

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "DB", NEW DELHI**

**BEFORE Dr. B.R.R. KUMAR, ACCOUNTANT MEMBER  
AND  
SH. YOGESH KUMAR US, JUDICIAL MEMBER**

**ITA No.4200 4201 & 4202/Del/2017  
Assessment Year: 2010-11, 2011-12 & 2013-14**

<b>ITO Ward- 2 (4) Dehradun</b>	<b>Vs</b>	<b>State Infrastructure &amp; Industrial Development Corporation of Uttarakhand Ltd. IT Park, Sahastradhara Road, Dehradun PAN No. AAHCS7324R</b>
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>

Appellant by	Sh. N. C. Upadhyay, SR DR
Respondent by	Sh. Saurab Gupta, CA

Date of hearing:	29/04/2022
Date of Pronouncement:	24/05/2022

**ORDER**

**PER B. R. R KUMAR AM:**

This appeal has been filed by the revenue against the order of the CIT(A), Dehradun dated 26.04.2017, on the following grounds :-

- 1. The Ld. CIT(A) has erred in law and on facts in allowing the assessee's claim of deduction u/s. 80 IA (4) (iii) ignoring the fact that the interest income shown by the assessee was the part of profit attributable to the business of the assessee and it was not 'derived from' eligible business activities.*

Since all the appeals deal with the same issue, they are being adjudicated by a common order.

2. The assessee company is a Govt, of Uttarakhand Enterprises acting as a nodal agency of the State Govt, which was incorporated as a Public Ltd. Company in the year 2002, in order to promote industrial and infrastructure development in the State, to provide the financial assistance in the shape of debt, equity, venture capital, to develop infrastructure and assist the private initiative in industry and infrastructure and to implement and manage projects and provide specialized financial consultancy and construction and all such other activities to promote industries and develop industrial infrastructure in the state of Uttarakhand.

3. The assessee electronically filed its Return for A.Y. 2011-12 on 30.09.2011 declaring income of Rs.21,45,12,620/-.The assessee claimed deduction u/s 80IA(4)(iii) of the I.T. Act amounting to Rs.15,79,11,665/- in respect of the units developed at Pant Nagar Industrial Estate, District-Rudrapur, Uttarakhand and BHEL, near Ranipur, Haridwar.

4. During the course of assessment proceedings, the AO noticed that the assessee's profit consisted of interest on amounts which were due from persons to whom areas had been allotted in the industrial estate. The assessee was therefore required to justify the claim of deduction u/s 80IA on the interest income on land premium of Rs. 17,60,12,522/-.

5. In response, the assessee submitted that the claim for deduction included interest on land premium on some industrial parks, in respect of which deduction under section 80IA had been claimed.

6. Regarding eligibility of interest on land premium for deduction under section 80IA, the assessee submitted before the revenue authorities that,

*"In the case of the assessee company there are various receipts forming part of the income from the industrial estates including interest received from allottee(s) who opt for deferred payment option in respect of land price. The said interest income in case of these three industrial estates is eligible for deduction U/s 80IA and also in case of other industrial estates is not eligible to deduction U/s 801 A, is a business income of the assessee and is an integral part of the legitimate business receipts and are directly related and originate from the eligible business of the assessee.*

*Before discussing the dissimilarity of section 80IA and 80IC would like to draw attention towards the latest judgment dated 28<sup>th</sup> October 2015 of the Hon'ble ITAT, Mumbai in the case of M/s Hiranandani Builders Vs I.T.O. In the said judgment not only the interest on deferred payment but also the interest income of FDR's created in the undertaking or an enterprise have been considered as having direct nexus with the business and have been declared eligible for deduction U/s 80IA. The judgment of Hon'ble Supreme Court in the case of M/s Liberty India Vs. CIT (317ITR) has been categorically discussed and differentiated".*

7. The business activities of the assessee company with respect to provisions of section 80-IA(4)(iii). The text of the said clause is given hereunder

*"any undertaking which develops, develops and operates or maintains and operates an park [—][or special economic zone] notified by the Central Government in accordance with the scheme framed and notified]—] by that Government..."*

8. Memorandum of Association of the assessee company is which is an integral part of main objects for which the company is established clearly provides, that development and management of industrial estates as one its main objects. Supported by the fact that assessee is incurring expenditure on development of the various industrial parks is established that to develop and operate industrial park is the main business activity of the assessee company. This fact has not been disputed by the revenue.

