

IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" Bench, Mumbai
Before Shri Shamim Yahya, Accountant Member

I.T.A. No. 4175/Mum/2019
(Assessment Year 2015-16)

Clover Solar Private Limited 85, A-Wing, Mittal tower Nariman Point Mumbai-400 021 PAN : AADCC2739E (Appellant)	Vs.	ITO, Range-3(1)(3) Aaykar Bhawan, M.K.Road Mumbai-400 020 (Respondent)
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Assessee by	Shri Ketan Ved
Department by	Shri Anil Gupta
Date of Hearing	18.11.2021
Date of Pronouncement	27 .01.2022

O R D E R

Per Shri Shamim Yahya (AM) :-

This appeal by the assessee is directed against the order of learned Commissioner of Income Tax (Appeals)-8 dated 27.03.2019 and pertains to assessment year 2015-16.

2. Grounds of appeal read as under:-

1:0 Re: Considering the interest of Rs. 7,03,702/- as 'Income from Other sources

1.1 The Commissioner of Income-tax (Appeals) has erred in confirming the addition made by the Assessing Officer of Rs. 7,03,702/- being the interest received on Fixed Deposits as 'Income from Other Sources' while computing the total income of the Appellant.

1.2 The Appellant submits that considering the facts and circumstances of its case and the law prevailing on the subject, the interest received on fixed deposits cannot be termed as Income from other sources and the stand taken by the Assessing Officer in this regard is incorrect, illegal, misconceived and erroneous and the Commissioner of Income-tax (Appeals) ought to have held as such.

1.3 The Appellant submits that the Assessing Officer be directed to consider the interest income of Rs. 7,03,702/- as part of its business income eligible for deduction u/s. 80-IA of the Income-tax Act, 1961 and to re-compute its total income and tax thereon accordingly.

3. The issue raised is that Ld.CIT(A) erred in considering the interest of Rs. 7,03,702/- as income from other sources and not eligible business income for deduction u/s. 80IA of the Act. I note that in this case, the AO treated that income of Rs. 7,03,702/- earned on funds deposited with bank as income from other sources and disallowed deduction u/s. 80-IA on that claimed by the assessee. Ld.CIT(A) noted following submissions of the assessee.

“during the appellant proceedings, the appellant submitted that it has signed a Power Purchase Agreement[PPA] with NTPC Vidyut Vyapar Nigam Ltd.[NVVN] on 15.10.2010 for 25 years. As per the terms and condition laid down in the sanction letter from PFC, the appellant had to maintain a collateral security in the form of Debt Service Reserve Account [DSRA] as indicated in clause(b) of the collateral on Page 5 of the sanction letter. The relevant extract is reproduced hereunder:-

“CSPL shall provide 2 (two) quarter’s DSRA in the form of Cash/Bank Guarantee[BG] in advance (including principal & interest) out of its own sources not having any recourse to project assets/revenues at the time of CoD. Such advance amount deposited in the DSRA shall be adjusted based on filing up of DSRA from project revenue”.

4. However, Ld.CIT(A) was not satisfied. He confirmed the AO’s order placing reliance upon the decision of ITAT, Mumbai in the case of Maharashtra Airport Development Authority vs DCIT.

5. Against the above order, assessee is in appeal before ITAT.

6. I have heard both the parties and perused the records. Ld. Counsel of the assessee submitted that the issue is squarely covered in favor of the assessee by the decision of Hon’ble Bombay High Court in the case of M/s. Tema Exchnagers

Manufactureres Pvt.Ltd. vs ACIT in ITA No. 415 of 2004, vide order dated 18.07.2018.

7. I note that in this case following question was referred as under:-

(a) On the facts and in the circumstances of the case, whether the Incometax Appellate Tribunal was right in law in reversing the order of the CIT(A) and restoring that of the Respondent No.1 and thereby denying the appellant the benefit of Section 80IA of the I.T. Act, in respect of interest income of Rs.6,69,573/?

26. The Hon'ble jurisdictional High court has decided the issue in favour of the assessee by holding as under:-

3. The deduction under both the aforesaid heads under Section 80IA of the Act was disallowed by the impugned order of the Tribunal. It followed the decision of the Apex Court in Commissioner of Income Tax Vs. Pandian Chemicals Ltd. 318 ITR 420 which has held that the words 'derived from' means something which has direct and immediate nexus with the industrial undertaking. Thus, the claim for deduction on the above heads was disallowed under Section 80IA of the Act.

4. Mr. Subramaniam, learned Counsel appearing in support of the appeal points out that Pandian Chemicals Ltd. (supra) was rendered in the context of Section 80HH of the Act and we are concerned with Section 80IA of the Act. It is particularly pointed out that there is a difference in the wording of the two sections as existing during the previous year relevant to the subject assessment year. Section 80HH of the Act grants deduction in respect of the profits and gains derived from industrial undertaking while Section 80IA of the Act as in force at the relevant time grants deduction of profits and gains derived from any business of an industrial undertaking. It is submitted that the above issue is no longer res integra as the issue stand concluded in its favour by the decision of this Court in Commissioner of Income Tax Vs. Jagdishprasad M. Joshi, 318 ITR 420.

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. Accordingly, the appeal is allowed.

8. Upon hearing both the parties and perusing the records. I find that the issue is squarely covered in favour of the assessee by the aforesaid decision of Hon’ble jurisdictional High Court. Hence, I set aside the orders of the authorities below and decide the issue in favor of the assessee.

9. In the result, assessee’s appeal stands allowed.

Pronounced in the open court on 27 .01.2022

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai; Dated : 27.01.2022

Thirumalesh, Sr.PS

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