

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES "C", BANGALORE**

Before Shri George George K, JM & Shri B.R.Baskaran, AM

ITA No.31/Bang/2019: Asst.Year 2013-2014
ITA No.32/Bang/2019: Asst.Year 2014-2015
ITA No.33/Bang/2019: Asst.Year 2015-2016

M/s.Jindal Aluminium Limited Jindal Nagar, Tumkur Road Bangalore - 560 073. PAN : AAACJ4324M.	v.	The Dy.Commissioner of Income-tax, Large Tax Payer Unit, Bangalore.
(Appellant)		(Respondent)

Appellant by : Smt.K.Soumya, Advocate
Respondent by : SmtH.Kabila, Addl.CIT-DR

Date of Hearing : 25.08.2021	Date of Pronouncement : 25.08.2021
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ORDER

Per George George K, JM

These appeals at the instance of the assessee are directed against consolidated order of the CIT(A) dated 19.11.2018. The relevant assessment years are 2013-2014, 2014-2015 and 2015-2016. Common issues are raised in these appeals, hence, they were heard together and are being disposed of by this consolidated order.

2. The issue raised in these appeals are as under:-

ITA No.	Asst.Year	Disallowance	Amount disallowed
31/Bang/2019	2013-2014	u/s 80IA	3,11,710
32/Bang/2019	2014-2015	Interest u/s 244A Interest on delayed payments	1,53,504 24,644
33/Bang/2019	2015-2016	u/s 80IA	37,82,522

We shall consider the above issues as under:

Disallowance u/s 80IA
(Asst.Years 2013-2014 & 2015-2016)

3. The Assessing Officer had disallowed the claim u/s 80IA of the I.T.Act to the extent of Rs.3,11,713 and Rs.37,82,522 for assessment years 2013-2014 and 2015-2016, respectively. The reasoning of the Assessing Officer to make the disallowance was that the assessee had incurred expenditure like managerial remuneration, audit fee, staff welfare expenses, legal and professional expenses, etc. and the same have to be apportioned between 80IA units and non 80IA units.

3.1 Aggrieved by the restriction of claim of deduction u/s 80IA of the I.T.Act, the assessee preferred appeals to the first appellate authority. The CIT(A) confirmed the view taken by the Assessing Officer. The relevant finding of the CIT(A) reads as follow:-

“6.1 The submission of the appellant has been considered. The appellant argues that the relevant expenses for the 80IA units have been separately accounted for and should not be disallowed by the AO. However, there was no such explanation before the AO and it was only submitted that the CIT(A) has already deleted similar disallowances for AY 2012-13. It is seen that the CIT(A) for A.Y. 2012-13 has upheld the disallowance on account of managerial remuneration, audit fees, staff welfare expenses, legal and professional expenses and has only allowed relief as regards advertisement and selling expenses. It is not the contention of the appellant that it has challenged this decision of the CIT(A) before the ITAT. Thus, apparently the appellant has accepted the disallowance of these expenses for AY 2012-13. Even otherwise, the appellant could have advanced its contention of separate accounting of all relevant expenditures pertaining to 80IA units before the AO and could have sustained the same which has not been done. Having considered the facts, I am of the view that the disallowance made by the AO for both the years

are reasonable and should be upheld. The grounds of appeal, therefore, cannot be allowed.”

3.2 Aggrieved by the order of the CIT(A), the assessee is in appeal before the Tribunal. The learned AR submitted that the CIT(A) has erred in not allowing full deduction u/s 80IA of the I.T.Act. It is submitted that the authority below ought to have appreciated that separate books of account were maintained for each of the windmills and the assessee has filed profit and loss account of each windmill along with Form No.10CCB. Therefore, it was stated that no common administrative expenses on proportionate basis is to be disallowed with regard to deduction claimed u/s 80IA of the I.T.Act. Further, the learned AR submitted that the primary reason for the first appellate authority to confirm the view of the A.O. was that identical issue for assessment year 2012-2013, the CIT(A) had decided against the assessee and no appeal was preferred to ITAT. This observation of the CIT(A), according to the learned AR, is factually incorrect, since the assessee had filed appeal for assessment year 2012-2013 to the ITAT and the ITAT in ITA No.324/Bang/2017 (order dated 25.09.2020), had restored the matter to the CIT(A).

3.3 The learned Departmental Representative supported the orders passed by the Income Tax Authorities.

3.4 We have heard the rival submissions and perused the material on record. The Tribunal on identical facts for assessment year 2012-2013, had restored the matter to the CIT(A). The relevant finding of the ITAT for assessment year 2012-2013, reads as follow:-

“4. In view of the above discussion, we set aside the order of CIT(A) and restore the matter back to his file for a fresh decision simultaneously with decision on this issue in Assessment Year 2008-09 if it is still pending before CIT(A) because in that year, the matter was remanded by the Tribunal to the file of CIT(A). In case, by the time this order reaches to the file of CIT(A), the issue is already decided by CIT(A) in Assessment Year 2008-09 then in the present year, he should decide the issue afresh in line with his final decision in Assessment Year 2008-09. In view of this, no further adjudication is called for at the present stage.”

3.5 Since the facts are identical for these assessment years and the assessment year 2012-2013, we direct the CIT(A) to consider the issue afresh. It is ordered accordingly.

3.6 In the result, the ground relating to the claim of deduction u/s 80IA of the I.T.Act for A.Y.'s 2013-2014 and 2015-2016 are allowed for statistical purposes.