9. Snippets from the order of the Assessing Officer as mentioned in the order of the Ld. CIT(A) are as under :-

- The land on which the industrial parks have been developed or are being developed, was made available by the State Government. The assessee developed industrial parks and the developed industrial plots were given on 99 years' lease to interested persons, for setting up industrial undertakings. The allottee has to make an initial one-time payment and then, recurring annual lease premium. The allottee is given an option of making down payment or deferred payment. In case of the former, he was allowed discount; in case of the latter, he was required to make payment in EMIs with interest.
- The AO observed that the assessee does not own the land. The development expenditure incurred by it, is debited and capitalized as current asset in its books of account. The land premium received by it from the allottees, is payable to the Government, is credited

to liability in the books of account. The interest on the land premium (in cases of deferred payments), is treated by it as its own receipt. The surplus by way of such receipt, after accounting for various operational expenses, is recognized as income and deduction u/s 80-IA of the I.T. Act is claimed in respect of the same.

- In the past, deduction as claimed by the assessee had been allowed. However, the AO noted that the land was not owned by the assessee; it was made available by the Government. Accordingly, the land premium was also treated as payable to the latter. The assessee developed the industrial infrastructure. But, he noted that the same was financed substantially by way of grants from the Central and the State Governments. The AO noted that the assessee was a corporation and had a separate legal personality. As such, it was expected that the transactions would be carried out in arms' length and businesslike manner. It was, however, noticed that it had no revenue model. The land premium as well as lease rentals belonged to the Government. The AO found it strange that, in spite of being a corporation, it has not cared to secure a business model for itself, in the whole transaction. He concluded that it may be incurring a part of development expenditure out of its own funds, but there was no contractual obligation on the part of the Government or the allottees to pay any sum to it towards that expenditure. Hence, he held that, in accounting as well as legal parlance, no amount actually received by it could be said to have any direct nexus with such expenditure.
- The AO concluded that it is by way of an informal arrangement, that it retains the interest component of the land premium (in installments scheme). If the installment scheme were not there, or if no allottee opted for the scheme, there would be no interest income. Thus, the income in question was purely incidental to the main business of development of industrial parks; it flowed from the financing arrangement, not from the business of development, or operation, or maintenance of industrial parks. The AO observed that the assessee, while offering installment scheme to the allottees, acts as a financial institution. As per RBI regulations relating to such institutions, it was mandatory for any corporation acting as such, to register itself with the RBI and follow the said regulations in conduct of such business. The assessee had not registered itself with the RBI. Yet, it was operating as a financial

institution. Thus, the RBI regulations were being violated by it. Be that as it may, he concluded that the interest income was directly attributable to the financing activity, which in turn, may be called incidental to the main activity, of development/operation/maintenance of industrial parks. Hence, he was of the opinion that the interest income was liable to be treated as income from other sources.

- At the most, he conceded that it may be called profit incidental or attributable to the main business but not 'derived from' the same. He pointed out that deduction u/s 80-IA of the I.T. Act was available in respect of the profit 'derived from' the eligible business. He also pointed out that the distinction between profit 'attributable to' and that 'derived from' a business that had engaged attention of the courts of law was settled after the decision of the Hon. Supreme Court in the case of Liberty India. In view of the facts and circumstances of the case as discussed above, he held that it was clear that the interest income did not have direct nexus to the business of development/operation/maintenance of industrial parks, not derived from it.
- The case laws quoted by the assessee were not entirely related to this case. Hence, he held that the assessee was not eligible for deduction u/s 80-IA in respect of the same. He therefore disallowed deduction u/s 80IA on the interest income on land premium at Rs.15,79,11,665/-.

10. Ld. CIT(A) disagreed with the finding of the Assessing Officer and based on the decision for the A.Y. 2012-13, the Ld. CIT(A) deleted the addition. While deleting the addition the Ld. CIT(A) relied upon the decision in his order dated 04.08.2016 in the case of the assessee itself. The said decision is as under :-

*"At the very outset it is important to note that the assessee is a State Government undertaking which has been incorporated with the specific purpose of fostering industrial development in the State of Uttarakhand and in the said process it is setting up Industrial parks in various parts of the state. For this purpose the Government of Uttarakhand has made available land to the assessee. The title of the land continues to remain in the name of the Government but the possession of the same is handed over\ to the assessee for the development of industrial parks and their management. The work of allotment to lessees is also being done by the assessee. This is the business activity of the assessee and in the course of this it earns certain business receipts. These business receipts have been considered eligible for deduction under section 80IA*

