

IN THE INCOME TAX APPELLATE TRIBUNAL
GAUHATI 'VIRTUAL' COURT, ATKOLKATA

BEFORE SHRI A. T. VARKEY, JM & DR. A.L.SAINI, AM

आयकरअपीलसं./ITA No.212/Gau/2019

(निर्धारणवर्ष / Assessment Year:2012-13)

Mahashakti Cement, Guwahati 1st Floor, H. M. Tower, S. C. Goswami Road, Panbazar, Guwahati	Vs.	ITO, Ward-2(1), Guwahati
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AAMFM 5912 F		
(Assessee)	..	(Respondent)

Assesseeby : Shri Somnath Ghosh, Advocate

Respondent by : Shri Jayanta Mridha, JCIT, Sr. D.R.

सुनवाईकीतारीख/ Date of Hearing : 10/09/2020

घोषणाकीतारीख/Date of Pronouncement : 22/10/2020

आदेश / O R D E R

Per Dr. A. L. Saini:

The captioned appeal filed by the assessee, pertaining to assessment year 2012-13, is directed against the order passed by the Commissioner of Income Tax (Appeal) -1, Guwahati, in appeal no. 482602031230318, dated 29.03.2019, which in turn arises out of an assessment order passed by the Assessing Officer u/s 143(3) / 263 of the Income Tax Act, 1961 (in short the 'Act').

2. The grounds of appeal raised by the assessee are as follows:

1. For that the Hon'ble Commissioner of Income Tax (Appeals), Guwahati-1, is not justified in upholding the view of the Id. Assessing Officer (ITO, ward-2(1)) that the interest income of Rs.17,89,186/- earned on FDR made under compulsion for obtaining term loan and cash credit has no direct nexus with manufacturing activity and thereby denying the benefits of deduction claimed u/s 80IC or 80IE on this amount.

2. For that the Demand issued u/s 156 be stayed till the disposal of appeal.

3. For that the assessee may kindly be permitted to add, alter or modify the grounds of appeal or any of the same at the time of hearing of the appeal.

3. The facts of the case which can be stated quite shortly are as follows: In the assessee's case under consideration, Learned Principal Commissioner of Income Tax, Guwahati-I (hereinafter referred to as the 'PCIT') has exercised his jurisdiction under section 263 of the Income Tax Act, 1961. On perusal of the assessment records of the assessee, the Ld. Principal Commissioner of Income Tax, Guwahati-I was of the opinion that the Ld. Assessing Officer had failed to make enquiries about the fact that the assessee had earned a sum of Rs. 17,89,186/- on account of Interest on Fixed Deposit which was not credited to the Profit and Loss account and in fact, the same was reduced from the interest expenditure incurred by the assessee and the net amount of expenditure was debited in the Profit and Loss Account. Therefore, Id PCIT remitted this issue back to the file of the assessing officer to examine the same.

4. Thereafter, the assessing officer framed the assessment order under section 143(3) r.w.s. 263 of the Act, in pursuance of the directions given by the Id PCIT under section 263 of the Act. While giving effect of the order of the Id PCIT, the Ld. Assessing Officer without applying his mind on this basic fact went on to deny the deduction under section 80IC of the Act on the Interest received on

Fixed Deposit in the sum of Rs. 17,89,186/- which was accordingly added in computing the total income of the assessee.

5. On appeal, the Ld. Commissioner of Income Tax (Appeals)-1, Guwahati upheld the action of the Ld. Assessing Officer. The ld CIT(A) held that assessing officer was right in denying deduction u/s. 80IC of the Act on Interest received on Fixed Deposit. Aggrieved by the order of the ld CIT(A), the assessee is in appeal before us.

6. At the outset itself, Learned Counsel for the assessee submitted before the Bench that the assessee is a partnership firm which was incorporated on 01-04-2009 for carrying on the business of manufacturing of cement. The assessee filed its return of income for the assessment year under dispute u/s139(1) of the Income Tax Act 1961 on 11-09-2012 declaring NIL income after claiming deduction on account of Excise Duty Refund, Remission of Value Added Tax and Transport Subsidy as eligible u/s, 80IC of the Income Tax Act 1961. The Ld. Assessing Officer denied the deduction under the provisions of section 80IC of the Income Tax Act, 1961 upon the interest received on fixed deposit in the amount of Rs. 17,89,186/- on the allegation that such income did not arise from manufacturing activity. The ld Counsel pointed out that fixed deposit was made by the assessee out of business fund and the said fixed deposit was given to the bank, as security deposit, to obtain credit/loan facility hence the source of such interest income is definitely business income which is akin to earning of income from the main activities by the assessee, and this fact had not been examined by the assessing officer, therefore, this issue should be remitted back to the file of the assessing officer to examine the same.

7. On the other hand, the Id. D.R did not have any objection if the said issue is remitted back to the file of the Assessing Officer for necessary verification and examination.

8. We heard both the parties and carefully gone through the submission put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the fact of the case including the findings of the Id CIT(A) and other materials available on record. The assessee has earned a sum of Rs. 17,89,186/- on account of Interest on Fixed Deposits pledged with Banks for security purpose. It is an admitted fact that the Ld. Assessing Officer denied the deduction under the provisions of section 80IC of the Income Tax Act, 1961 upon the interest received on fixed deposit in the amount of Rs. 17,89,186/- on the allegation that such income did not arise from the business of manufacturing or production carried out in a specified area. We note that fixed deposit was made by the assessee out of business fund to obtain loan/credit facilities from bank for the purpose of doing business hence, the source of such income is definitely business income which is akin to earning of income from the main activities by the assessee.

We note that since the Id. Counsel for the assessee has fairly submitted before the Bench that to earn the interest income is not the purpose of making fixed deposit, but in fact, the purpose of making fixed deposit is to obtain the loan/credit facility from the banks which are directly linked with the assessee's business and hence eligible for deduction u/s 80IC of the Act. We note that the Assessing Officer has not verified this fact, as narrated by the assessee above, therefore the matter should be remitted back to the file of the Assessing Officer for verification of the fact that whether fixed deposit was made by the assessee for the purpose of taking credit facility which are connected with the assessee's business. That is, what was the object behind to make the fixed deposit should be examined by the Assessing Officer? Since the said issue has not been verified by the Assessing Officer

therefore we set aside the order of the Id CIT(A) and remit this issue back to the file of the Assessing Officer to verify the fact whether the fixed deposit was made by the assessee to take the credit facility or not. If the assessee has made the fixed deposit out of his business fund to take credit facilities from the Bank then in that situation, the Assessing Officer ought to allow the deduction u/s 80IC of the Act in respect of interest on fixed deposit in accordance with law.

9. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the Court on 22.10.2020

Sd/-
(A.T. VARKEY)
न्यायिकसदस्य / JUDICIAL MEMBER

Sd/-
(A.L.SAINI)
लेखासदस्य / ACCOUNTANT MEMBER

दिनांक/ Date: 22/10/2020
(SB, Sr.PS)

Copy of the order forwarded to:

1. Mahashakti Cement
2. ITO, Ward-2(1), Guwahati
3. C.I.T(A)-
4. C.I.T.- Guwahati.
5. CIT(DR), GauhatiBench, Guwahati.
6. Guard File.

True copy

By Order

Senior Private Secretary / DDO/ H.O.O
ITAT, Gauhati Bench