coordinate bench of this Tribunal in the case of Jayshree Industries Ltd Vs Jt. CIT in ITA No. 359/Kol/2014 dated 16.03.2018 wherein identical question was answered in favour of the assessee. The Ld. AR therefore claimed that qua this Tribunal the issue involved in this ground was no longer res integra and was squarely decided in assessee's favour. He therefore prayed that the order of the Ld. CIT(A) be upheld.

5. After giving due consideration to the facts of the case and findings recorded by the Ld. CIT(A) in his appellate order, we find that in the impugned order the Ld. CIT(A) after going through the material filed before the AO came to a definite finding that the assessee had in fact made addition to the block of plant & machinery which exceeded 25% in value compared to the opening gross block of plant & machinery as on 01.04.2007 being the first day of the financial year in which the substantial expansion had begun. Before us the Ld. DR was unable to controvert this factual finding of the Ld. CIT(A). We therefore the find that the only issue agitated by the Revenue in Ground No. 1 is answered squarely in assessee's favour by this Tribunal in case of Jayshree Industries Ltd Vs Jt. CIT (supra). In that case also the AO had disallowed the assessee's claim for deduction u/s 80IE in respect of tea garden on the ground that increase in the investment in the plant & machinery by more than 25% of the book value was carried out in more than one financial year. This Tribunal after examining the provisions of Section 80IE recorded a categorical finding that nowhere the said Section mandated that the substantial expansion once commenced should be completed within the same financial year. The coordinate Bench of this Tribunal therefore did not find merit in the Revenue's objection that for claiming deduction u/s 80IE it was necessary for the assessee to achieve the substantial expansion within one financial year. Respectfully following the aforesaid decision in the case of Jayshree Industries Ltd Vs Jt. CIT (supra), we reject Ground No. 1 of the Revenue.

6. Ground No. 2 raised by the Revenue is against the Ld. CIT(A)'s order directing the AO to consider interest income under the head 'Business' without appreciating the fact that interest income earned by the assessee from FDs and financial institutions had no nexus with the assessee's business of growing & manufacturing tea. At the outset the Ld. AR of the assessee pointed out that this very issue was adjudicated in assessee's favour by the jurisdictional Hon'ble Calcutta High Court in assessee's own case in its judgment rendered in ITAT No. 92 of 2013 dated 19.06.2018 for the AY 2007-08. The Ld. AR submitted that in AY 2007-08 also the assessee had earned interest from FDs and financial institutions

which was assessed by the AO under the head 'Other Sources' and benefit of Rule 8 was denied to the assessee. On appeal the Ld. CIT(A) upheld the assessee's contention by observing as follows:

"14. I have carefully considered the submissions of the A/R and have perused the decision of the Jurisdictional High Court in the case of Eveready Industries (I) Ltd for the A.Y. 1991-92 & 1992-93. In the audited accounts for the year ended 31st March 2007 appellant had debited gross interest of Rs.43,44,53,000 lacs and separately credited Rs.1,64,65,000, out of which Rs.4,74,687 being exempt interest, i.e. Rs.1,59,90,313/- being gross interest received on loans and deposits. The net interest expenditure was therefore Rs.41,79,88,000/-. According to A.O. Rule-8 was not applicable to the interest received as it did not have any element of agricultural income. By the same logic, the entire interest debited in the Profit & Loss A/c also did not have element of expenditure incurred wholly & exclusively in relation to business of growing and manufacture of tea. In any business; fund position undergoes change on day-to-day & from moment to moment. Interest is a charge for use of funds. Interest income is a charge received for use of assessee's business funds by other persons. Similarly interest expenditure is a charge paid by the assessee for use of funds belonging to others. To determine the effective cost of borrowings; it is therefore necessary to set off the interest received against interest paid and only the net interest can be considered to be business expenditure for tax purposes. In the present case after setting off interest received against interest paid there was net interest expenditure of Rs.41,79,88,000/-. which was incurred in connection with business of growing and manufacture of tea to which M/s. Mcleod Russel India Ltd. :A.Y. : 2007-08 Rule - 8 was applicable. I do not find substance in the AO's hypothesis that gross interest paid represented expenditure of tea business to which Rule - 8 was applicable whereas gross interest received represented non agricultural income to which Rule - 8 was not applicable. Having regard to the nature of business and composite nature of funds deployed, the only correct method was to set off interest received against interest paid. This proposition is accepted by the Jurisdictional Calcutta High Court in the case of Eveready Industries (I) Ltd in 1TA Nos 123 of 2000 dated 22.12.2009. In that case also the assessee engaged in business of growing and manufacture of tea had derived interest income which was assessed subject to application of Rule-8. In the regular income tax assessments, the AO did not assess interest income separately but considered the interest to be part of the composite business of growing and manufacture of tea & thereby assessed only 40% of such income under central income tax assessment. The C I T in his order u/s 263 directed to AO to assess gross interest received as fully chargeable to tax under Central Income Tax. The Order of the CIT u/s 263 was upheld by the Tribunal. On further appeal, the Calcutta High Court however held that the interest income was rightly treated by the AO to be part of assessee's business of growing and manufacture of tea subject to Rule - 8 and therefore only 40% of interest income could be brought to Central Income Tax.

