IN THE INCOME TAX APPELLATE TRIBUNAL

"D" BENCH, MUMBAI

BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND

SHRI N.K. PRADHAN, ACCOUNTANT MEMBER

ITA no.3703/Mum./2017
(Assessment Year : 2011–12)

Asstt. Commissioner of Income Tax
Circle–3(2)(1), Mumbai ……. Appellant

v/s

Maharashtra Airport Development Co. Ltd.
World Trade Centre, Tower–1
Cuffe Parade, Mumbai 400 005
PAN – AADCM9623M ……. Respondent

Assessee by : Shri Salil Kapoor
Revenue by : Shri Rajesh Kumar

Date of Hearing – 03.07.2019	Date of Order – 12.07.2019

O R D E R

PER SAKTIJIT DEY. J.M.

Captioned appeal has been filed by the Revenue challenging the order dated 27th February 2017, passed by the learned Commissioner (Appeals)–8, Mumbai, for the assessment year 2011–12.

2. In ground no.1, the Revenue has challenged the decision of the learned Commissioner (Appeals) in allowing assessee's claim of deduction under section 80IAB of the Income Tax Act, 1961 (for short *"the Act"*).

3. Brief facts are, the assessee, a wholly owned Undertaking of Government of Maharashtra, is engaged in the activity of infrastructure development like setting–up of Special Economic Zone (SEZ) and developing International Airport at Nagpur. For the assessment year under dispute, the assessee had filed its return of income on 29th September 2011, declaring loss of ₹ 5,04,68,884, under the normal provisions and book loss of ₹ 1,80,88,280, under section 115JB of the Act. During the assessment proceedings, the Assessing Officer to verify the deduction claimed under section 80IAB of the Act called upon the assessee to furnish necessary details. After verifying the details furnished by the assessee, he noticed that an amount of ₹ 3,85,32,309, on which the assessee has claimed deduction under section 80IAB of the Act represents interest received on advances given to contractors. Being of the view that such income is not part of the profit derived from business, the Assessing Officer held that it is not eligible for deduction under section 80IAB of the Act. Accordingly, he disallowed assessee's claim of deduction in respect of such income. Further, he treated such income as income from other sources. Being aggrieved, the assessee filed appeal before the first appellate authority.

4. Learned Commissioner (Appeals) taking note of the fact that while deciding identical issue in assessee's own case for the

assessment year 2008–09 the Tribunal has allowed assessee's claim of deduction, followed the same and allowed assessee's claim.

5. The learned Departmental Representative relied upon the observations of the Assessing Officer. Further, he submitted, the advance given to the contractor is for mobilization of machinery. Therefore, the interest income derived cannot be treated as income from business. Thus, he submitted that it has to be assessed under the head income from other sources. In support of such contention, he relied upon the following decisions:–

i) CIT v/s Khattri Perfumers Pvt. Ltd., [2013] 37 taxmann. com 449;

ii) Essar Power Ltd. v/s ACIT, [2013] 32 taxmann.com 346; &

iii) CIT v/s Alpine Solvex Ltd., [2005] 144 Taxman 67.

6. On the other hand, learned Authorised Representative submitted, advances were given to assessee's own contractors who were engaged by the assessee for the purpose of its business. Therefore, the interest income derived from such advances cannot be detached from the business activity. Further, he submitted, the issue is covered by the decision of the Tribunal in assessee's own case for the assessment year 2008–09 to 2010–11.

7. We have considered rival submissions and perused the material on record. It is noticed that the Assessing Officer has disallowed

assessee's claim of deduction in respect of interest expenditure on the ground that it is not derived from the business of infrastructure development. However, it is observed, while deciding identical issue in assessee's own case for the assessment year 2008–09, the Tribunal has allowed assessee's claim of deduction in respect of interest on advance given to contractors. Following the said decision, the Tribunal, while deciding the issue in assessee's own case for the assessment year 2010–11 in ITA no.3072/Mum./2014, dated 19th June 2019, has allowed assessee's claim of deduction with the following observations:–

> *"14. On appraisal of the above mentioned finding, we noticed that the issue has been discussed and decided in favour of the assessee by the Hon"ble ITAT in the assessee'"s own case for the A.Y.2008-09 in ITA. No.1223/M/2013 dated 27.08.2014. The facts are not distinguishable at this stage also. Subsequently, the issue has been decided by CIT(A) in favour of the assessee in the A.Y.2011-12 & 2012-13. Since the matter of controversy has duly been covered in favour of the assessee by the decision of the Hon"ble ITAT in the assessee"s own case for the A.Y.2008-09 in ITA. No.1223/M/2013 dated 27.08.2014, therefore, by honoring the said decision we allowed the claim of the assessee and treated the interest income in sum of Rs. 1,42,29,269/- as business income. Accordingly, this issue is decided in favour of the assessee against the revenue."*

8. Facts being identical, respectfully following the decision of the Tribunal in preceding assessment years, as referred to above, we uphold the decision of learned Commissioner (Appeals) on the issue. Ground is dismissed.

