

आयकर अपीलीय अधीकरण, न्यायपीठ – “वि” कोलकाता,  
*IN THE INCOME TAX APPELLATE TRIBUNAL  
KOLKATA BENCH “B” KOLKATA*

Before **Shri S.S.Godara, Judicial Member** and  
**Dr. A.L. Saini, Accountant Member**

**ITA No.1016/Kol/2018**  
Assessment Year :2013-14

Jay Shree Tea & Industries Ltd., 10, Camac Street, Kolkta-17 [PAN No.AAACJ 7788 D]	<b>V/s.</b>	DCIT, Circle-4(1), Aayakar Bhawan, P-7, Chowringhee Square, Kikatqa-700 069
अपीलार्थी /Appellant	..	प्रत्यर्थी/Respondent

अपीलार्थी की ओर से/By Appellant	Shri B.K. Chadurvedi, CA
प्रत्यर्थी की ओर से/By Respondent	Shri Radhey Shyam, CIT-DR
सुनवाई की तारीख/Date of Hearing	09-09-2019
घोषणा की तारीख/Date of Pronouncement	06-12-2019

**आदेश /ORDER**

**PER S.S.Godara, Judicial Member:-**

This assessee's appeal for assessment year 2013-14 arises against the Principal Commissioner of Income Tax-2,Kolkata's order dated 22.03.2018 passed in case F.No.Pr.CIT-2/Kol/Revision/17-18/263/Jay Shree/13-14/11392-94, involving proceedings u/s 263 of the Income Tax Act, 1961;in short 'the Act'.

Heard both the parties reiterating their respective stands against and in support of the Principal CIT's action assuming u/s 263 revision jurisdiction qua the assessee's regular assessment framed on 09.03.2016 determining income of ₹22,26,27,270/- under normal and ₹33,65,83,660/- under MAT provision. Case file perused.

2. Both the learned representatives take us to the PCIT's revision findings under challenge on the sole substantive issue of assessee's interest income as under:-

*"2. The assessment records of the assessee-company were called for and on the basis of the verification of the material available on record, it was found that the order of assessment u/s.143(3), dated 09.03.2016 for the A.Y 2013-14, is erroneous in so far as it is prejudicial to the interest of revenue on the following ground:-*

*'The perusal of the assessment records reveals that as per Profit & Loss Account for the year ended 31<sup>st</sup> March, 2013, you credited an amount of Rs.27,92,53,000/- under the head "Other Income" (Schedule 2.19 to the P&L A/c) which included Rs.13,11,47,476/- as "Interest Income" which was allocated to three heads namely '100% Taxable by Central' '40% Taxable by central' and 'Head Office' ((which later proportionately allocated between previous two) amounting to Rs.14,43,568/-, Rs.9,88,847/- and Rs.12,87,15,061/-. For the purpose of Rule 8 of Income Tax Rules. "Interest Income" should not be included in composite income rather it should be taxable on full (100%) without availing any apportionment.'*

*3. A show cause notice, dated 27.02.2018 was issued to the assessee-company requiring it to submit clarification or explanation to the above issue & also to show cause why remedial action u/s.263 of the Act would not be taken against the assessment order made u/s.143(3) dated 09.03.2016. In its response, Shri B.K. Chadurvedi, Vice President (Taxation) appeared on behalf of the assessee company and furnished a written submission to the show cause notice, which is placed on record. The matter was discussed and heard. The relevant portion of the written submission mad therein is reproduced below:-*

*'The assessee is mainly engaged in the business of growing and manufacturing of tea, apart from other activities and the income from tea grown and manufactured is required to be computed as if business income and 40% thereof is taxable under the income tax act, as per rule 8 of the Income Tax Rules, 1962.*

*For the purpose of computation of income of each tea estate, all the revenue income and expenditure of tea estates are considered and three after the total expenditure of the Head Office is being allocated to all the gardens and units on the basis of sales percentage. All the income and expenditure so allocated includes payment of interest and receipt of interest both. In the year under review the total interest earned by the assessee is Rs.13,11,47,476/- which includes Rs.9,88,847/- being the interest received by the tea estates on security deposits made with the electricity board and the total expenditure on account of interest is Rs.37,38,37,446/-. Therefore, the net amount is Rs.24,26,89,970/- which has been proportionately charged in the profit and loss account in all the units and gardens.*

*The Hon'ble High Court in the case of AFT Industries Ltd. [270 ITR 167] has held that cess on green leaf will be deductible from the*

composite income and thereafter rule 8 will be applicable. The said principle laid down by the Hon'ble Calcutta High Court has been approved by the Apex Court in the case of Commissioner of Income Tax vs. Appejay Tea Co. Ltd. [**Civil Appeal no. 1105 of 2006**]. A copy of the said judgment of the Hon'ble Supreme Court is annexed hereto. Reliance is further placed on the judgment of the Hon'ble Calcutta High Court in the case of Warren Tea Ltd. vs. Commissioner of Income Tax & Others. [374 ITR 0006] and Commissioner of Income Tax vs. J.J. Exporters Ltd. [**324 ITR 329**]. Although both the judgments are principally in favour of the assessee but the judgment in respect of Warren Tea which is a tea company and whose income is assessable under rule 8, the Hon'ble Court has held that the interest earned by the Company is a business income and accordingly eligible for the purpose of computation of deduction u/s 33AB of the Income Tax Act, 1961 which is applicable to the assessee deriving income from growing and manufacturing tea which is assessable in accordance with rule 8 of the Income Tax Rules, 1962. A copy of the judgment of Warren Tea Ltd. is annexed.

From the above judgments, it is crystal clear that the interest income earned by the assessee has rightly been apportioned amongst its units and gardens and the assessment order passed u/s.143(3) on 09-03-2016 is neither erroneous nor prejudice to the interest of revenue.