15. The decision of the Calcutta High Court squarely answers the question raised in Ground No. 6 of the present appeal. In appellant's case also after netting of interest received against interest paid there is net expenditure of Rs.41,79,88,000/- which could only be considered to be expenditure incurred in connection with assessee's business of growing and manufacture of tea. The AO could not treat interest paid and interest received of different footings. I

therefore direct AO to consider interest receipt of Rs.1,59,90,313/- as part of assessee's income of growing and manufacture of tea and therefore in computing book profits only 40% of such interest could be brought to tax for the purposes of Sec. 115 JB of the Act. The AO shall accordingly re-compute the book Profits."

7. On further appeal the coordinate bench of this Tribunal reversed the Ld. CIT(A)'s order and restored the AO's order assessing interest income wholly to Central Income-tax without giving benefit of Rule 8. Being aggrieved the assessee carried the matter before the Hon'ble Calcutta High Court wherein the following the question was raised:

"Whether the interest income derived from temporary investment of surplus borrowed funds for the business of growing and manufacturing of tea, would fall within the scope of Rule 8 of the Income Tax Rules, 1962?

8. In its judgment the Hon'ble Calcutta High Court found merit in the assessee's case and set aside the decision of this Tribunal and restored the order of the Ld. CIT(A) holding that the interest income was liable to be set off against the interest expense and only the net interest expenditure was liable to be considered for assessing income from composite business to which Rule 8 was applicable. The Ld. AR also brought to our attention the decision of the coordinate Bench of this Tribunal in the case of Eveready Industries India Ltd for the AY 1997-98 in ITA No. 959/Kol/2002 wherein also the identical view was expressed by the Tribunal. The Tribunal held that since assessee paid interest on loans and also derived interest on deposits, the interest received had to be netted off against interest payment and only the net interest expenditure could be considered in computing the composite income of growing & manufacture of tea. Against this order of the Tribunal, an appeal u/s 260A was filed by the Revenue before the Hon'ble Calcutta High Court raising the following question of law :

(iv) Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is correct in holding interest of Rs. 22, 07, 47, 000/- received as "Profits and Gains of Business" instead of "Income from other Sources", contrary to law, on the basis of its order for earlier years against which appeals under Section 260A of the Income Tax Act, 1961 have been admitted by the Hon'ble Court ?

9. In its judgment dated 09.08.2018 in ITA No. 789 of 2004, the Hon'ble Calcutta High Court dismissed the appeal of the Revenue inter alia including the question raised above. The Ld. DR was unable to controvert the submissions of the Ld. AR as also the findings of the Ld. CIT(A) which are in consonance with the view taken by the Hon'ble Calcutta High Court in assessee's own case for AY 2007-08. Respectfully following the judgement of the Hon'ble Calcutta High Court rendered in assessee's own case, we therefore see no reason to take any contrary view. Accordingly Ground No. 2 raised by the Revenue is rejected.

10. In the result, the appeal of the Revenue in ITA No. 116/Kol/2016 is dismissed.

11. Now we proceed to deal with the Revenue's appeal in ITA No. 117/Kol/2016 for AY 2011-12. Ground No. 1 of the appeal relates to the disallowance of deduction claimed u/s 80IE in respect of eight tea gardens on the premise that substantial expansion in respect of these gardens was carried out over more than one year. After considering the rival submissions, it is observed that the issue involved in this ground is identical to Ground No.1 of department appeal in A.Y. 2010-11. In the AY 2010-11, the AO had disallowed the deduction claimed in respect of four tea gardens, namely Moran, Paneery, Mona bari and Mijicajan. In the AY 2011-12, besides disallowing the claim in respect of the foregoing four tea gardens, the AO disallowed the claim made in respect of tea gardens at Phillobari, Rajmai, Nyagogra & Dehing which had completed the expansion in the relevant previous year and the deduction was first claimed in the year under consideration. The reasons for making the disallowance in the year under consideration are same as discussed in the assessment order for AY 2010-11. The order of the Ld. CIT(A) was also passed on identical lines on which the relief was allowed in the appellate order for AY 2010-11. Therefore, following our conclusions drawn in A.Y. 2010-11, we dismiss this Ground raised by the Revenue and uphold the order of Ld. CIT(A).

12. Ground No. 2is against the order of Ld. CIT(A) directing the AO to assess interest income under the head 'Business' and grant the benefit of Rule 8. After considering the

rival submissions and the orders of the authorities below, it is observed that the issue involved in this ground is similar to the Ground No.2 of department appeal in A.Y. 2010-11. Following our conclusion in A.Y. 2010-11, we uphold the order of Ld. CIT(A) and dismiss this ground of the revenue.

13. In the result, the appeal of the Revenue in ITA No. 117/Kol/2016 is also dismissed.

Sd/-	Sd/-
(A.L. Saini)	(Aby. T. Varkey)
Accountant Member	Judicial Member

Dated : 01 February, 2019

Biswajit (Sr.P.S.)

Copy of the order forwarded to:

1. Appellant – DCIT, Circle 4(1), P-7, Chowringhee Square, Kolkata – 69.
2. Respondent – M/s. Mcleod Russel India Ltd., 4,Mangoe Lane, Kolkata – 01.
3. The CIT(A)
4. CIT
5. DR, ITAT, Kolkata.

/True Copy, By order,

Assistant Registrar/H.O.O.
ITAT Kolkata