

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "G", MUMBAI**

**BEFORE SHRI RAJESH KUMAR, ACCOUNTANT MEMBER AND
SHRI RAM LAL NEGI, JUDICIAL MEMBER**

**ITA No.7464/M/2016
Assessment Year: 2012-13**

M/s. G.K. Founders P. Ltd., B-201, Jyoti Plaza, Above Om Sai Tata Motors, S.V. Road, Kandivali (West), Mumbai – 400 067 PAN: AAACG4385R	Vs.	Asst. Commissioner-14(1)2, Mumbai
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Vimal Punmiya, A.R.
Revenue by : Shri Choudhary Arunkumar Singh, D.R.

Date of Hearing : 30.04.2019
Date of Pronouncement : 14.05.2019

ORDER

Per Rajesh Kumar, Accountant Member:

The present appeal has been preferred by the assessee against the order dated 14.09.2016 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2012-13.

2. The grounds raised by the assessee are as under:

"1. The Learned Commissioner of Income Tax (Appeals) erred in considering the Interest Income received on LC, FD and Bank Guarantee, Bank Interest, Interest on VAT Refund and Interest on HDFC Asset Management as Income from other sources and not as Business Income and thereby denying deduction u/s 80.1B of Income Tax Act.

2. The Learned Commissioner of Income Tax (Appeals) also erred in ignoring the Commissioner of Income Tax (Appeal) order for Assessment Year 2010-11 which

was on similar grounds and the appeal was allowed in favour of the assessee company.

3. The Learned Commissioner of Income Tax (Appeals) erred in charging Interest u/sec.234B and 234C of the I.T Act, 1961 and having regard to the fact and the circumstances of the case and in law the appellant denies its liability for payment of any interest under the various provisions of the Act.”

3. The issue in the 1st ground of appeal is against the order of Ld. CIT(A) upholding order of AO by treating the interest income on LC, FD and bank guarantee, interest on VAT, refund and interest on HDFC asset management as income from other sources as against the assessee’s treatment of the same as business income thereby denying deduction under section 80IB of the Act.

4. The facts in brief are that the assessee filed the return of income on 29.09.2012 declaring income at Rs.81,85,950/- after claiming deduction under section 80IB of the Act equal to Rs.35,08,263/- which was processed under section 143(1) of the Act. Thereafter the case of the assessee was selected under scrutiny and statutory notices were duly issued and served upon the assessee. During the course of assessment proceedings, the AO found that assessee has credited under the head “other income” in the P&L account a sum of Rs.44,15,532/- comprising bank interest of Rs.33,663/-, interest on VAT refund of Rs.30,967/- interest on LC, FD and bank guarantee of Rs.42,47,259/-, interest on HDFC with asset management of Rs.1,03,643/-. According to the AO, the said interest was wrongly treated as income from business as the same falls under the head “Income from other sources” and accordingly a show cause notice was issued to the assessee which was replied by the assessee vide letter dated 03.02.2015. The AO rejected

the contentions of the assessee and treated the same as income from other sources on the ground that same is not emanating from business activity of the assessee by relying on the decision in the case of Murli Investment Co. vs. CIT 167 ITR 368 (Raj), Godavari Sugar Mills Ltd. vs. CIT 191 ITR 359 (Bom) and South India Shipping Corporation Ltd. vs. CIT (1999) 240 ITR 24 (Madras). The AO further relied on the case of Kinfra Export Promotion Industrial Ports Ltd. vs. DCIT (2013) 59 SOT 57 (URO Kochin) wherein it has been held that if interest income is not derived from eligible undertaking it is not eligible for deduction. According to the AO, there is no direct nexus between the interest income with the business activity and same could not be considered as profit and gain from eligible undertaking and hence deduction was denied by framing assessment under section 143(3) dated 13.02.2015.

5. In the appellate proceedings, the appeal of the assessee on this ground was dismissed by the Ld. CIT(A) by observing and holding as under:

"5.3 I have considered the facts of the case and the appellant's submissions. The appellant company is engaged in the business of manufacturing of aluminum ingots and had claimed deduction u/s 80IB. The pertinent issue to be decided is not whether per se the interest income constituted business income or income from other sources but whether deduction u/s 80IB can be claimed in respect of such interest income. Deduction u/s 80IB is allowable in respect of the profits and gains derived from the manufacturing activities of the industrial undertaking. The operational word used in the section is "derived from" and not "attributable to". The Hon'ble Supreme Court in *Cambay Electric Industrial Co. Ltd. v. CIT* 113 ITR 84 (SC) had clearly stated that the expression "derived from" had a narrower connotation than the expression "attributable to". This was reiterated in *Pandian Chemicals Ltd. v. CIT*, 262 ITR 278(SC) wherein it held that "*It is clear, therefore, that the word "derived from" in Section 80HH of the income-tax Act, 1961, must be understood as something which has direct or immediate nexus with the appellant industrial undertaking*". The Hon'ble Apex Court accordingly affirmed the order of the Hon'ble Madras High Court holding that the interest on deposits with Tamil Nadu Electricity Board cannot be treated as income derived by the industrial undertaking for the purpose of Section 80HH. It is, therefore, settled law now that

