

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "E" : DELHI

BEFORE SHRI BHAVNESH SAINI, J.M. & SHRI O.P. KANT, A.M.

ITA.No.5041/Del./2016
Assessment Year 2013-2014

Noida Special Economic Zone Authority, Dadri Road, Phase-2, Noida – 201 305. PAN AAALN0639A	vs	The Addl. CIT (TDS) CGO Complex-1, Hapur Road, Ghaziabad.
(Appellant)		(Respondent)

For Assessee :	Shri H. Hasnain, Advocate.
For Revenue :	Shri Sankar Naskar, Sr. D.R.

Date of Hearing :	31.10.2019
Date of Pronouncement :	01.11.2019

ORDER

PER BHAVNESH SAINI, J.M.

This appeal by Assessee has been directed against the Order of the Ld. CIT(A)-I, Noida, Dated 29.07.2016, for the A.Y. 2013-2014.

2. In the present appeal, the assessee has raised several grounds of appeal claiming that Ld. CIT(A) has erred in Law and facts in confirming the assessment without

analysing the chargeability of Section 28 in respect of business income and Clause (iv) and Section 28 is clear about the interest income to be treated as business income. The assessee further states in the grounds of appeal that authorities below have erred in making the interest income as taxable under the Head "Income from other sources" under section 56 of the I.T. Act, 1961.

3. The Ld. CIT(A) noted in the impugned order that the dispute between the assessee and the Revenue has a very narrow canvass. The assessee has claimed deduction under section 80IAB of the I.T. Act on proceeds of its business income. However, the A.O. found from Form 26AS that assessee has received interest from Bank amounting to Rs.4,86,76,333/- and has claimed deduction under section 80IAB of the I.T. Act qua this amount also. The A.O. held that interest received by the assessee from the Bank was not relatable to its business and, therefore, was not eligible for deduction under section 80IAB of the I.T. Act. Consequently, the A.O. brought this amount to tax. It is also noted that Counsel for Assessee sought to establish

that the assessee being an undertaking of the Ministry of Commerce, Government of India, was required to keep its surplus funds with the Banks only and, therefore, any interest claimed by the assessee on parking of its funds with the Banks, should be deemed to be the business income.

4. The assessee has filed an application for admission of the additional ground which reads as under :

“Because, the learned CIT(A), Noida has accepted the interest income as eligible for deduction under section 80IAB in the appeal of AY 2012-13 and hence the interest income earned in AY 2013-14 may also be allowed as eligible for deduction U/s 80IAB in the AY 2013-14.”

4.1. Learned Counsel for the Assessee submitted that Ld. CIT(A) has confirmed the disallowance of interest income under section 80IAB of the Act accepting the A.O's observation that it has no direct nexus with the business of the assessee. In the meantime, assessee was allowed the exemption under section 10(46) of the I.T. Act by CBDT, the interest income treating the same as earned from business activity and making it exempt from Income Tax. In view of the Notification Dated 20.07.2017 of the CBDT issued in

reference to Section 10(46), the Ld. CIT(A)-I, Noida in another appeal of the assessee for the A.Y. 2012-2013, passed the Order in favour of the assessee on the similar issue of interest income and allowed deduction under section 80IAB treating the same as earned from business activity. Therefore, since, the interest income was accepted as income from business activity by the Ld. CIT(A)-I, Noida in A.Y. 2012-2013, therefore, it should be allowed as earned from business activity in assessment year under appeal as well. Copy of the Order of the Ld. CIT(A) for A.Y. 2012-2013 Dated 29.06.2018 is filed on record.

5. Considering the submissions of both the parties, we are of the view that the additional ground is legal in nature and goes to the root of the matter. The stand of the assessee have been accepted in preceding A.Y. 2012-2013 by the Ld. CIT(A) on the basis of the Notification issued by the CBDT. In this view of the matter, we admit the additional ground of appeal.

6. Since the additional ground was not raised before the Ld. CIT(A) and no findings have been given on the same

in the impugned order, therefore, matter requires reconsideration at the level of the Ld. CIT(A). It may also be stated that other grounds of appeals raised by the assessee in the appeal have not been pressed by the Learned Counsel for the Assessee during the course of hearing. He has only pressed for additional ground of appeal. In this view of the matter, we set aside the Order of the Ld. CIT(A) and restore the additional ground of appeal to the file of Ld. CIT(A) with a direction to re-decide this ground in the light of appellate order passed by the Ld. CIT(A), Dated 29.06.2018 for A.Y. 2012-2013 and Notification of CBDT. The Ld. CIT(A) shall give reasonable, sufficient opportunity of being heard to the assessee.

7. In the result, appeal of Assessee partly allowed for statistical purposes.

Order pronounced in the open Court.

Sd/-
(O.P. KANT)
ACCOUNTANT MEMBER

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Delhi, Dated 01st November, 2019

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT "E" Bench
6.	Guard File

// BY Order //

Asst. Registrar : ITAT Delhi Benches :
Delhi.