

THE INCOME TAX APPELLATE TRIBUNAL  
"A" Bench, Mumbai  
Shri Shamim Yahya (AM) & Shri Amarjit Singh (JM)

I.T.A. No. 3096/Mum/2019 (Assessment Year : 2014-15)

M/s. Lovely Fragrance A-701, Baker Fields Shashtri Nagar Andheri West Mumbai-400 058  PAN : AAAFL1837E (Appellant)	Vs.	PCIT-24 Room No. 416 Piramal Chambers Lalbaug, Parel Mumbai-400 012.  (Respondent)
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Assessee by	Shri Mahavir Jain
Department by	Shri Rajeev Harit
Date of Hearing	05.08.2021
Date of Pronouncement	20.10.2021

ORDER

Per Shamim Yahya (AM) :-

This appeal by the assessee is directed against revision order under section 263 of the I.T. Act of learned Commissioner of Income Tax [in short learned CIT] dated 18.2.2019 pertaining to assessment year 2014-15.

2. The grounds of appeal read as under :

1. On the facts and circumstances of the case and in law the learned Pr. Commissioner of Income Tax erred in invoking jurisdiction under section 263 of the Act and in setting aside the assessment order passed u/s 143(3) on the issue interest income amounting to Rs. 7,36,943/- and its allowability as deduction u/s 80IA of the Income Tax Act, 1961.
2. On the facts and circumstances of the case and in law order the learned Pr. Commissioner of Income Tax erred in not appreciating the fact that at the time of passing the assessment order, the issue relating to claim of deduction u/s 80-IA had been duly examined by the Ld. AO, as such, at the most it may be a case of 'inadequate enquiry' and not 'lack of enquiry' to give jurisdiction u/s 263 of the Act
3. On the facts and circumstances of the case and in law order the learned Commissioner of Income Tax erred in passing order u/s 263 ignoring the settled legal position that where two views are possible and the Assessing

Officer has taken one of the possible views, such an order cannot be treated as an erroneous order to give jurisdiction u/s 263 of the Act.

4. On the facts and circumstances of the case and in law order the learned Pr. Commissioner of Income Tax erred in not appreciating the fact that even on merits, the interest income is 'derived from the business of the undertaking', and as such, the same shall be eligible for deduction u/s 80IA in view of the decision of the Hon'ble jurisdictional High Court in the case of *M/s. Tema Exchangers Manufacturers Pvt. Ltd.* [ITA No. 415 of 2004].

5. On the facts and circumstances of the case and in law order the learned Commissioner of Income Tax erred in passing order u/s 263 without appreciating the fact that appellant has paid taxes under MAT and any adjustment in normal provision of tax will not have any impact on tax liability of appellant in current year, hence, order passed u/s 263 cannot be said to be prejudicial to the interest of revenue.

That the appellant craves leave to add, alter, modify or delete all or any of the above grounds of appeal.”

3. In this case learned CIT noted that Assessment for the A.Y. 2014-15 was completed in this case u/s. 143(3) of the Income-tax Act on 30.11.2016, on a total income of Rs. 47,73,530/- under normal provisions of the Income-tax Act as against returned income of Rs. Nil. This was pursuant to disallowance of assessee's claim of deduction 80IA of the Act of equivalent amount. However, as the tax computed on the normal provisions of the Act was less than the tax computed u/s. 115JC, therefore income computed as per book profit was deemed to be income of the assessee at Rs. 2,12,88,404/-. Learned CIT observed that subsequently, it was noticed that during the relevant financial year the assessee firm had received interest of Rs. 7,36,943/- against loan given to the Partners. That as mentioned above, while completing the assessment, the deduction claimed by the assessee had been restricted by an amount of Rs. 47,73,534/-. That the deduction was worked out after setting off the unabsorbed business loss shown by the assessee in the preceding years, which the assessee had not taken into account while working out the claim of deduction. That the interest income was not separately taxed under 'Income from Other Sources', and the deduction u/s.80IA of the Act was allowed on the interest income also.

Learned CIT in the backdrop of the above issued show-cause notice dated 05.12.2018 to the assessee pointing out that since interest received on loan constitutes income from 'Other Sources', incorrect allowance by the Assessing Officer of deduction of interest received on loan resulted in excess allowance of deduction to the tune of Rs. 7,36,943/-.

4. The assessee explained as under :

(i) That the assessee has installed windmills in different locations in India and claimed deduction u/s. 80IA on the profit earned by such units.

(ii) That, since, the impugned interest had been received by the firm against loan given to its Partners, the same was shown as income under the head of Business & Profession.

(iii) That, during the assessment proceedings, proper enquires were conducted by the Assessing Officer in respect of the said interest on loan, and that it was only after analyzing the submissions made and documents furnished, that the Assessing Officer considered it fit not to make any disallowance on this count.

(iv) That, Section 263 of the Act cannot be invoked where claim of deduction u/s. 80IA has been duly examined and verified by the Assessing Officer. The Assessing Officer, vide notice dated 14.10.2016 u/s. 142(1), has specifically asked the assessee about details of interest received from Partners, and in response to the same the assessee has submitted detailed information in respect of the same and has also duly explained its treatment in the books of account.

(v) That there are catena of judgments, wherein it has been held that powers u/s. 263 of the Act can be invoked only in cases of "lack of inquiry" by the Assessing but not where there was "inadequate inquiry". Various decisions of Hon'ble High courts have been cited in this connection.

(vi) That the order passed by the Assessing Officer is neither erroneous nor prejudicial to the interests of revenue, since the impugned interest income had nexus with the assessee's business and is, therefore, eligible for deduction u/s. 80IA. Here, again, some judgments have been cited where it was held that income, which is incidental to profits and gains derived from eligible business, qualifies for deduction u/s. 80IA.

(vii) That the order passed by the Assessing Officer cannot be prejudicial to the interests of revenue because during the relevant financial year the assessee has paid tax under the special provisions of MAT u/s. 115JC of the Act and not under the normal provisions. Thus, any adjustment to the total

income under the normal provisions would not make any difference in the computation of book profit under MAT provisions.

5. However, learned CIT was not convinced. He held as under :

5. The aforesaid points raised by the assessee have been considered but not found acceptable. The assessment order passed by the Assessing Officer was both erroneous and prejudicial to the interest of revenue in view of the following:-

(i) Perusal of the relevant assessment records does not support the assessee's contention that the Assessing Officer had duly examined, and analyzed the assessee's submission regarding interest income received during the year. It is seen that the notice u/s, 142(1) of the Act, dated 14.10.2016, was the first questionnaire issued by the Assessing Officer, containing questions of a very general nature, intended to ascertain the nature of business of the assessee and obtain an overall view of the financials. The questionnaire, therefore, sought basic details e.g. copies of profit and loss account and balance sheet, copies of ITRs filed by the partners, details of investment in shares, details of expenses and details of current liabilities, and of loans & advances, etc. One of these details was party-wise break-up of interest received and paid during the year. In response to the same, the assessee, vide letter dated 08.07.2016, furnished a tabular Chart, showing names of the persons to whom loan was advanced, the amount of loan given during the year, amount received during the year, interest income earned and rate of interest. The covering letter stated that the firm had given loan to their Partners during the year. The assessee, contrary to the stand taken during proceedings u/s. 263 of the Income-tax Act, has not explained anything further about the treatment of the interest income in the books of account, viz. why it was considered to be business income or how it had nexus with the business of the assessee. No queries in this respect were raised by the Assessing Officer and none in this regard were, therefore, answered. The only aspect which was taken up for examination by the Assessing Officer was about why brought- forward losses incurred on account of some of the windmills should not be set off against the profits of the current year before claimed deduction u/s. 80IA. In this question detailed reply was given by the assessee vide letter dated 16.11.2016, and after analyzing the same the Assessing Officer restricted the assessee's claim of deduction u/s. 80IA by an amount of Rs. 47,73,534/-. This, therefore, was the only aspect on which the Assessing Officer had conducted any kind of inquiry.

