

**IN THE INCOME TAX APPELLATE TRIBUNAL  
(DELHI BENCH 'F' : NEW DELHI)**

**BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER  
and  
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**(THROUGH VIDEO CONFERENCE)**

**ITA No.1122/Del./2018  
(ASSESSMENT YEAR : 2013-14)**

**ITA No.1123/Del./2018  
(ASSESSMENT YEAR : 2014-15)**

Addl.CIT, Spl. Range 9, vs. M/s. World Window Infrastructure  
New Delhi. and Logistics Pvt. Ltd.,  
75, Khirki Village, Malviya Nagar,  
New Delhi – 110 017.

**(PAN : AAACW6405E)**

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Nand Kishore Bansal, CA  
REVENUE BY : Shri Munesh Kumar, CIT DR

**Date of Hearing : 28.10.2021  
Date of Order : 28.10.2021**

**ORDER**

**PER KULDIP SINGH, JUDICIAL MEMBER :**

Since common questions of facts and law have been raised in both the inter-connected appeals, the same are being disposed off by way of consolidated order to avoid repetition of discussion.

2. Appellant, Addl. CIT, Special Range 9, New Delhi (hereinafter referred to as 'the Revenue') by filing the present

appeal sought to set aside the impugned order dated 22.11.2017 & 28.12.2017 passed by the CIT (Appeals)-9, New Delhi qua the assessment years 2013-14 & 2014-15 respectively on the grounds inter alia that :-

**“ITA No.1122/Del/2018 (AY 2013-14)**

**1. The ld. CIT (A) has erred on the facts and circumstances of the case by deleting the addition made by the AO on account of disallowance of claim of deduction u/s 80IA.”**

**“ITA No.1123/Del/2018 (AY 2014-15)**

**1. The ld. CIT (A) has erred on the facts and circumstances of the case by deleting the addition made by the AO on account of disallowance of claim of deduction u/s 80IA.**

**2. The ld. CIT (A) has erred in not appreciation of the fact that AO made the disallowance in accordance with sec. 14A r.w.r. 8D of the IT Act only.**

**3. The Ld. CIT (A) has erred on the facts and circumstances of the case by deleting addition u/s 37 made by the AO on account of addition u/s 37 of the I.T. Act.**

**4. The Ld. CIT (A) has erred on the facts and circumstances of the case by deleting the addition made by the AO on account of disallowance of interest earned on FDR.”**

2. Briefly stated the facts necessary for adjudication of the controversy at hand are : Assessee company during the year under consideration was engaged in the business of operating and maintaining Dry Port (Inland Container Depot). Assessee claimed deduction under section 80IA of the Income-tax Act, 1961 (for short ‘the Act’) to the tune of Rs.10,79,48,177/- & Rs.9,64,63,739/- for Assessment Years 2013-14 & 2014-15

respectively. Declining the contentions raised by the assessee for the claim of deduction under section 80IA of the Act, Assessing Officer (AO) proceeded to disallow the same.

3. In AY 2014-15, AO also made disallowance to the tune of Rs.1,42,68,784/- by invoking the provisions contained u/s 14A of the Act read with Rule 8D of the Income-tax Rules, 1962 (for short 'the Rules').

4. In AY 2014-15, AO also called upon the assessee to show-cause as to why proportionate disallowance should not be made in respect of assessment made in related companies/sister concerns as assessee company has made advance of Rs.35,42,69,402/- to its subsidiary company and sister concerns for non-commercial purposes. Being dissatisfied from the reply filed by the assessee, AO proceeded to made addition of Rs.3,49,97,305/- u/s 37 of the Act by making following calculations :-

<b>i.</b>	<b>Amount of investment expenses claimed</b>	<b>598,30,702/-</b>
<b>ii.</b>	<b>Amount of payments made to sister concern</b>	<b>35,42,69,402/-</b>

<b>Sr.No.</b>	<b>Particulars</b>	<b>2014</b>	<b>2013</b>
<b>1.</b>	<b>Long term advances</b>	<b>36,98,71,872</b>	<b>36,37,05,931</b>
	<b>Short term advances</b>	<b>26,34,86,449</b>	<b>21,42,39,689</b>
	<b>Total</b>	<b>63,33,58,321</b>	<b>57,79,45,620</b>
	<b>Average advances</b>	<b>60,56,51,971</b>	

<b>Amount of disallowance</b>	<b><math>\frac{59830702 \times 354269402}{605651971}</math></b>
	<b>= 34997305</b>
<b>Addition/disallowance of deduction – Rs.349,97,305/-</b>	

and thereby framed the assessment at Rs.12,62,88,847/- & Rs.17,12,59,105/- for AYs 2013-14 & 2014-15 respectively.

5. Assessee carried the matter before the Id. CIT (A) by way of filing the appeals who has deleted the addition by allowing the appeals. Feeling aggrieved by the order passed by the Id. CIT(A), the Revenue has come up before the Tribunal by way of filing the present appeals.

6. We have heard the Id. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

**GROUND NO.1 OF  
AYs 2013-14 & 2014-15**

7. Undisputedly, assessee has claimed deduction u/s 80IA of the Act qua its income on the business of running of Inland Container Depot (ICD). It is also not in dispute that business of ICD covered under the definition of infrastructure facilities.

8. Perusal of the order passed by the AO goes to prove that he has denied the deduction u/s 80IA of the Act on the ground that Income-tax Department having not accepted the decision rendered by **Hon'ble Delhi High Court in case of Container Corporation**

**of India Ltd. vs. ACIT 346 ITR 140 (Del.)** and thereby filed Special Leave Petition before Hon'ble Supreme Court.

9. Ld. CIT (A) deleted the impugned disallowance on account of deduction u/s 80IA by following the decision rendered by **Hon'ble Delhi High Court in case of Container Corporation of India Ltd.** (supra).

10. **Hon'ble Delhi High Court** decided the identical issue in case of **Container Corporation of India Ltd.** (supra) by returning following findings :-

**“.....In our opinion having regard to the provisions of the Customs Act, the communications issued by the CBEC as well as the Ministry of Commerce and Industry, the object of including “inland port” as an infrastructure facility and also having regard to the fact that customs clearance also takes place in the ICD, the assessee’s claim that the ICDs are Inland Ports under Explanation (d) of section 80-IA (4) requires to be upheld.....”**

11. In view of what has been discussed above, we are of the considered view that Id. CIT (A) deleted the impugned addition made by the AO by way of disallowance made u/s 80IA by thrashing the facts at hand in the light of the decision rendered by **Hon'ble Delhi High Court in case of Container Corporation of India Ltd.** (supra), hence we find no scope to interfere into the same. So, ground no.1 of AYs 2013-14 & 2014-15 is determined against the Revenue.

**GROUND NO.2 OF AY 2014-15**

12. AO by invoking the provisions contained u/s 14A read with Rule 8D (ii) & 8D (iii) made disallowance of Rs.1,42,68,784/- as under :-

**“Working of disallowance u/s 14A r.w.r. 8D**

	2014	2013
Noncurrent Investment	42,91,49,399/-	40,01,71,001
Average Investment	41,46,60,200/-	
Total Assets	2,11,75,41,363/-	195,10,81,412
Average Assets	2,03,43,11,388/-	
Interest Expense	5,98,30,702/-	

Under Rule 8D (ii)	$\frac{\text{Invest Expense} \times \text{Average Investment}}{\text{Average Assets}}$ $\frac{5,98,30,702 \times 41,46,60,200/-}{203,43,11,388/-}$ $= 1,21,95,483$
Under Rule 8D (iii)	0.5% of average investment $0.5\% \times 41,46,60,200/-$ $= 20,73,301/-$ $= 142,68,784/-$
<b>Addition/disallowance of deduction – Rs.1,42,68,784/-</b>	

13. Ld. CIT (A) deleted the addition made by the AO u/s 14A read with Rule 8D (ii) & 8D (iii) by returning following findings :-

**“5.2.2 In the present case, it has been explained that appellant has not earned any exempt income which does not form part of the total income earned by the assessee and also no interest has been incurred for acquiring the said investment. It is a fact as noted from the impugned order and submission of the appellant that during the previous year relating to assessment year 2014-15, an amount of Rs.50114766/- has been debited as interest expenditure to the profit and loss account. However, no exempt income more particularly dividend from the investment is found to be claimed in the tax computation**

**5.2.3 In view of the above facts and circumstances of the case, it is amply clear that as far as provisions of section 14A are concerned, disallowance under this section can be made only in respect of expenditure incurred by the assessee to earn the exempt income.”**

14. Bare perusal of the impugned order passed by the Id. CIT(A) goes to prove that disallowance of Rs.1,42,68,784/- has been deleted on the sole ground that assessee company has not earned exempt dividend income from the investment during the year under consideration and as such, no disallowance can be made.

15. Hon'ble Delhi High Court in case of **Holcim India Pvt. Ltd. – ITA No.486/3024 & ITA No.299/2014** and Hon'ble Supreme Court in case of **Godrej & Boyce Manufacturing Company Ltd. vs. DCIT – 394 ITR 449 (SC)** have categorically held that, *“when the assessee has not earned any dividend income forming part of the total income during the year under consideration, section 14A read with Rule 8D is not attracted.”*

Consequently, we find no scope to interfere into the deletion of disallowance made by the Id. CIT (A) u/s 14A read with Rule 8D.

So, ground no.2 of Assessment Year 2014-15 is determined against the Revenue.

**GROUND NO.3 OF AY 2014-15**

16. Ld. CIT (A) deleted the addition of Rs.3,49,97,305/- made by the AO u/s 37 of the Act by way of proportionate disallowance

of interest qua the amount of Rs.35,42,64,402/- made by the assessee to its subsidiary and sister concern on the ground that the same was not for business purpose by returning following findings:-

**“5.3.2 The appellant, however, claims that Assessee has not lent any interest free funds to related companies out of the interest bearing funds. During the previous year relevant to AY 2014-15, loans amounting to Rs. 61,65,581/- only has been freshly lent to related concerns out of total Rs. 35,42,69,402/. The net worth of the appellant is Rs 133,06 crore as on 31.03.2014 and has EBIDTA of Rs 27,06 crore for the year ended 31<sup>st</sup> March 2014 and therefore, all the other loans have been given in previous financial years and have been either given out of total funds received from share capital' received from investors or from interest free funds available with the appellant or from internal accruals of the appellant. Moreover, no disallowance has been made in any of the earlier years, It has also been claimed that the advances have been given for the purpose of business acquiring for land in the interest of appellant only. The appellant is in the business of running a dry port which requires acres of land to keep loaded and empty containers and as per U,P Land Revenue Act, one entity cannot acquire more than 12 acres of land and these subsidiaries have been made to consolidate land for the dry port business, no interest has been charged from the subsidiary companies.**

**5.3.3 It is noted from the balance sheet of the appellant for the previous year relevant to assessment year 2014-15, it is having a net worth of Rs.133,06 crore comprising of Rs.119.3 crore on account of reserve and surplus and Rs.13.7 crore on account of share capital whereas interest free advance given to subsidiary is only Ra.35.42 crore in which the current year advance is only Ra.61.65 lakhs.**

**5,3,4 Ld. AO though disallowed a portion of interest on above account only because of being not satisfied with the reply of the appellant, has not elaborated how and why at all the reply/explanation offered by the assessee advanced during the course of assessment proceedings was not acceptable. On careful consideration of the submission of the appellant vis-a-vis impugned order and material on record, I find it convincing that Ld. AO has not established nexus between the borrowed funds and amount advanced. It was incumbent upon the AO to establish a reasonable nexus between borrowed**

