

आयकर अपीलीय अधीकरण, न्यायपीठ –“A” कोलकाता,
IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH: KOLKATA
[Before Shri J. Sudhakar Reddy, AM and Shri A. T. Varkey, JM]

I.T.A. No. 2155/Kol/2018
Assessment Year: 2014-15

M/s PDP Steels Ltd. (PAN: AABCP 6726 C)	Vs.	ITO, Ward-3(3), Kolkata
Appellant		Respondent

Date of Hearing (Virtual)	02.03.2021
Date of Pronouncement	10.03.2021
For the Appellant	Shri S. Jhajharia, FCA
For the Respondent	Shri Dhrubajyoti Roy, JCIT

ORDER

Per Shri A. T. Varkey, JM:

This is an appeal preferred by the Assessee is against the order of Ld. CIT(A)-1, Kolkata dated 31.08.2018 for Assessment year 2014-15.

2. In the revised grounds of appeal, the assessee has challenged the action of Ld. CIT(A) in not granting deduction u/s 80IC of the Income Tax Act, 1961 (hereinafter referred to as the Act) on the interest income from fixed deposit of Rs. 20,37,345/-. According to the assessee, even if the interest income from Fixed Deposit does not qualify for the deduction u/s 80IC, still it being a business receipt should be given the benefit of netting.

3. The Ld. A.R Shri S. Jhajharia, FCA submitted that the revised ground no. 2 in respect of interest income survives and according to him only the net interest (i.e. interest income- interest paid-expenses) be taken out of the deduction u/s 80IC. According to Ld. A.R, the interest receipt from FD was business income, because the FD's were maintained in the bank for the purpose of issue of bank guarantee which

were in-turn required for purchase of raw material from M/s SAIL. In order to substantiate this fact according to Ld. A.R, necessary documents were already placed before the AO and the same is also part of the audited accounts. And he drew our attention to page 5 of the paper book (letter dated 08.07.2016 to the AO in assessment proceedings) and pages 25 and 29 respectively of the paper book (which is the part of the audited accounts of AY 2014-15) which according to assessee reveals that the FD with the bank is for issue of bank guarantee for procurement of raw material from M/s SAIL and hence such interest income is for the purpose of business of the assessee. So, according to him, the nature of interest income being business and even if the aforesaid receipt [interest from FD] is not eligible for deduction u/s 80IC in view of the judgment of the Hon'ble Calcutta High Court in the case of Reckitt Benckiser India (P) Ltd. vs. ACIT, Kolkata (2015) 56 taxmann.com 415 (Cal) and also the judgment of Hon'ble Supreme Court in the case of Liberty India Ltd. vs. CIT (2009) 183 Taxman 349 (SC) because, it does not have first degree nexus with the profits earned from the eligible unit, still such interest should be allowed to be netted as held by the Hon'ble Gujrat High Court in the case of CIT vs. Nirma Ltd. (2014) 367 ITR 12 (Guj) and it was pointed out that the Hon'ble Gujrat High Court applied such principle in the context of section 80I, 80IA etc. and excluded only the net interest income from such deduction, so he prayed that benefit of netting should be given to assessee.

4. In the light of the aforesaid discussion, we are not repeating the same again for the sake of brevity. We note that in the revenue appeal for the same assessment year i.e. AY 2014-15 we have confirmed the action of Ld. CIT(A) in respect of claim of the assessee in respect of interest income as not eligible for deduction u/s 80IC wherein we held as under:

“3. Aggrieved the assessee preferred an appeal before the Ld. CIT(A), who in respect of the AO's action disallowing interest income of Rs. 20,37,345/- has held as under:

“In view of the above discussion and respectively following the decision of the jurisdictional High Court in the case of Reckitt Benckiser (India) Vs. Addl. Commissioner of Income Tax (supra), I am of the view that there is no infirmity

in the finding of the AO in holding that the appellant was not entitled for deduction u/s 80IC of the I. T. Act, 1961 in respect of the interest income of Rs. 5,52,844/- from bank deposits under the head "other Income".

Therefore, the interest income of Rs. 5,52,844/- is held to be not eligible for deduction under the section 80IC of the Act. Accordingly, this ground is partly allowed."

4. Aggrieved the Revenue is before us assailing the aforesaid action of Ld. CIT(A). However, we note that the Ld. CIT(A) at page 15 of the impugned order has confirmed the action of the AO in respect of disallowance of interest income from fixed deposit. However, has mistakenly typed the figure as Rs. 5,52,844/- in place of Rs. 20,37,345/-. Since, the interest income from fixed deposit cannot be having first degree nexus with the profit and gain derived from the undertaking which is eligible for deduction u/s 80IC of the Act, we confirm the order of the Ld. CIT(A) and correct the mistake of the figures shown as Rs. 20,37,345/- in place of Rs. 5,52,844/-. And so the Revenue's appeal to this extend succeeds."

However, the issue of netting of interest income was not before us, because the revenue appeal came up without this assessee's cross-appeal. And since this issue has come to our notice only in this appeal, in the interest of justice and fair play and as per settled principle of law, we are of the opinion that the net interest should only be brought to tax. Needless to say, the assessee in this case has claimed to have made the FDs for the purpose of procuring bank guarantee which was a condition precedent for procurement of raw material from M/s SAIL. And therefore, according to us, the interest income even if it does not qualify for deduction u/s 80IC of the Act being not having first degree nexus, still the nature of the receipt since being business in nature and not from other sources [refer CIT vs. Nirma Ltd. (supra)] needs to be treated as business receipt, if the facts are correct, which may be verified by the Ld CIT(A), since we have restored certain issues back to him, while adjudicating the Revenue Appeal for this assessment year. And if the contention of the assessee is found to be correct, then netting should be allowed to their interest receipt as held by the Hon'ble Gujrat High Court in the case of CIT vs. Nirma Ltd.(supra). Therefore we restore this issue back to the file of the Ld. CIT(A) who shall consider this issue which considering our order in Revenue appeal and dispose of the issue in accordance to law.

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

Order is pronounced in the open court on 10th March, 2021.

Sd/-
(J.S. Reddy)
Accountant Member

Sd/-
(A. T. Varkey)
Judicial Member

Dated: 10.03.2021

SB, Sr. PS

Copy of the order forwarded to:

1. Appellant- M/s PDP Steels Ltd., C/o, Salarpuria Jajodia & Co. 7, C.R. Avenue, Kolkata-700072.
2. Respondent – ITO, Ward-3(3), Kolkata
3. The CIT(A)- 1, Kolkata (sent through e-mail)
4. CIT- , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

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By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata