

**IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ' A ' Bench, Hyderabad**

Before

**Before Shri Rama Kanta Panda, Accountant Member
AND
Shri Laliet Kumar, Judicial Member**

ITA No.1221/Hyd/2019		
Assessment Year: 2012-13		
Dy.Commissioner of Income Tax, Circle – 3(1), Hyderabad.	Vs.	Sai Regency Power Corporation Private Limited, Kondapur, Hyderabad. PAN : AACCR6134R.
(Appellant)		(Respondent)
Assessee by:		Shri C.A. M.Chandramouleswar Rao
Revenue by:		Shri K.P.R.R. Murthy.
Date of hearing:		14.06.2022
Date of pronouncement:		22.06.2022

ORDER

Per Laliet Kumar, J.M.

This is an appeal filed by the Revenue having aggrieved by the order passed by the Id.Commissioner of Income Tax (Appeals)-3, order dt.18.06.2019 for the assessment year 2012-13.

2. The only effective ground raised by the Revenue reads as under :

“Ld.CIT(A) erred in deleting the disallowance u/s. 80IA on interest income of Rs.3,00,93,705/- without appreciating the fact that the assessee company is not eligible for deduction u/s. 80IA on interest income of Rs.3,00,93,705/- as the income was not directly generated from business operations and ignoring the fact that assessee itself has shown separately such income in the computation of income for A.Y. 2010-11 and not claimed deduction u/s 80IA thereon.”

3. At the outset, the ld. DR for the Revenue had drawn our attention to the facts of the assessment order wherein the Assessing Officer has mentioned as under :

The assessee is a company who filed its return of income electronically on 28.09.2012 admitting total income of Rs.18,55,980/- after claiming deduction u/s 80IA of Rs.13,29,28,837/- and book profit of Rs.40,04,54,223/- u/s 115JB of the Act. Subsequently, the case was taken up for scrutiny and assessment was completed u/s 143(3) of the Act on 30.01.2015 determining the income at Rs.29,18,277/-. Subsequently, AO noticed that while claiming deduction u/s 80IA, assessee has included interest income of Rs.3,00,93,705/- as part of income from power generation and claimed it as deduction u/s 80IA of the Act. Later, the Assessing Officer re-opened the assessment by issuing notice u/s 148 r.w.s. 147 of the Act and finally assessed the total income of Rs.3,30,11,980/-.

4. Thereafter, the ld.DR had drawn our attention at Para 8 of the ld.CIT(A)'s order wherein the ld.CIT(A) had granted the relief to the assessee relying upon the various decisions of hon'ble High Courts.

5. The Ld.DR for the Revenue has submitted firstly the interest income earned by the assessee cannot be said to be income derived within the meaning of section 80IA of the Act as the interest income earned by the assessee is not the income earned from the eligible business. The ld.DR relied upon the decisions of hon'ble Supreme Court in the matter of Conventional Fastners Vs. CIT, Dehradun (2018) 94 Taxmann.com 80 (SC) and Pandian Chemicals Ltd. Vs. CIT reported in (2003) 183 CTR SC 99.

6. Per contra, the ld.AR had relied upon the order of ld.CIT(A) at para 8 (supra). It was also submitted by the ld.AR that the ld.CIT(A) has granted relief in treating the interest income as derived from 80IA of the Act and had also granted the relief on the income earned by the assessee after deploying the amount for commercial purposes.

7. The ld.AR on query from the Bench about the details of the interest earned vis a vis the amount deposited with the bank and the financial institutions, which are directly connected with the business of the assessee drew our attention to pages 40 and 41 of the Paper Book, wherein at page 40, the following break up of amounts held as margin money has been mentioned.

16 Cash and bank balances		31 Mar 2012	31 Mar 2011
Cash and Cash Equivalents			
Cash on hand;		115,813	219,433
Balances with banks;			
On current account		152,904,668	15,889,281
On deposit account		-	5,500,000
		<u>153,020,481</u>	<u>21,608,714</u>
Other bank balances			
Deposits with Bank held as margin money or security against guarantees or borrowings		343,482,327	249,343,896
Deposits having maturity more than 3 months		-	50,024,117
		<u>343,482,327</u>	<u>299,368,013</u>
Total		<u>496,502,808</u>	<u>320,976,727</u>

Similarly, at page 41, the interest earned by the assessee is also mentioned to the following effect :

17 Other income		31 Mar 2012	31 Mar 2011
Particulars			
Interest income		30,093,705	16,760,939
Dividends income		175,000	17,500
Net gain on sale of investments		2,541,822	782,850
Miscellaneous income		194,592	176,340
		<u>33,005,119</u>	<u>17,737,629</u>

8. The ld.AR had submitted that the order passed by the ld.CIT(A) was in accordance with law, hence it is required to be approved by the Tribunal.

