

IN THE INCOME TAX APPELLATE TRIBUNAL  
KOLKATA BENCH 'B', KOLKATA  
(Before Shri A.T. Varkey, J.M. & Dr.A.L.Saini, A.M.)

ITA No. 125/Kol/2018 : Asstt. Year : 2014-15

A.C.I.T, Cir-4(1), Kolkata	Vs	M/s. Darjeeling Organic Tea Estates (P).Ltd PAN: AADCD 1923B
(Department)		(Respondent)

Department by : Shri Robin Choudhury, Addl. CIT, Id.Sr.DR  
Assessee by : Shri S. M Surana, Advocate, Id.AR

Date of Hearing : 28-01-2019	Date of Pronouncement: 29-03-2019
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ORDER

Per Dr. A.L.Saini, A.M.:

The captioned appeal filed by the Revenue, pertaining to assessment year 2014-15, is directed against the order passed by the Commissioner of Income-tax (Appeals)-2, Kolkata, in Appeal No. 11209/CIT(A)-2/16-17, dated 02-11-2017, which in turn arises out of an order passed by the Assessing Officer u/s. 143(3) of the Income-Tax Act, 1961 (in short, the 'Act'), dated 30-12-2016.

2. Grounds of appeal raised by the Revenue are as follows:-

1. *Whether on the facts and in circumstances of the case and in law, the Id. CIT(A) erred in holding that interest income earned by the assessee on Fixed Deposit was not 100% central taxable income as and this is eligible for apportionment under rule 8 of Income Tax Rules, 1962.*

2. *Whether on the facts and in circumstances of the case, the CIT(A) has erred in holding that interest income was incidental to the business of assessee ignoring the fact this income had no direct nexus with assessee's main business i.e growing and manufacturing of tea.*

3. When this appeal was called out for hearing, learned counsel for the assessee invited our attention to the order dated 07.02.2018, passed by the Division Bench of this Tribunal in assessee's own case in ITA No.964/Kol/2017, for the Assessment Year 2012-13, whereby the issue whether fixed deposit interest is eligible for apportionment under Rule 8 of the Income Tax Rules, has been discussed and adjudicated in favor of assessee. Learned counsel for the assessee submitted that the present appeal is squarely covered by the aforesaid order of the Tribunal, a copy of which was also placed before the Bench.

4. Learned Departmental Representative relied upon the order of the assessing officer.

5. We see no reasons to take any other view of the matter than the view so taken by the Division Bench of this Tribunal in assessee's own case vide order dated 07.02.2018, In this order, the Tribunal has inter alia observed as follows:

*“6.1 On perusal of order of Ld. Pr CIT we note that Ld. Pr. CIT has held the order of AO as erroneous in so far as prejudicial to the interest of revenue without considering the submission made by assessee before him during the proceedings. The submission made by assessee vide letter dated 23.02.2017 reads as under:-*

*"with regard to the assessment of the interest income on Fixed Deposit, it has been stated by your honour that interest income should not have been assessed by the Ld. AO as composite income. On first look your honour's assertion may be correct. However, if your honour will kindly appreciate the facts, it will be evident that the Fixed Deposits were made from out of the cash credit account and on maturity, the fixed deposit was transferred to the same very cash credit account. Fixed deposit had to be made for the purpose of sanction of higher cash credit by the banker and the fixed deposit was made in the same bank granting cash credit. It was statutory requirement for the banks to maintain fixed deposit of the required amount to enjoy the cash credit facility which was part of the agreement with the bank. If your honour will kindly look into the balance sheet of the company it will be evident that the loan from the bank was more than 28 crores as at the end of the assessment year in question and more than 53 crores as at the beginning of the year. It may also be noted that there was no net interest income since interest paid on the cash credit as per balance sheet was over Rs. 10 crores which included over Rs.5*

*crores against the cash credit account. Therefore, no part of the interest received can be treated as independent income but interest received should be telescoped with the interest paid. In fact, it was the requirement of the bank to maintain particular amount of fixed deposit as per the terms of cash credit account. In fact, this issue was also raised by the AO when required documents were produced in this connection, it is further submitted that in view of the following judgements interest on fixed deposit cannot be separately taken as income from other sources when the assessee is enjoying the cash credit facility against the same FD and FD was also made from the cash credit account. Reference in this connection is invited to the decision of ITAT in the case of Somnath Roy Choudhury in ITA No. 615/K/2013 dated 20.1.2016 vide para 5(1) of the said order."*

*From the above, we observe that ld. Pr. CIT u/s 263 of the Act has not pointed out any defect in the submission filed by assessee before him during proceedings. The assessee before Ld. Pr. CIT has made the submission that amount of interest income is directly linked with the agricultural operation of assessee. Therefore, the same has to be included in the composite income as specified under Rule 8 of IT Rules, 1962. We find force in the advanced argument placed by Ld. AR for the assessee as the impugned interest income is directly linked with the agricultural operation of assessee. In holding so, we find support and guidance from the judgment of Hon'ble jurisdictional High Court in the case of [Eveready Industries India Ltd. v. CIT & Anr.](#) reported (2010) 323 ITR 312 (Cal) wherein the Hon'ble court has held:-*

