

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "A", MUMBAI**

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
AND
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.3566/M/2019
Assessment Year: 2014-15**

ACIT 3(2)(1), Room No.674, 6 th Floor Aayakar Bhavan, M.K. Road, Mumbai - 400020	Vs.	M/s. Lalitpur Power Generation Company Ltd., 106-107, Bajaj Bhavan, Jamanlal Bajaj Marg, 226, Nariman Point, Mumbai – 400 021 PAN: AABCL6739M
(Appellant)		(Respondent)

**CO No.64/M/2020
(Arising out of ITA No.3566/M/2019)
Assessment Year: 2014-15**

M/s. Lalitpur Power Generation Company Ltd., 2 nd Floor, Bajaj Bhavan, Jamnalal Bajaj Marg, Nariman Point, Mumbai – 400 021 PAN: AABCL6739M	Vs.	ACIT 3(2)(1), Room No.674, 6 th Floor Aayakar Bhavan, M.K. Road, Mumbai - 400020
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Kirit Kamdar, A.R.
Revenue by : Shri Mehul Jain, Sr. D.R.

Date of Hearing : 09.12.2021
Date of Pronouncement : 14.01.2022

ORDER

Per Kuldip Singh, Judicial Member:

Aforesaid appeal filed by the Revenue and cross objections filed by the assessee are being disposed of by way of composite order in order to avoid the repetition of discussion.

2. Appellant ACIT-3(2)(1), Mumbai (hereinafter referred to as the Revenue) and cross objector (M/s. Lalitpur Power Generation Company Limited) by filing present appeal and cross objections sought to set aside the impugned order dated 28.03.2019 passed by Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] on the grounds inter alia that:-

ITA No.3566/M/2020

*“1. Treating of interest income on non-earmarked fund as income from other sources – Rs.1,86,73,436/-
2. Treating of rental income as income from other sources – Rs.1,46,000/-.”*

CO No.64/M/2020

“1. On the facts and in the circumstances of the case and in law, the respondent prays that in case the interest income of Rs.1,86,73,436 is held to be taxable under the head “Income from Other Sources” as prayed for by the Department in ground no. 2 of their appeal no. 3566/Mum/2019, then deduction ought to be granted under section 57 in respect of the interest expenditure incurred in relation to earning the said interest income.

2. On the facts and in the circumstances of the case and in law, the respondent prays that in case the interest income of Rs.1,86,73,436 is held to be taxable under the head “Income from other sources” as prayed for by the Department and in case deduction is not allowed under section 57 in respect of interest expenditure as prayed for in ground no. 1 above, then cost of acquisition of assets/ written down value thereof ought not to be reduced by such amount of interest income.”

2. Briefly stated facts necessary for adjudication for the controversy at hand are that; the assessee is a Bajaj Group Company who has set up a 1980 MW Thermal Power Plant (TPP)

660 MW already commenced in the state of UP. During A.Y. 2013-14 the construction activity was in progress.

3. Assessee company has filed its return declaring nil income, as in the computation of income it has claimed loss of Rs.98,97,000/- and the same have been capitalized as pre-commencement of expenses as the manufacturing activity has not been commenced during the year. From the information available on record the AO noticed that the assessee company has received an amount of Rs.2,27,98,350/- on account of interest income subject to TDS under section 94A of the Act. The assessee company in its return has claimed refund of Rs.22,79,835/- on account of TDS. The AO sought to treat the interest income as revenue receipt so as to bring it to tax as income from other sources. Declining the contention raised by the assessee company the AO proceeded to treat the interest income of Rs.1,97,07,000/- on non-earmarked fund as income from other sources and brought the same to tax. The AO also made addition of Rs.1,46,000/- received by the assessee company as rental income from Abhitek Developers Pvt. Ltd. which has been subjected to TDS but not shown in the computation of income or in the accounts as rental income and thereby framed the assessment at the total income of Rs.1,98,53,000/- under section 143(3) of the Act.

4. The assessee carried the matter before the Ld. CIT(A) by way of filing the appeal who has partly allowed the same. Feeling aggrieved the Revenue as well as the assessee have come up before the Tribunal by way of filing appeal as well as cross objections respectively.

5. We have heard the Ld. Authorised Representatives of the parties to the appeal, perused the order passed by the Ld. Lower Revenue Authorities in the light of the facts and circumstances of the case and case law relied upon.

6. At the very outset it is brought to the notice of the Bench by the Ld. D.R. for the Revenue that the Ld. CIT(A) has entertained numerous documents in additional evidences for the first time which have not been forwarded to the AO to examine & verify the same and thereby violated the provisions contained under Rule 46A(3) of IT Rules, 1962. This factual position has not been controverted by Ld. Sr. D.R. or by the assessee rather the Ld. A.R. for the assessee brought on record additional fact that identical issue in the identical facts and circumstances of the case in assessee's own case have been set aside to the AO to decide afresh.

7. Undisputedly, identical issue had come up before the co-ordinate Bench of the Tribunal in assessee's own case i.e. Dy. CIT

vs. Bajaj Energy Ltd. in ITA No.983/M/2015 order dated 11.10.2017 in A.Y. 2011-12 which was remitted back to the AO to decide afresh in the light of the decision rendered by Hon'ble Supreme Court in case of CIT vs. Karnal Co-operative Sugar Mills Ltd. (2000) 243 ITR 2 (SC).

8. Both the Ld. A.R and D.R have made a request that in order to substantiate the cause of justice, issues cropped up in the present appeal be also remitted to AO to decide afresh in the light of the directions issued by the co-ordinate Bench of the Tribunal in assessee's own case in order dated 11.10.2017 (supra) passed for A.Y. 2011-12.

9. In view of what has been discussed above, we are of the considered view that since the evidence entertained by Ld. CIT(A) during the appellate proceedings has not seen the light of the day during assessment proceedings and AO has never been given an opportunity to look into and verify the facts taken in the additional evidence, the order passed by the Ld. CIT(A) is not sustainable, hence liable to be set aside.

10. Consequently, appeal filed by the Revenue is allowed for statistical purposes and the case is remitted back to the AO to decide afresh, in the light of the directions issued by the co-ordinate

Bench of the Tribunal in assessee's own case in order dated 11.10.2017 (supra) passed for A.Y. 2011-12, after providing opportunity of being heard to the parties. Resultantly, the appeal filed by the Revenue is allowed for statistical purposes and the cross objections filed by the assessee are dismissed having not been pressed.

Order pronounced in the open court on 14.01.2022.

**Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER**

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

Mumbai, Dated: 14.01.2022.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.