

**IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH, MUMBAI**

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER &
SHIR S RIFAUR RAHMAN, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. Nos. 6133 & 6134/Mum/2010
(निर्धारण वर्ष / Assessment Years : 2006-07 & 2007-08)

IL & FS Windfarms Lat (Previously known as IL & FS energy Dev. Co. Ltd.,) The IL & FS Financial Centre, Plot No. C-22, G Block Bandra Kurla Complex, Bandra (E), Mumbai.	बनाम/ Vs.	The ACIT – 10(1) Mumbai.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAAC12550A		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से/ Appellant by :	Ms. Vidya Phanse
प्रत्यर्थी की ओर से/Respondent by :	Shri Kumar Padmapani Bora

सुनवाई की तारीख / Date of Hearing	19/12/2019
घोषणा की तारीख/Date of Pronouncement	17/01/2020

आदेश / ORDER

PER SHRI S RIFAUR RAHMAN- AM:

Both these appeals are filed by the assessee against the separate orders of the Ld CIT(A)-21, Mumbai, dated 14.06.2010 and 03.06.2010 for AYs 2006-07 & 2007-08.

ITA No. 6133/Mum/2010, A.Y 2006-07:

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2. Briefly the facts of the case are that assessee is engaged in the business of generation and distribution of electricity. The assessee filed its return of income on 26.10.2006 and claimed deduction u/s 80IA excluding the interest income. The A.O disallowed the claim of the assessee u/s 80IA of the Act on the interest income. Accordingly, the A.O completed the assessment on the basis of the return of income. Aggrieved by the order of the A.O the assessee preferred an appeal before the CIT(A).

3. The CIT(A) held that the revised return is not as per law and further held that the interest receipts are not derived from business of generating electricity, therefore, no deduction is allowed u/s 80IA of the Act. Aggrieved, the assessee preferred an appeal before us by raising the following grounds of appeal:

1. *On the facts and circumstances of the case the Ld. CIT(A) has erred in rejecting the claim of the appellant is entitled to deduction u/s 80IA in respect of the interest income of Rs. 1,49,68,016/-. The appellant prays that they are entitled to deduction u/s 80IA in respect of interest income of Rs. 1,49,68,016/.*

2. *On the facts and circumstances of the case the Ld. CIT(A) has erred in rejecting the claim of the appellant that the appellant is entitled to deduction u/s. 80IA in respect of the interest income of Rs. 1,15,65,252/-. The appellant prays that they are entitled*

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to deduction u/s 80IA in respect of interest income of Rs. 1,15,65,252/-.

3. On the facts and circumstances of the case the Ld. CIT(A) has erred in rejecting the claim of the appellant that the appellant is entitled to deduction u/s 80IA in respect of the interest income of Rs. 34,02,764/-. The appellant prays that they are entitled to deduction u/s 80IA in respect of interest income of Rs. 34,02,764/-.

4. On the facts and circumstances of the case the Ld. CIT(A) has erred in confirming that the income of Rs. 1,49,68,016/- is to be taxed under the head income from other sources instead of the same to be taxed under the head business income. The appellant prays that sum of Rs. 1,49,68,016/- may be taxed under the head income from business.

5. On the facts and circumstances of the case the appellant denies the liability for payment interest u/s 234B of the Act. The appellant prays that the interest levied u/s 234b may be deleted.

6. The appellant craves leave to add, alter or amend the grounds of appeal which are without prejudice to one other.

4. Considered the rival submissions and perused the material available on record. We find that the issue in dispute is squarely covered by the decisions of the coordinate bench of this Tribunal in assessee's own case for earlier AY 2005 -06. For the A.Y 2005-06 the coordinate bench has held as under:

“6 Before us the ld AR of the assessee has submitted that the assessee has purchased wind farm from Infrastructure Leasing & Financial Services Ltd and made part payment for the said purchase of asset. The balance consideration of Rs. 29.64 crores