The assessee is filing its return of income and is being assessed regularly year after year. From the date of incorporating of the company, the assessee is filing its return and showing its income and expenditure by allocating the interest income and expenditure to all of its units and gardens and the said computation are being accepted by the revenue. In none of the past years, the question of taxing interest income as income from other sources has been raised.

This is a settled law that although the res judicata does not apply to the tax preceding but the consistency should be maintained. Reliance is placed on the following judgments:

- ARONI COMMERCIALS LTD. vs. DEPUTY COMMISSIONER OF INCOME TAX AND ANOTHER [**362 ITR 403**]
- GALILEO NEDERLAND BY vs. ASSISTANT DIRECTOR OF INCOME-TAX (INTERNATIONAL TAXATION) [**367 ITR 319**]
- Nuclear Power corporation of India Ltd. vs. Dy. Director of Income tax (intl. Taxation) [**ITAT-Mum; ITA 733-35/Mum/11**]

From the above judgments, it is crystal clear that the consistency should be maintained to maintain the uniformity, of the facts and circumstances of the assessee are identical. Since in the instant cases, the assessee was apportioning its interest income to all of its units and gardens year after year and department has accepted the same and made assessments accordingly, the order passed by the Ld. Assessing Officer cannot be said to be erroneous.

The Hon'ble Supreme Court in the case of Malabar Industrial Co. Ltd. v. Commissioner of Income Tax [243 ITR 83] has held that if two views are possible and the Income Tax Office has taken one view with which

the Commissioner does not agree, it cannot be treated as an erroneous order prejudicial to the interest of the revenue.

Since the Learned. Assessing Officer has taken a possible view which is being constantly followed year after year, order cannot be said to be erroneous and prejudicial to the interest of the revenue.

Under the above circumstances, we therefore pray before your goodself to please drop the proceeding initiated u/s 263 of the Income Tax Act, 1961.

*4. I have considered the submission made on behalf of the assessee and the facts on record. Regarding the applicability of the provisions of Rule 8 of Income Tax Rules, 1962 on the interest income, it has been submitted on behalf of the assessee that the issue stands covered by the judgment of the jurisdictional High Court in Warren Tea Ltd. vs. CIT (2015) 374 ITR 06(Cal) which is binding. I am of the considered view that the decisions of the jurisdictional High Court in Eveready Industries India Ltd. vs. CIT (2010) 323 ITR 312 (Cal) and Warren Tea Ltd. vs. CIT (2015) 374 ITR 06 (Cal) are squarely applicable to the facts of the case. It is also seen that the operation of the said decisions has not been stayed by the Supreme Court. Therefore the Assessing Officer is directed to decide the issue in the light of the decisions in the case of Eveready Industries India Learned. Vs. CIT (2010) 323 ITR 312 (cal) and Warren Tea Ltd. vs. CIT (2015) 374 ITR 06 (Cal).*

*5. Subject to the observations made above, the assessment order passed by the AO is set aside in respect of only the point stated in **Para-2** above. The Assessing Officer is directed to initiate fresh assessment proceedings & carry out necessary verification & take action accordingly after verification of the correctness of the claim of the assessee. The Assessing Officer must also provide reasonable opportunity to the assessee company to produce documents & evidences which it may chose to rely upon for substantiating its own claim. Thereafter a fresh assessment order may be passed in accordance with the relevant provisions of law.”*

3. A perusal of the PCIT's foregoing detailed discussion makes it clear that he has invoked his revision jurisdiction qua assessee's interest income of ₹13,11,47,476/- included in "other income" of ₹27,92,53,000/-. The Revenue's case is that the PCIT has rightly issued his revision direction to the Assessing Officer. We see no reason to concur with the same. We make it clear that the PCIT has himself admitted the clinching legal proposition in view of hon'ble jurisdictional high court's twin judgments in *Warren Tea Ltd. vs. Commissioner of Income Tax (2015) 374 ITR 06 (Cal)* and *Eveready Industries India Ltd. vs. Commissioner of Income Tax (2010) 323 ITR 312 (Cal)*. Their lordships make it clear that interest income derived from parking

of surplus funds in case of tea company has to be treated as business income since the main activity is of growing, manufacturing and selling of tea and not that of earning interest by making investments in short term fixed deposits. No contrary judicial precedent has been quoted at the Revenue's behest taking a different stand against the taxpayer. The PCIT nowhere holds the impugned assessment as erroneous causing prejudice to the interest of the Revenue; simultaneously, as per hon'ble apex court's landmark decision in *Malabar Industrial Co. Ltd. vs. Commissioner of Income Tax* (2000) 243 ITR 83 (SC). We therefore accept the assessee's arguments and restore the regular assessment dated 09.03.2016 framed in the instant case. The PCIT's revision direction stand reversed.

4. This assessee's appeal is allowed.

Order pronounced in the open court 06/12/2019

Sd/-  
(लेखा सदस्य)  
( A.L.Saini)  
(Accountant Member)  
Kolkata,

Sd/-  
(न्यायिक सदस्य)  
(S.S.Godara)  
(Judicial Member)

\*Dkp

दिनांक:- 06/12/2019 कोलकाता ।

**आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-**

1. अपीलार्थी/Appellant-Jay Shree Tea & Industries Ltd., 10, Camac Street, Kolkata-17
2. प्रत्यर्थी/Respondent-DCIT, Cir-4(1), P-7 Chowringhee Sq. Kolkata-69
3. संबंधित आयकर आयुक्त / Concerned CIT Kolkata
4. आयकर आयुक्त- अपील / CIT (A) Kolkata
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

/True Copy/

By order/आदेश से,

सहायक पंजीकार  
आयकर अपीलीय अधिकरण,  
कोलकाता ।