

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'E' : NEW DELHI)**

**BEFORE HON'BLE VICE PRESIDENT, SHRI G.D. AGRAWAL
and
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.1748/Del./2016
(ASSESSMENT YEAR : 2011-12)**

M/s. Sunland Alloys, vs. JCIT, Range 39,
A – 49/1, Wazirpur Indl. Area, (now ACIT, Circle 36(1)),
Delhi – 110 052. New Delhi.

(PAN :AAXFS1913K)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Sudhir Kumar, CA
Shri Achin Garg, Advocate
REVENUE BY : Smt. Rinku Singh, Senior DR

Date of Hearing : 15.05.2019

Date of Order : 29 .05.2019

ORDER

PER KULDIP SINGH, JUDICIAL MEMBER :

Appellant, M/s. Sunland Alloys (hereinafter referred to as the 'assessee') by filing the present appeal sought to set aside the impugned order dated 21.03.2016 passed by the Commissioner of Income-tax (Appeals)-20, New Delhi qua the assessment year 2011-12 on the grounds inter alia that :-

“1 The ld. Commissioner of Income Tax (Appeals) - 20, New Delhi [hereafter the CIT (A)] erred in dismissing the ground of appeal that the assessment is bad in law inter alia because any valid notice u/s 143 (2) of the Income Tax Act, 1961 (hereafter

the Act) was neither issued nor served within the limitation period provided by proviso to section 143 (2) of the Act.

2 The ld. CIT (A) erred in upholding the disallowance of deduction of Rs.2,61,488 u/s 80IB of the Act in respect of interest on fixed deposits made for pledging to open letter of credit and to obtain bank guarantee.

Without prejudice and alternatively: the ld. CIT (A) erred in upholding not setting off of Rs.10,45,953 being interest on FDR, which were purchased from the OD account, against the interest paid to Bank on the OD account.

3 The ld. CIT (A) erred in holding that the ground of appeal that, "The ld. JCIT erred in charging interest u/s 234D of the Act and further erred in withdrawing interest u/s 244A of the Act; and without prejudice the same are excessive" is consequential, without considering the submissions."

2. Briefly stated the facts necessary for adjudication of the controversy at hand are : assessee firm is into the business of manufacturing of aluminum alloy ingots and trading of non-ferrous metal scrap and started its manufacturing unit for manufacturing of aluminum alloys ingots during financial year 2003-04 and continued till the year under assessment. Assessee claimed deduction under section 80-IB of the Income-tax Act, 1961 (for short 'the Act') @ 25% of the profit derived from industrial undertaking engaged in manufacturing activities. Assessee declared gross profit of Rs.15,07,12,312/- on the total turnover of Rs.3,36,71,24,650/- yielding GP rate of 4.48 % as against GP rate of 5.6% declared in the immediate preceding year. AO noticed that the assessee has claimed excess deduction under section 80-IB of

the Act. From the report, AO noticed that the total amount of deduction available to the assessee under section 80-IB of the Act was Rs.1,63,29,836/- whereas the assessee has included interest received from Fixed Deposit (FD) with banks amounting to Rs.10,45,953/- as other income and has claimed deduction under section 80-IB of the Act on these receipts also. Since immediate source of interest is depositing (FDRs) which is not the business, so the interest income cannot be held to be derived from the industrial undertaking. Consequently, AO made addition of Rs.2,61,488/- on account of excess claim of exemption under section 80-IB of the Act.

3. Without prejudice and alternatively assessee claimed setting off of Rs.10,45,953/- being interest on FDRs which was purchased from the OD Account against the interest paid to the bank on the OD Account.

4. AO assessed the total income of the assessee at Rs.3,39,05,870/-.

5. Assessee carried the matter by way of an appeal before the Id. CIT (A) Who has partly allowed the appeal. Feeling aggrieved, the assessee has come up before the Tribunal by way of filing the present appeal.

6. We have heard the Id. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

GROUND NO.1

7. Ground No.1 is general in nature, hence does not require any specific adjudication.

GROUND NO.2

8. Undisputedly, assessee is entitled for deduction as claimed for the year under assessment. The assessee has not pressed its primary contention to claim deduction in respect of interest earned on fixed deposits rather pressed the alternative contention which was raised without prejudice for setting off of amount of interest earned on FDRs against the amount paid to the bank on account of interest on cash credit.

9. The AO has only disputed the inclusion of interest received on FDRs with bank amounting to Rs.10,45,953/- for the purpose of deduction under section 80-IB of the Act on the ground that the same is not business income.

10. Ld. AR for the assessee contended that without prejudice and in the alternative, assessee is entitled for setting off of Rs.10,45,953/- against the interest paid to the bank on OD Account

on the basis of rule of consistency as setting off is allowed to the assessee in the last year and in the subsequent year, which fact is not disputed. On the other hand, ld. DR for the revenue supported the order passed by the AO as well as ld. CIT by relying upon the decision cited as *Conventional Fastners vs. CIT – 2018-TIOL-20-SC-IT, CIT vs. Jyoti Apparels – (2008) 166 taxman 343 (Delhi) and CIT vs. Mereena Creations 330 ITR 199 (Delhi)*.

11. Assessee has come up with a specific submission that FDRs have been purchased from the cash credit account maintained with the banks and during the year under assessment, assessee firm has paid Rs.3,12,39,400/- as interest on these cash credit accounts and as such interest earned on fixed deposits on banks should be set off from/against the amount paid to the bank on account of interest in the cash credit accounts.

12. We are of the considered view that when assessee has purchased the FDRs from the cash credit accounts on which it has paid interest of Rs.3,12,39,400/-, the interest earned on the FDRs is eligible to be set off from/against the amount paid to the bank as interest on cash credit account even by following the rule of consistency. These facts are proved from the statement of account issued by the Canara Bank and State Bank of India, available at pages 7 to 13 of the paper book.

13. In view of what has been discussed above, we are of the considered view that when there is no change in the facts and circumstances of the case during the year under assessment and by following the rule of consistency, assessee is entitled for setting off of the interest earned on fixed deposit with the bank against the amount of interest paid to the bank on account of cash credit account on the line of earlier years as well as subsequent years. Consequently Ground No.2 is determined in favour of the assessee.

GROUND NO.3

13. Ground No.3 being consequential in nature needs no specific findings.

14. Resultantly, the appeal filed by the assessee is hereby allowed.

Order pronounced in open court on this 29th day of May, 2019.

**Sd/-
(G.D. AGRAWAL)
VICE PRESIDENT**

**sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

**Dated the 29th day of May, 2019
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)-20, New Delhi.
- 5.CIT(ITAT), New Delhi.

**AR, ITAT
NEW DELHI.**