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has been reflected under the head “deferred credit liability”. The assessee has subscribed to subordinated debts of 2001 series V in the form of non convertible redeemable debentures. As per the terms, the interest on this instrument will accrue every year; but no physical payment will be made and only at the end of the term, the maturity value of the said instrument will be paid to the assessee. The ld AR has submitted that this investment instrument was for the purpose of making the payment for the Wind mill. He has thus submitted that investment in the instrument is part of the transaction of purchase of Wind mill and therefore, the interest earned on the instrument is eligible for deduction u/s 80IA. He has relied upon the decision of the Hon’ble Madhya Pradesh High Court in the case of CIT vs Prakash Oils Ltd reported in 58 DTR 279. He has also relied upon the order of the Tribunal in the case of Jagdishprasad M Joshi vs DCIT in ITA No.3569/Mum/2001 vide order dated 13.8.2004. The ld AR has further submitted that for the AY 2003-04 and 2004-05, the Tribunal remanded the issue to the record of the CIT(A).

6.1 On the other hand, the ld DR has relied upon the orders of the lower authorities and submitted that interest income cannot be treated as income derived from the undertaking thereby not eligible for deduction/s 80IA. The ld DR has relied upon the decision of the Hon’ble Calcutta High Court in the case of Commissioner of Income-tax v. Chitranjali reported in 159 ITR 801. The ld DR has further submitted that the order of the Tribunal in the case of Jagdishprasad M Joshi (supra) relied upon by the ld AR is not applicable in the case of the assessee because this order was for the AY 1997-98 and the provisions of sec. 80IA has been amended by the Finance Act w.e.f 1.4.2002 whereby the expression ‘business’ of industrial undertaking has been changed over to expression ‘profit and gain’ derived from undertaking’ He has pointed out that this issue was not considered by the Tribunal.

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7 We have considered the rival contention as well as the relevant material on record. As far as the validity of the revised return is concerned, undisputedly, the assessee has filed revised return within the period of limitation as prescribed under the provisions of the Sec. 139(5). Therefore, in view of the decision of the Hon'ble supreme Court in the case of Goetze (India) Ltd. v. Commissioner of Income-tax reported in 284 ITR 323, we are of the considered view that the assessee can raise fresh claim in the revised return. Accordingly, this issue relating to the filing of revised return is decided in favour of the assessee.

8 Now, we turn to the allowability of the claim of deduction u/s 80IA on interest income. The CIT(A) has considered and adjudicated the issue by following the decision of the Hon'ble Supreme Court in the case of Pandian Chemicals Ltd v CIT reported in 262 ITR 278 in paras 3.2 to 2.4 as under:

“ 3.2 I have perused the facts in this case and the position of law. The assessee qualifies for deduction u/s. 801A as an undertaking set up for the generation of power as per clause (iv)(a), of subsection (4,) of section 801A. Subsection (1), of section 801A provides that —

“(1) Where the gross total income of an assessee includes any profits and gains derived by an undertaking or an enterprise from any business referred to in subsection (4) (such business being hereinafter referred to as the eligible business), there shall, in accordance with and subject to the provisions of this section, be allowed, in computing the total income of the assessee, a deduction of an amount equal to hundred per cent. of profits and gains derived from such business for ten consecutive assessment years.”

3.3 There are several case laws wherein it has been held that the word “derived” is to have a restricted meaning. The expression ‘derived from’ has since now been explained by the Apex Court in the case of Pandian Chemicals Ltd. v. CIT[2003] 262 ITR 278,

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wherein the Apex Court has observed that the word 'derived from' in section 80HH of the Income-tax Act, 1961 must be understood as something which has a direct or immediate nexus with the assessee's undertaking. Apart from this, in the said decision, the Apex Court has confirmed the decision of the Madras High Court in the case of CIT v. Pandian Chemicals Ltd. [1998] 233 ITR 497. We may, with respect, refer to some of the observations of the Madras High Court which are in the following terms:

"Profits or gains eligible for deduction under section 80HH of the Income-tax Act, 1961, must be derived from the actual conduct of the business. The expression 'derived from' should be given a restricted meaning and whenever the Legislature wants to give a wider expression, the Legislature employs the expression 'attributable to' and the use of the expression 'derived from' indicates that the profit or gain should be derived from the conduct of the business. There is no justification to give the expression 'derived from' a wider meaning to cover every receipt connected with the industrial undertaking. It is not all business receipts that would qualify for the deduction and the Legislature has apparently not intended to give the benefit of deduction to all business income. If the intention of the Legislature was to grant relief to all business income, it could have used the expression, 'Profits and gains of industrial undertaking' The fact that the Legislature has used the expression 'profits and gains derived from the industrial undertaking' has some significance and it connotes that the immediate and effective source of income eligible for grant of relief under section 80HH must be the industrial undertaking itself and not any other source. The mandate of law is that unless the source of the profit is the undertaking, the assessee is not eligible to claim deduction under section 80HH. Mere commercial connection between the income and the industrial undertaking would not be sufficient.

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3.4 Now, the appellant has claimed deduction under sub clause (iv)(a), of sub-section (4) of section 801A, which reads as follow:
(iv) an undertaking which,---

(a) is set up in any part of India for the generation or generation and distribution of power if It begins to generate power at any time during the period beginning on the 1st day of April, 1993 and ending on the 31st day of March, 2010;

The eligible business under section 801A is therefore, generation of electricity. It is only the profits of this business which are eligible for deduction. The above receipts are clearly not derived from the business of general of electricity. The word used in 801A(l) is “derived”. Hence, no deduction is available on the income specified in the above ground.

” 9 As far as the decision of Hon’ble Madhya Pradesh is concerned, it is to be noted that in that case, the interest was received on the delayed receipt of sale; therefore, it was part of the sale proceeds and the turnover and accordingly, the said decision is not applicable in the case in hand where the interest has been earned by the assessee on the investment made in the securities. The Tribunal for the AY 2003-04 and 2004-05 has remanded the issue to the record of the CIT(A) for fresh adjudication as the CIT(A) refused to admit the additional ground raised by the assessee in the said year. Therefore, in the absence of any finding, the order of the Tribunal for the AY 2003-04 and 2004-05 would not help the case of either party for the AY under consideration. This issue has been settled by the Hon’ble Supreme Court in the case of Pandian Chemicals (supra) which has been followed by the CIT(A). Further, in the case of Liberty India v. Commissioner of Income-tax reported in 317 ITR 218, the Supreme court has observed that to claim the deduction u/s 80IA and 80IB, the income should have direct first decree nexus to the profit & gains as derived from the undertaking. Therefore, on merits, we do not find any reason to interfere with

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the order of the impugned order of the CIT(A) and accordingly, the same is upheld.

5. As the issue in dispute is materially identical to the said AY, i.e, the interest is derived from securities and it is not directly linked to direct income of the assessee. Hence, we uphold the order of CIT(A) in confirming the disallowance made by the AO towards interest income, as the decision of the CIT(A) is in consonance with the order of Tribunal and the ground nos 1 to 3 raised by the assessee on this issue are dismissed.

5.1 With regard to the Ground of appeal No. 4, as the interest income is from securities, the same is to be charged in the head income from other sources. Therefore, ground raised by the assessee is dismissed.

5.2 With regard to the Ground of appeal No. 5, it is consequential and accordingly dismissed.

5.3 In the result, appeal filed by the assessee is dismissed.

ITA No. 6134/Mum/2010, A.Y: 2007-08:

6. The issues involved in this appeal are exactly identical to A.Y 2006-07 except variants in figures. Hence, the decision rendered by us for the A.Y 2006-07 (supra) would apply *mutatis-mutandis* for A.Y 2007-08 also.

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7. In the result, both the appeals filed by the assessee are dismissed.

This Order pronounced in Open Court on	17.01.2020
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Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Mumbai, Dated 17 .01.2020

KRK, PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त(अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद /DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Asst. Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Mumbai