(ii) It would follow from the above that this was a case, not of 'inadequate inquiry' but of 'lack of inquiry'. Conducting inquiry involves a process not just of obtaining information, but also of processing and analyzing the information for arriving at some conclusion, depending on the nature of the task at hand. In other words, there is a vast difference between calling for general information and conducting inquiry on the same. In this case, as has been shown earlier, the Assessing Officer had collected general information

for gauging the assessee's nature and status of business, but he had not conducted any inquiry, whatsoever, on any aspect of interest income received and its ramifications on the assessee's claim of deduction u/s. 80IA of the Income-tax Act.

(iii) Mention may be made of the decision of the Hon'ble Delhi High Court in the case of CIT vs. Anil Kumar Sharma, which has been relied on by the assessee. In this case, records showed that the Assessing Officer had applied his mind to the issue in question, and he had not only issued a detailed questionnaire, he had also invited the explanation of the assessee on various issues. The Hon'ble Court held that once such application of mind was discernible from records, the proceedings u/s. 263 of the Income-tax Act would not lie with the Commissioner only because he held a different view. In our instant case, however, it has already been shown that the Assessing Officer clearly did not address the issue of whether the interest income deserved to be treated as business income, or whether it constituted income from 'Other Sources'. There was not a single question requiring the assessee to explain why and how the interest income constituted business income, what nexus it had with the assessee's business, and why it should be allowed as deduction u/s, 80IA of the Act.

(iv) This, in turn, brings us to the assessee's next contention, viz. that the interest income had nexus with their business and was, therefore eligible for deduction u/s. 80IA. Here again, in decisions cited by the assessee, it was held that deduction under the said Section would be allowable if the impugned income is incidental to the profits and gains derived from eligible business u/s. 80IA. For claiming deduction u/s. 80IA, the income has to be "derived" from the eligible business, and not just "attributable to" the eligible business. The term "derived" has been defined in multiple decisions of the Hon'ble Apex Court to mean that the income has to be received directly from the eligible business, and not just be indirectly attributable to it. In our instant case, the assessee was engaged in the business of generation and supply of electricity in the States of Karnataka and Rajasthan, for which it has installed windmills in different locations. There is nothing on record to show that the interest received against loans given to Partners had any direct nexus with the business of the assessee. As emphasized over and over again, no questions on this count were asked to the assessee, and there is absolutely nothing in the assessment records to show that the assessee had furnished any details in this respect. This being so, the interest income needed to be taxed separately under the head of 'Income from Other Sources' instead of allowing the same as deduction u/s. 80IA.

(v) We finally come to the assessee's last line of argument, that any adjustment to the total income of the firm under normal provisions of the Income-tax would not have had any impact from the revenue angle since the assessee had paid taxes u/s. 115JC of the Income-tax Act. This point was already covered in the show-cause notice itself. It is true that even if Rs. 7,36,943/- were to be further disallowed u/s. 80IA, the taxable income of the firm for the relevant year would still be more as per provisions of Section

115JC of the Act, However, the impact of not separating the interest income & taxing the same under 'Other Sources' will be seen in the year in which the firm starts offering income under the normal provisions of the Income-tax Act and credit for taxes paid would be allowed as per MAT credit.

6. Against the backdrop of the discussion above, it would be abundantly clear the assessment order passed by the Assessing Officer in this case was erroneous in so far as it was prejudicial to the interests of revenue. As per Explanation 2 to Section 263 of the Act, an order passed by the Assessing Officer shall be "deemed" to be erroneous in so far as it is prejudicial to the interests of revenue if, in the opinion of the Principal Commissioner or Commissioner, any one of the four conditions prescribed in the Act are satisfied. Out of these prescribed conditions, the following are relevant in the given context, viz.

- (i) If the order is passed without making inquiries or verification which should have been made;
- (ii) If the order is passed allowing any relief without inquiring into the claim.