*39. As we have already narrated above that the assessee in this case procured loans from banks and other financial institutions for its tea growing and manufacturing business and part of such funds remain temporarily unutilized. The assessee, instead of keeping the amount idle, invested the surplus funds in short-term interest bearing fixed deposits and earned interest. The main activity of the assessee is growing, manufacturing and selling of teas and not that of earning interest by investing in short-term fixed deposits.*

*The assessee earned interest on such short-term fixed deposits made out of the business funds available with the assessee before they were utilized for actual business and, therefore, the*

*same was incidental to the business activity of the assessee-company and interest on such short-term deposit must be treated as business income. The assessee, a tea growing and manufacturing company, was left with surplus funds. The assessee invested such surplus funds in short-term deposits to exploit the business funds of the company and earned interest. Therefore, the interest income of the assessee is business income and not income from other sources.*

*40. We are, therefore, of the opinion that the Income-tax Appellate Tribunal and the Commissioner of Income-tax substantially erred in law in directing the Assessing Officer to revise the assessments of the aforementioned assessment years by treating the income earned by the assessee from such short-term investments as 100 per cent, (hundred) per centum assessable treating the same as income from other sources.*

*41. We hold that, in the facts and circumstances of the case, the Assessing Officers were right in treating the interest income earned by the assessee by investing surplus fund of the business in short-term deposits as business income and rightly applied the tests as provided in sub-rule (1) of rule 8 of the said Rules while making the assessments in relation to the income of the assessee.*

*6.2 We also find support and guidance from the judgment of Hon'ble jurisdictional High Court in the case of [Warren Tea Ltd. vs. CIT & Anr.](#) reported (2015) 374 ITR 6 (Cal), wherein the Hon'ble jurisdictional High Court has held:-*

*"The funds may not always be necessary or may not always be blocked. Therefore, the funds which were surplus at any point of time were fruitfully invested in short-term fixed deposits and the assessee thus earned interest which in a way has reduced its burden on account of interest as would appear from the two figures indicated above. It is, therefore, not possible to hold that the interest earned was not a business income. When the assessee has paid interest of nearly Rs. 2.66 crores and has earned interest of nearly Rs. 1.88 crores, the effective debit on that side is less than Rs. 1 crore.*

*8. We are, as such, unable to see any reason why it can be said that the interest earned by the assessee should not be treated as the business income for the purpose of the benefit under section 33AB. The two judgments, cited by Mr. Majumdar, also*

*support the contentions of the assessee. Another reason why the views expressed by the Tribunal cannot be accepted is that the benefit under section 33AB can be obtained provided the assessee has made the deposits with the national bank. Such deposits are not interest-free deposits. Interest also accrues from such deposits. If the intention of the Legislature was that income arising out of interest is to be excluded then a specific provision in that regard would have been made in the section itself.*

*9. For the aforesaid reasons, the impugned judgment and order passed by the learned Tribunal is set aside. The questions framed above are answered in favour of the assessee and the appeal is allowed."*

*From the above proposition, we find that the income is directly linked with the business operation of assessee. Therefore, same is liable for taxation in the manner specified in Rule 8 of IT Rules, 1962. Keeping in view the above stated discussion and also bearing in mind entirety of the case, we deem it fit and proper to uphold the grievance of the assessee and quash the impugned revision order as devoid of jurisdiction. The assessee gets the relief, accordingly".*

6. As the issue is squarely covered in favour of assessee, by the judgment of the coordinate bench, in assessee's own case (supra) and there is no change in facts and law and the ld. DR for the Revenue has not controverted the findings of the order of Tribunal in assessee's own cases (supra), hence, respectfully following the said order of the Tribunal in assessee's own case (supra), we dismiss ground nos. 1 & 2 of revenue's appeal.

7. In the result, the appeal filed by the Revenue is dismissed.

Order Pronounced in the Open Court on 29-03-2019

Sd/-

(A.T Varkey )  
Judicial Member

Sd/-

(Dr. A.L.Saini)  
Accountant Member

Dated: 29 -03-2019

\*PRADIP (Sr.PS)

Copy of the order forwarded to:

1. The appellant/Revenue : The ACIT, Cir-4(1), Kolkata, Aaykar Bhawan, P-7 Chowringhee Square, 8<sup>th</sup> Floor, Kolkata-69.
2. The respondent/Assessee: M/s. Darjeeling Organic Tea Estates P.Ltd Jain Centre, 34A Metcalf Street, 7<sup>th</sup> Floor, Mission Row, Kolkata-1.
3. The CIT-I,
4. The CIT(A)-I,
5. DR, Kolkata Benches, Kolkata

True Copy,

By order,

Asst. Registrar

ITAT, Kolkata Benches