*as per the notifications issued by the CBDT in respect of these industrial parks. The question therefore arises as to whether assessee can be denied the benefit of deduction in respect of receipt of interest on deferred payments. The Assessing Officer has held that the land belongs to the State Government and thus the land premium belongs to it. He adds that there is no contractual agreement by which it has been agreed that the assessee will have a right to receive interest component of the deferred payment scheme. He has further argued that interest on deferred payment does not arise by the activity of development and maintenance of the industrial park but as a result of financing activity done by the assessee company and therefore at best it is attributable to the business but not derived from the business. Therefore as per the judgments of the Hon Supreme Court in the case of Liberty India(Supra)it is not a deductible receipt. The assessee has stated that the deferred payment scheme is one of the ways in which the allottees have been allowed to make payment for the land. In the event of down payment they are given a discount and the entire land premium collected from them is paid to the Government. Under the deferred payment scheme, the interest component is added to the land premium and collected from the allottees. The land premium is paid to the Government and the interest is retained by the Corporation. The assessee corporation could not present a copy of the scheme whereby it was authorized to retain this money but presented a letter in which the Government has pointed out that the land has been mutated in the name of the Uttarakhand Government and management rights vested in the Corporation and asking the Managing Director to ensure that upon allotment (to lessees) by SIDCUL, the land premium, lease rent, re establishment Levy, reconstitution levy and transfer levy may be paid to the Government treasury from time to time. It has been thus argued that there is no demand for interest from deferred payment scheme to be deposited in Government account and this shows that the assessee was entitled to retain this amount. It has also furnished a copy of the application form in which the details of the scheme of allotment, including the payment requirements under deferred payment scheme, are outlined. It has also presented a copy of its audited accounts which are signed by its Board, who comprise senior officers of the Government, including the Chief Secretary, to show that the Government was fully in the know that such interest was being charged. It has argued that as per the judgment of the Hon Supreme Court in the case of Govinda Chowdhury (supra) and several other judgments interest on delayed payments was sales receipt and was fully deductible under section 801 A.*

9. *On consideration of facts, it is clear that the deduction under section 80IA is available under sub section 4(iii) to any undertaking which develops, develops and operates or maintains and operates an Industrial park or SEZ notified by the Central Govt in accordance with the scheme framed and notified by it. There is nothing in the Act or in the Industrial Park Schemes (of 2002 or 2008) that mandate that the industrial park developer or operator must be the owner of the land. The only conditions are that it should develop, operates or maintain an industrial park. Thus the fact that the assessee does not own the land does not debar it from having a right to any income from the industrial park, subject to its understanding with the owner of the land in this regard. The letter of the Principal Secretary, Industrial development dated 13 Feb 2013 makes it quite clear that the corporation has been set up by the state of Uttarakhand (the land owner) and given management rights to foster the industrial development in the state and lays down the levies to be passed ok to the State Government by SIDCUL. Interest on deferred payments is not one of the levies which is required to be passed on. Furthermore, perusal of the application for allotment indicates that for the purposes of the allottee, the single entity with which it has to deal for the project is the Assessee*