9. In ground no.2, the Revenue has challenged the decision of learned Commissioner (Appeals) in allowing assessee's claim of deduction under section 80IAB of the Act in respect of lease rental income of ₹ 2,04,90,596.

10. During the assessment proceedings, the Assessing Officer noticing that the assessee has claimed deduction under section 80IAB of the Act in respect of income from SEZ comprising of various components such as interest on loan premium, lease rental income, rent from central facility building, lease premium income, etc., was of the view that such income received by the assessee has no nexus with the business carried on by the assessee, hence, proceeded to treat it as income from other sources. Consequently, assessee's claim of deduction under section 80IAB of the Act in respect of such income was disallowed. The assessee challenged the aforesaid decision of the Assessing Officer before the first appellate authority.

11. Learned Commissioner (Appeals), after considering the submissions of the assessee, found that the assessee was created to play a lead role in the planning and implementation of Multi Modal International Hub Airport at Nagpur. On perusing the Memorandum of Association, learned Commissioner (Appeals) found that one of the most essential business activities of the assessee is to operate the SEZ and derive income from leasing out part of it to the eligible person for

eligible activities with the approval of the Government of India and in conformity with the SEZ policy. Thus, he held that the lease rental income received from the SEZ is part of business activity carried on by the assessee. Accordingly, he allowed assessee's claim of deduction.

12. The learned Departmental Representative relied upon the observations of the Assessing Officer.

13. The learned Authorised Representative submitted, identical issue has been decided in favour of the assessee by the Tribunal in assessment year 2007–08 and 2010–11. Thus, he submitted, the issue is squarely covered by the decisions of the Tribunal.

14. We have considered rival submissions and perused the material on record. Though the Assessing Officer has treated the lease rental income as income from other source, however, after verifying the factual details emerging from record, it is noticed that such income is derived from operating the SEZ. As rightly observed by the learned Commissioner (Appeals), one of the major business activities of the assessee is to develop SEZ and give them on lease to the eligible persons / entities in conformity with the Government policy. Thus, in our view, the lease rent income received from SEZ has a proximate connection with the business activities of the assessee. Moreover, while deciding identical issue in assessee's own case for the

assessment year 2010–11, the Tribunal in ITA no.3072/Mum./2014, has followed its decision in assessee's own case for the assessment year 2007–08 and has held that the lease rental income, lease premium, income from CFB, interest on premium, etc., has to be treated as income from business. Respectfully following the decision of the Tribunal in assessee's own case, as referred to above, we uphold the decision of the learned Commissioner (Appeals) on this issue. Ground raised is dismissed.

15. IN grounds no.3 and 4, the Revenue has challenged the decision of the learned Commissioner (Appeals) in deleting the disallowance of ₹ 10,79,818, under section 14A r/w rule 8D.

16. In the course of assessment proceedings, the Assessing Officer noticing that the assessee has made investment of ₹ 23,83,16,789, in exempt income yielding assets proceeded to disallow an amount of ₹ 10,79,818, under section 14A r/w rule 8D. The assessee challenged the aforesaid disallowance before the first appellate authority.

17. The learned Commissioner (Appeals) having found that the assessee has not received any exempt income during the year deleted the disallowance made under section 14A r/w rule 8D.

18. We have considered rival submissions and perused the material on record. From the assessment order itself it is evident that during

the year the assessee has not earned any exempt income. Learned Departmental Representative also could not controvert the aforesaid factual position. Since, the assessee has not received any exempt income during the year, no disallowance under section 14A r/w rule 8D can be made in view of the ratio laid down in a plethora of judicial pronouncements. In fact, while considering identical issue in assessee's own case for the assessment year 2010–11, the Tribunal, in the order referred to above, has deleted the disallowance under section 14A r/w rule 8D, since no exempt income was earned by the assessee during the year. Thus, in view of the above, we do not find any reason to interfere with the decision of the learned Commissioner (Appeals) on this issue. Ground is dismissed.

19. In ground no.5, the Revenue has raised the issue of deletion of disallowance made under section 14A vis–a–vis book profit computed under section 115JB of the Act.

20. Having considered rival submissions, we are of the view that as per the settled position of law, while computing book profit under section 115JB of the Act, no adjustment can be made by referring to section 14A r/w rule 8D. The only adjustment which can be made by the Assessing Officer is as per explanation–1 of section 115JB(2) of the Act. In view of the aforesaid, ground raised is dismissed.

21. In the result, Revenue's appeal is dismissed.

Order pronounced in the open Court on 12.07.2019

Sd/-	**Sd/-**
N.K. PRADHAN	**SAKTIJIT DEY**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

MUMBAI, DATED: 12.07.2019

Copy of the order forwarded to:

(1) The Assessee;

(2) The Revenue;

(3) The CIT(A);

(4) The CIT, Mumbai City concerned;

(5) The DR, ITAT, Mumbai;

(6) Guard file.

True Copy
By Order

Pradeep J. Chowdhury
Sr. Private Secretary

Assistant Registrar
ITAT, Mumbai