incidental business receipts which have no nexus with the manufacturing activity of the industrial undertaking will not be eligible for deduction u/s section 80IB, The interest income earned had no direct or immediate nexus with the manufacturing activity of the appellant. It is, at best an incidental business receipt and will not be eligible for the purpose of claiming deduction u/s 801B. The disallowance made by the Assessing Officer is upheld. The appellant's ground of appeal is dismissed.”

6. The Ld. A.R. vehemently submitted before us that the fixed deposits were required for obtaining letter of credit and other credit facilities, hence the interest income is directly related to the business and has to be treated as business income. The assessee has to maintain margin as mandated by the bank as is clear from the sanction letter of the State Bank of India filed in the paper book. The assessee submitted that the credit facilities were availed from State Bank of India in the form of cash credit, buyers credit, LC, bank guarantees etc. for which company has give fixed deposits as securities. The Ld. A.R. therefore submitted that the facts of the assessee's case are completely different from the decisions relied upon by the AO and Ld. CIT(A). In defence of his argument, the Ld. A.R. relied on a series of decisions.

1. CIT vs. Jaypee Dsc Ventures Ltd. (ITA No.357/2010 dated 16.12.2010 (Delhi-HC)
2. CIT vs. Indo Swiss Jewels Ltd. (2005) 284 ITR 389 (Bom.)
3. Lok Holdings (2008) 308 ITR 256 (Bom.)
4. CIT vs. Koshika Telecom (2006) 287 ITR 479 (Delhi)

The Ld. A.R. submitted that even in the assessee's own case similar issue was allowed by Ld. CIT(A) in the assessment year 2010-11 by allowing the appeal in favour of the assessee a copy of which is placed on page No.108 to 110 of the paper book. The Ld. A.R., therefore, prayed before the Bench that since the issue has already been decided in favour of the assessee by the Ld. CIT(A) in A.Y. 2010-11, the same may kindly

be allowed in the current year also as the income earned has the nexus with the manufacturing of aluminum ingots as these fixed deposits were required as security in order to avail the credit facilities from State Bank of India for the purpose of manufacturing activity of the assessee.

7. The Ld. D.R., on the other hand, relied heavily on the orders of lower authorities by submitting that the interest income has rightly been treated as income from other sources by the AO and rightly confirmed by the Ld. CIT(A) as there is no direct nexus between the business of the assessee and the interest income for the purpose of allowing deduction under section 80IB of the Act. The ld DR argued that the word used is income derived from the manufacturing activity whereas in the present case the interest income has no such direct nexus and therefore the order of Ld. CIT(A) deserved to be upheld on this issue.

8. After hearing both the parties and perusing the material on record, we observe that the assessee being in the business of manufacturing of aluminum ingots has availed various credit facilities in the form of cash credit, buyer credit, LC, bank guarantee etc. from State Bank of India for which it has to keep the necessary deposits as securities as per the bank mandate and the assessee has earned interest income as has been stated hereinabove. We further find that the Ld. CIT(A) in A.Y. 2010-11 has decided the issue in favour of the assessee by following the decision of CIT vs. Koshika Telecom Ltd. 287 ITR 479 (Delhi) wherein it has been held that interest flowing from deposits made by the assessee which are inextricably linked to the

business of the assessee can not be treated as income from other sources. In the case of CIT vs. Jaypee Dsc Ventures Ltd. (supra) it has been held by the Hon'ble Delhi High Court that where the money is deposited into bank not as surplus money but out of business exigencies and necessities, then the interest acquires the character of business receipts. In the case of CIT vs. Indo Swiss Jewels Ltd. (supra) the interest earned on short term deposits kept apart for the purpose of business has to be treated as income earned from business and can not be treated as income from other sources. Similarly, in the case of CIT vs. Koshika Telecom (supra) which has been relied upon by the predecessor CIT(A) to decide the appeal in favour of the assessee in A.Y. 2010-11 has the same ratio. Accordingly, we respectfully following the decisions as discussed hereinabove direct the AO to treat the interest and the various deposits as stated hereinabove as income from business and not from income from other sources. Accordingly, the assessee is entitled to deduction under section 80IB. The AO is directed accordingly.

9. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 14.05.2019.

Sd/-
(Ram Lal Negi)
JUDICIAL MEMBER

Sd/-
(Rajesh Kumar)
ACCOUNTANT MEMBER

Mumbai, Dated: 14.05.2019.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai

The DR Concerned Bench
//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.