corporation. It is the Assessee corporation that collects fees and it the Corporation that allots the land for industrial operations. Thus an allottee can only be allotted land as per the scheme laid down in the application form. Presuming that there is no separate Government approval for the deferred payment scheme (since the assessee could not produce any document in support of such) or the collection of interest with regard to it, it has to be assumed that the payment schemes have been devised by the management of SIDCUL to get as much payment upfront as possible and also to encourage those who are not able to pay upfront to also seek allotment. The Upfront payments are at discounted rate in that they are bereft of any interest payment and a rebate of 2% is offered. The deferred payments are charged at a rate of 15% per annum. The allottee has to opt for one and once he does, then he is obligated to make payment as per the same or else SIDCUL has the right to cancel the allotment. Thus, contractually, he is bound to pay to SIDCUL, the amount demanded by it as per the relevant scheme of payment opted for. With regard to the deferred payment scheme in itself, these kinds of payment schemes are quite common in any real estate project. Deferred payments are taken to encourage allottees to apply for flats, lands or houses and pay as they earn. A premium is usually charged in respect of such payments as a compensation for the delayed receipt of payment This does not convert the builder or the real estate developer into a financier (as alleged by the Assessing Officer) and by no stretch of imagination can it be argued, that the payment received is on account of any finance provided and it does not constitute the cost of the land. The cost of a land can vary depending upon the scheme of payment opted for in much the same way that the cost of a motor car or a household appliance can vary depending on the manner in which the payment is made. Ultimately, the interest is a compensation for delayed payment and as pointed out by the Hon Supreme Court in the case of Govinda Choudhury (supra) and in the other case laws cited by the assessee, interest on delayed payment is nothing more than the proceeds of sale and therefore the receipts from the eligible business. Therefore one is unable to accept the contention of the assessing officer that the interest received by the assessee is not from the development operation and maintenance of the Industrial park because as it emerges in the letter of the Principal Secretary Industrial development dated 13 Feb 2013, the allotment of plots and collection for the same is done by the SIDCUL, as part of the management of the industrial parks and therefore all money collected for such allotment has to be considered as being derived from the business or running an Industrial park. Thereafter, such sums of money which are specifically payable to the Government are shown as liabilities in its accounts and the rest are taken as receipts for the purposes of computation of its eligible income. That part of the receipts that go to the Government, are in any case exempt from tax as per the provisions of Article 289 of the constitution, while the income derived by the assessee corporation from such operations is eligible for deduction under section 80IA, as notified by the CBDT. The Government obviously does not have any issue with the assessee collecting and keeping a portion of the land cost so determined and collected in the form of interest, otherwise a demand would have been made for the same from the assessee. Thus, in view of the fact that it is authorized to develop, operate and maintain the Industrial parks, authorized to allot to lessees and collect payments on allotment from lessees and only pay specified levies to the Government in this regard, it has to be held that the assessee has a title to retain what is not specifically demanded by the Government.

10. The case of Liberty India (supra) cited by the Assessing Officer is not applicable to the facts of the case. It was delivered in the context of a manufacturing undertaking seeking benefit of deduction on account of sums received under the

*DEPB scheme. In that case the Hon Supreme Court held that the same was not derived from the industrial operations and therefore was not the profit of the eligible business. However, the assessee's case is somewhat different from a manufacturing concern. In developing, operating and maintaining industrial parks, the assessee would be called upon to perform a bouquet of services and any income that arises to the assessee corporation out of any of these services must be held to have been derived from the eligible business of developing, operating and maintaining an industrial park. The interest on deferred payments for allotment under such scheme quite clearly arise out of the primary activity of allotment of plots in the industrial park. It is therefore income derived from the eligible business. In the circumstances, the assessing officer does not seem to have made out a convincing case for the denial of benefits of deduction under section 80IA on interest payments received by the assessee under the deferred payments scheme and retained by it. The disallowance of and addition of Rs. Rs.9,77,02,124/- on this account is therefore unwarranted. It is therefore deleted. "*

11. Heard the arguments of both the parties and perused the material available on record.

12. The issue boils down to as to whether the receipts from the clients of the assessee who choose to make lumpsum upfront payment and who choose to make deferred installment payments along with interest are to be treated alike or not. We hold that since the receipt of interest is intrinsically linked to the primary activity of allotment of plots in the industrial park, it is hereby held that the interest is derived from the eligible business and thus, eligible for the purpose of direction u/s. 80 IA of the Act. Ergo, we hereby affirm the decision of Ld. CIT(A).

13. In the result, the appeals of the revenue are dismissed.

**Order pronounced in the open Court on 24.05.2022.**

Sd/-  
**(YOGESH KUMAR US)**  
**JUDICIAL MEMBER**  
 Dated: 24-05-2022

Sd/-  
**(Dr. B. R. R KUMAR)**  
**ACCOUNTANT MEMBER**

*Copy of order to: -*

- 1) The Appellant
- 2) The Respondent
- 3) The CIT
- 4) The CIT(A)
- 5) The DR, I.T.A.T., New Delhi

By Order

Assistant Registrar  
ITAT, New Delhi

Date of dictation	23.05.2022
Date on which the typed draft is placed before the dictating Member	23.05.2022
Date on which the approved draft comes to the Sr.PS/PS	23.05.2022
Date on which the fair order is placed before the Dictating Member for Pronouncement	23.05.2022
Date on which the fair order comes back to the Sr. PS/ PS	23.05.2022
Date on which the final order is uploaded on the website of ITAT	24.05.2022
Date on which the file goes to the Bench Clerk	24.05.2022
Date on which file goes to the Head Clerk.	
The date on which file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	