**funds and interest free advances, the same is not found to be made in the impugned order. The nexus between borrowed funds and interest free advance has to be necessarily established before resorting to the disallowance of interest expenditure as held in the ACIT vs M/s Namdev Ex ort RD. Joshi & Co, v CIT 251 ITR 332 (MP) as also in ACIT vs Chandra Prakash 27 tax World 328 (Jaipur Bench).**

**5.3,5 It is therefore, logical that advance given by the appellant to its subsidiaries of Rs,35.42 crores which includes current year fresh advance of Rs.61.65 lakhs be taken and construed to be out of own surplus fund at Rs.133.06 crore comprising of Rs.119.3 crore on account of reserve and surplus and Rs.13.7 crore on account of share capital. In view of facts and judicial pronouncement noted above, this ground of appeal relating to disallowance of interest of Rs.3,49,97,30S/- is allowed in favour of appellant.”**

17. Bare perusal of the impugned order passed by the ld. CIT(A) goes to prove that ld. CIT (A) has deleted the addition by thrashing facts in the light of the submissions made by the assessee on the ground that when the AO has failed to establish a reasonable nexus between the borrowing fund and interest free advances, addition is not sustainable and relied upon the decision rendered by **Hon'ble Madhya Pradesh High Court in R.D. Joshi & Co. vs. CIT 251 ITR 332 (MP) and order passed by the coordinate Bench of the Tribunal in ACIT vs. Chandra Prakash 27 tax world 328 (Jaipur Bench).**

18. At the same time, ld. CIT (A) brought on record the fact that the assessee was having surplus fund of Rs.133.06 crores i.e (Rs.119.3 crores on account of reserves & surplus and Rs.13.7 crores on account of share capital) in its kitty. When the assessee

was having surplus fund of Rs.133.06 crores during the year under consideration, advancing of interest free loan of Rs.35.42 crores to its subsidiaries is not to attract any disallowance on account of proportionate interest on advances made to the subsidiaries. So, ld. CIT (A) has rightly deleted the addition, hence ground no.3 of AY 2014-15 is determined against the Revenue.

**GROUND NO.4 OF AY 2014-15**

19. The Revenue by raising Ground No.4 challenged the deletion of addition made by the AO on account of disallowance of interest earned by the assessee company on FDR. However, on the other hand, ld. AR for the assessee contended that the issue has been decided by the ld. CIT (A) in accordance with the law applicable to the facts and in view of the law laid down by **Hon'ble jurisdictional High Court in case of CIT vs. Jaypee DSC Ventures Ltd. (2012) 17 taxmann.com 257 (Delhi).**

20. In Schedule 19, assessee has reduced the interest income earned on bank deposits amounting to Rs.20,05,747/- from the interest expenses incurred during the year. Declining the contentions raised by the assessee, AO charged the income earned from deposits in the bank under the head 'income from other sources' and made addition thereof to the income of the assessee.

21. Undisputedly, assessee submitted a bank guarantee to the Central Warehousing Corporation as a pre-condition for contract and to some Chain Train Operators for lease of containers. It is also not in dispute that in consideration to the aforesaid bank guarantee, assessee deposited margin with the banks in the form of FDR on which it has earned interest and thereby deducted the same from the interest income.

22. Assessee's claim is that deposits have been made for the business purpose and have not been made out of surplus fund to earn extra income and as such, no disallowance is admissible.