In this particular case, it has been shown how the order was passed without any inquiring into the question of allowability of deduction of the interest income u/s. 80IA, thereby warranting intervention u/s.263 of the Act.”

6. Therefore learned CIT referred to some case laws and concluded as under :-

“In view of the provisions of section 263 of the Income Tax Act, and also the ratio of the decisions as above, it is my considered view that the impugned order is erroneous in so far as it is prejudicial to the interest of Revenue. The assessment order is, therefore, set aside on the issue of categorization of interest income and its allowability as deduction u/s.80IA of the Act. The Assessing Officer is directed to re-assess the income of the assessee afresh in the light of the discussion above, after following due procedure and after affording the assessee reasonable opportunity of being heard.”

7. Against the above order assessee is in appeal before us.

8. We have heard both the parties and perused the records. At the outset we note that issue regarding treatment of interest income viz-a-viz deduction under section 80IA has been decided by Hon'ble Jurisdictional High Court in the case of Tema Exchangers Manufacturers Pvt. Ltd.(supra) vide order dated 18.7.2018. It was held that:

5. We find that this Court in *Jagdishprasad M. Joshi* (supra), the question which was posed for our consideration was as under:

*“Whether on the facts and in the circumstances of the case and in law, the Tribunal was right in allowing the appeal of the assessee holding that the interest income earned by the assessee on fixed deposits with the bank and other interest income are eligible for deduction under Section 80IA of the Income Tax Act, 1961?”*

6. This Court answered the question in the affirmative while dismissing the Revenue’s appeal. This by holding that income earned by the assessee on the fixed deposit from the bank has to be extended deductions under Section 80IA of the Act. In support of the above, this Court relied upon the decision of the Delhi High Court in *Commissioner of Income Tax Vs. Eltek SGS P. Ltd.*, 300 ITR 06 wherein the difference in the language employed in Sections 80IB and 80HH of the Act was brought out i.e. “profits and gains derived from industrial undertakings” as found in Section 80HH of the Act with “profits and gains derived from any business of an industrial undertakings”. In view of the difference in language of the two Sections, this Court held that interest on fixed deposits in the bank would be profits and gains derived from any business of an industrial undertaking. The same reasoning would apply to extend deductions under Section 80IA of the Act for the compensation received for non supply of spare parts. Thus, the issue stands concluded in favour of the appellant assessee by the decision of this Court in *Jagdishprasad M. Joshi* (supra).

7. Mr. Tejveer Singh, learned Counsel for the Revenue is unable to points out why the aforesaid decision in the case of *Jagdishprasad M. Joshi* (supra) would not apply to the present facts.

8. In the above view, both the questions of law are answered in the negative i.e. in favour of the appellant assessee and against the respondent Revenue.”

9. Learned Departmental Representative has opposed the above plea and point out that Hon'ble Supreme Court in the case of *Liberty India* 317 ITR 218 has held that words “derived from” is narrow than the connotation as compared to word “attributable to”. By issuing the expression ‘derived from’, Parliament intended to cover sources not beyond the first degree.

10. Upon careful consideration we find that aforesaid order of Hon'ble Jurisdictional High Court was delivered much later than the Hon'ble Supreme Court decision. It is settled law that interpretation of law and Supreme Court decisions by Hon'ble Jurisdictional High Court is binding upon lower courts and Tribunal. Hence, respectfully following the precedent from Hon'ble Jurisdictional High Court we hold that since the issue is covered in favour of

the assessee the jurisdiction under section 263 exercised by learned CIT is bad in law. Hence, we set aside the same.

11. In the result, appeal by the assessee stands allowed.

Pronounced in the open court on 20.10.2021.

Sd/-  
(AMARJIT SINGH)  
JUDICIAL MEMBER

Sd/-  
(SHAMIM YAHYA)  
ACCOUNTANT MEMBER

Mumbai; Dated : 20/10/2021

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

BY ORDER,

(Assistant Registrar)  
ITAT, Mumbai

PS