9. We have heard the rival submissions and perused the material available on the record. In the present case, the assessee has not provided the details of the various fixed deposits and interest on such deposits made by the assessee with the financial institutions, statutory institutions. In the absence of the such details along with purposes, objects and reasons for depositing the amount with the financial institutions etc, it is difficult to record any categorical finding by us that assessee had derived the interest income which had a direct nexus/relation with the eligible business activities of the assessee or not. Therefore we are compelled to remit the matter back to the file of the assessing officer for deciding the issue afresh.

10. Admittedly, the ld.CIT(A) had not granted any relief to the assessee on the aspect of netting of interest, in the present case, despite reliance of the assessee upon the decision of hon'ble Supreme Court in the case of ACG Associated Capsules (P) Ltd. Vs. CIT (2012) 18 taxmann.com 137 (SC). However the CIT(A) had granted relief to the assessee relying upon the decision in the case of hon'ble Bombay High Court in the case of CIT Vs. Jagdish prasad M. Joshi (2009) 318 ITR 420, wherein in para - 2 it was held as under :-

"2. Perused the judgment of the learned Income-tax Appellate Tribunal wherein it is observed as under :

"The very same issue was considered by the Income-tax Appellate Tribunal, Mumbai 'G' Bench in the assessee's own case for the immediately preceding the assessment year 1997-98 in I. T. A. No. 3569/M/ 2001 through their order dated

September 13, 2004. After considering the facts and features of the case and also considering the decision of the Supreme Court in the case of Pandian Chemicals Ltd. v. CIT [2003] 262 ITR 278, the Tribunal has held that the interest income earned by the assessee was in the nature of business income and should be considered as part of business profit for the purpose of granting deduction under section 80-IA. We find that this issue stands fully covered by the said order in favour of the assessee. Accordingly, we direct the assessing authority to include the interest income also as part of the assessee's business income for granting relief under section 80-IA."

11. Further, the issue of allowability of the interest income earned by the assessee on account of deposits with the Banks / financial institutions / other institutions was examined by the Hon'ble Gujarat High Court in the case of Empire Pumps Private Limited Vs. ACIT (2015) 54 taxmann.com 317 in Para 10 it was held as under:

"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."

12. From the reading of the above said decision, it is abundantly clear that any such interest income that was earned by the assessee from fixed deposits placed by the assessee, for the purpose of giving the security for getting the electricity connection, tender or bank guarantee etc and thus intrinsically connected with the business of the assessee, therefore it can be treated as income from the business of the assessee. Therefore, only income earned by the assessee by way of interest on the fixed deposits maintained by the assessee with the financial institutions etc, which were necessary and compulsory for doing the business of the assessee, shall alone be treated as income derived from eligible business for deduction u/s 80IA of the Act. However, the interest income earned by the assessee from other fixed deposits which were

not necessarily or close or proximately linked with eligible business would be falling under 'income from other sources'.

13. In view of the above, we deem it appropriate to direct the Assessing Officer to compute the eligible interest income with reference to the deposits made by the assessee with the bank / financial institutions etc which were necessary for the doing the eligible business of the assessee. On verification, if the Assessing Officer concludes that the deposits with the banks in the form of FDs etc were essential for the business of the assessee then such interest income shall only be eligible for deduction u/s 80IA of the Act being the income derived from the business of the assessee.

14. In the result, the appeal of the Revenue is allowed for statistical purposes.

Order pronounced in the Open Court on 22nd June, 2022.

Sd/- (RAMA KANTA PANDA) ACCOUNTANT MEMBER	Sd/- (LALIET KUMAR) JUDICIAL MEMBER
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Hyderabad, dated 22nd June, 2022.

TYNM/sps

Copy to:

S.No	Addresses
1	Sai Regency Power Corporation Private Limited, 8-2-293/82/A/413/A, Road No.22, Jubilee Hills, Hyderabad.
2	DCIT, Circle 3(1), Hyderabad.
3	Commissioner of Income Tax (Appeals)-3, Hyderabad
4	Pr.CIT-3, Hyderabad.
5	DR, ITAT Hyderabad Benches
6	Guard File

By Order