23. Aforesaid contentions of the assessee have been considered by the Id. CIT (A) and deleted the same by returning following findings :-

**“5.4.4 In the light of facts as discussed above, the issue arises whether the interest income arising out of FOR kept as margin money to obtain the bank guarantee for securing the contract/to enter into agreement with the CWC (The Central Warehousing Corporation) requires to be treated as business income (as claimed by the appellant) or income from other sources (as treated by the Ld. AO in the impugned order).**

**5.4,5 It is ascertained from the document submitted by the appellant like agreement with the CWC, bank guarantee document by the banks to the CWC, term and condition mentioned in the sanctioned letter for bank guarantee etc, and fact of the case discussed above that as a precondition to secure the contract/agreement with the CWC, the appellant was under obligation to submit bank guarantee to the CWC and for this reason, the appellant had to keep FOR as margin money with the bank to obtain the said bank guarantee, Importantly, the act of keeping FOR with the bank is apparently a compulsion on the part of the appellant which indicates a direct nexus between the interest income on account**

of this FOR and the business activity, Thus, this interest income attains the character of business income as held in the case of CIT vs Jaypee OSC ventures Ltd. (2012) 17 taxmann.com 257 (Delhi) wherein the Hon'ble Delhi High Court has interalia observed that:

“..... it was apparent from records that bank guarantee was furnished as a condition precedent to entering into contract and further it was to be kept alive to fulfill certain Obligations. Quite apart from the above, the release of the same was dependent on the satisfaction of certain conditions. Thus, the instant case is not one where the assessee had made the deposit of surplus money lying idle with it in order to earn interest; on the contrary, the amount of interest was earned from fixed deposits which were kept in the bank for furnishing the bank guarantee. It had an inextricable nexus with securing the contract ..... ” and therefore, the said interest income was allowed to be treated as business income.

**5.4.6** Reliance is also placed on the judicial decision in the case of Empire Pumps (P) Ltd. vs ACIT (2015) 54 taxmann.com 317 (Gujarat) wherein Hon'ble High Court of Gujarat has taken into consideration the judgment in the case of CIT vs Jaypee DSC ventures Ltd. cited (Supra) while deciding the issue pertaining to section 801 of the Act and held therein:

“1(10) ... Thus, it is clear that the income earned from fixed deposit placed for business purpose cannot be treated as income from other source but must be seen as part of the assessee's business income. In the present case also the assessee was compelled to park a part of its funds in fixed deposits under the insistence of the financial institutions and therefore the income received thereupon cannot be termed to be income from other sources ... ”

**5.4.7** In view of the factual matrix of the case and judicial pronouncements cited supra including that of jurisdictional High Court of Delhi, I find that this ground of appeal is covered under the ratio and decision of the cases and therefore, deserves to be decided in favour of appellant. Accordingly, the interest income of Rs.20,05,747/- is directed to be treated as income from business 'and profession so much so the same should be allowed for computation of deduction u/s 80IA of the Act.”

24. We have perused the aforesaid findings which are strictly on facts in the light of the law laid down by **Hon'ble Delhi High Court in case of CIT vs. Jaypee DSC Ventures Ltd. (2012) 17 taxmann.com 257 (Delhi)**, the ratio of which is that, "*when a bank guarantee is furnished as a condition precedent to entering into a contract and further it has to be kept alive to fulfill certain obligations and the fixed deposits have not been made out of the surplus funds available with the assessee, the same is to be treated as business income.*" Since judgment of **Hon'ble jurisdictional High Court in case of CIT vs. Jaypee DSC Ventures Ltd. (supra)** is squarely applicable to the facts of the case at hand, ld. CIT (A) has rightly deleted the addition. So, ground no.,4 of AY 2014-15 is determined against the Revenue.

25. Resultantly, both the appeals for the Assessment Years 2013-134 & 2014-15 filed by the Revenue are dismissed.

**Order pronounced in open court on this 28<sup>th</sup> day of October, 2021 after the conclusion of the virtual hearing.**

Sd/-  
**(R.K. PANDA)**  
**ACCOUNTANT MEMBER**

sd/-  
**(KULDIP SINGH)**  
**JUDICIAL MEMBER**

**Dated the 28<sup>th</sup> day of October, 2021**  
**TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)-1, Gurgaon.
- 5.CIT(ITAT), New Delhi.

AR, ITAT  
NEW DELHI.