Interest u/s 244A (Asst.Year 2014-2015)

4. The Assessing Officer had added to the total income interest received on refund u/s 244A of the I.T.Act. The relevant observation of the A.O. reads as follow:-

“8. The Income Tax Department had issued interest u/ s 244A on Income-tax refunds to the assessee company for the A.Y.2010-11 and A.Y. 2012-13 amounting to Rs.1,53,504 and Rs.1,00,68,264 respectively and during the F.Y. 2013-14 relevant to A.Y. 2014-15. During the course of assessment proceedings, the assessee furnished the details that, Rs. 1,00,68,264 was duly accounted in the books as other income. However, with regard to interest relating to A.Y. 2010-11, the assessee stated that the interest granted amounting to Rs. 56,74,909 was duly accounted in earlier assessment year and the interest granted amounting to Rs. 1,53,504 has been accounted in the books during the F.Y. 2016-17. It is verified that the interest of Rs.56,74,909 was granted u/s 143(1) of the Act prior to F Y 2013-14 and the assessee has accounted it. However, the interest of Rs. 1,53,504 was granted on 08/07/2013 and hence it is assessable for A.Y.2014-15.

8.1 It is noted that the interest income is a statutory payment unlike a contractual one would accrue on passing of the requisite order by the statutory authority. There is little doubt that interest u/ s 244A received from the income tax department would be assessable as Income from other sources in the year of receipt as held in Maharashtra State Cooperative Bank Ltd Vs ACIT 2 ITR (Trib) 543 and DCIT Vs. Sheshasayee Paper and Boards Ltd (ITAT Chennai) 2 ITR (Trib) 417. Accordingly, Rs.1,53,504 is added to the Gross Total income of the assessee and brought to tax. As this income is going to increase the total receipts of the assessee for the year, the addition is also made to the book profits of the assessee u/s 115JB of the Act.”

4.1 On further appeal, the CIT(A) confirmed the addition made to the income amounting to Rs.1,53,504.

4.2 Aggrieved by the order of the CIT(A), the assessee has raised this issue before the Tribunal. The learned AR submitted that the assessee has not received any requisite order from the Assessing Officer in relation to the interest amount of Rs.1,53,504 u/s 244A of the I.T.Act. It was submitted that in absence of such incidents of refund, the assessee has not been able to recognize the interest income of Rs.1,53,504 in the relevant assessment year.

4.3 The learned Departmental Representative submitted that admittedly the refund was received during the relevant assessment year, hence, the Assessing Officer has rightly taxed the interest income under the head 'income from other sources' during the relevant assessment year.

4.4 We have heard rival submissions and perused the material on record. Admittedly, the Income Tax Department had issued interest u/s 244A on Income-tax refund for assessment year 2012-2013 amounting to Rs.1,53,504 on 08,07.2013. Since the assessee had received a sum of

Rs.1,53,504 during the relevant assessment year, the same has to be brought to tax as income from other sources, in view of the judicial pronouncements cited by the Assessing Officer at para 8.1 of the impugned assessment order. Therefore, the ground relating to interest income received on refund u/s 244A of the I.T.Act whether it can be taxed in the relevant assessment year, is rejected.

Interest of Rs.24,644 paid u/s 201(1A) of the I.T.Act
(Asst.Year 2014-2015)

5. The assessee had paid interest u/s 201(1A) of the I.T.Act amounting to Rs.24,644 and claimed the same as an allowable expenditure. The Assessing Officer disallowed the expenditure by observing as under:-

“6.1 The submission of the assessee is considered. The same is not acceptable. The requirement to deduct tax at source and to remit such tax to the credit of the Central Government is statutory obligations imposed on the assessee by the statute. The charging of interest under section 201(1A) for the delay in making the payment of the tax deducted at source has no connection with the business carried on by the assessee but is only referable to the default on the part of the assessee in making the payment. Therefore, the payment of interest cannot be treated as interest on money borrowed for the purpose of the business. On the other hand, the revenue, which is due to the Government, was unlawfully withheld and it is for this reason that the interest under section 201(1A) was charged on the belated payment. Reliance is placed on the decision of Hon'ble Delhi ITAT in Iyer and Sons (P.) Ltd. V. Income-Tax Officer (1982) 1 ITD 502. The Hon'ble Supreme Court in the case of Bharat Commerce & Industry v CIT (1998) 230 ITR 733 held that interest for late payment of direct taxes is not deductible. Similar decision was rendered by the Hon'ble Madras High Court in the case of CIT vs Chennai Properties & Investments Ltd 239 ITR 435. Therefore, Rs.24,644 is added back to the total income of the assessee.”

5.1 The view taken by the Assessing Officer was confirmed by the CIT(A).

5.2 Aggrieved, the assessee has raised this issue before the Tribunal.

5.3 We have heard rival submissions and perused the material on record. The Hon'ble Apex Court in the case of Bharat Commerce & Industry v. CIT reported in 230 ITR 733 had held that interest for late payment of direct taxes is not a deductible expenditure. In view of the clear dictum laid down by the Hon'ble Apex Court, the interest expenditure of RS.24,644 paid u/s 201(1A) of the I.T.Act cannot be allowed as a deduction. It is ordered accordingly.

5.4 Hence, this ground is rejected.

6. In the result, the appeals filed by the assessee for assessment years 2013-2014 and 2015-2016 are allowed for statistical purposes and the appeal filed by the assessee for assessment year 2014-2015 is dismissed.

Order pronounced on this 25th day of August, 2021.

Sd/-
(B.R.Baskaran)
ACCOUNTANT MEMBER

Sd/-
(George George K)
JUDICIAL MEMBER

Bangalore; Dated : 25th August, 2021.
Devadas G*

Copy to :

1. The Appellant.
2. The Respondent.
3. The CIT(A)-14, Bengaluru
4. The CIT (LTU),Bengaluru.
5. The DR, ITAT, Bengaluru.
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