

**IN THE INCOME TAX APPELLATE TRIBUNAL 'A' BENCH, PUNE**

**SHRI PARTHA SARATHI CHAUDHURY, JM AND  
DR. DIPAK P. RIPOTE, AM**

**ITA No. 1740 and 1741/PUN/2018**  
**Assessment Year : 2006-07 & 2007-08**

Sigma Electric Manufacturing Corpn.,  
Gat No. 154/1 Mahalunge, Chakan,  
Talegaon Road, Chakan, Pune 410 501  
PAN: AAXCS 4322 F :Appellant

Vs.

The Asstt. C.I.T. Cir. 0, Pune. : Respondent

Appellant by : Shri Sharad Shah  
Respondent by : Shri Arvind Desai  
Date of Hearing : 28-07-2022  
Date of Pronouncement : 10-08-2022

**ORDER**

**PER PARTHA SARATHI CHAUDHURY, JM :**

These appeals preferred by the assessee emanates from separate orders of the Id. CIT(A)-6, Pune both dated 29-08-2018 for A.Y. 2016-07 and 2007-08 as per the grounds of appeal on record.

2. At the outset, the Id. Counsel for the assessee submitted that they are aggrieved since the benefit of tax holiday u/s 10B of the Income-tax Act, 1961 (hereinafter referred to as "the Act") was not granted to the assessee. He also submitted that this is the second round of appeal before us. In the first round of appeal, the Id. A.O has observed this issue from para 5.5 of his order and under the sub-heads of this provision of sec. 10B the dispute was with regard to (i) scrap sale; (ii) sales-tax set off; and (iii) interest received. The Id. Counsel submitted that with regard to scrap sale and sales-tax set off, they are not aggrieved since these components have been decided in their favour. The only grievance is with regard to the interest received component whether it would be eligible for benefit u/s 10B of the Act. The Id. A.O in the first round held that this income is in the nature of income from other sources of the assessee since the income is out of interest earned on deposits and cannot be said to have

derived from the business of the assessee. The Id. CIT(A) in the first round of proceedings has discussed at para 8.3 of his order. The Id. CIT(A) observed that in respect of first two items i.e. sale of scrap and sales-tax set off are covered by the decision of Pune Tribunal and therefore, the Id. A.O was directed to allow deduction u/s 10B of the Act in respect of these two items. However, at para 8.4 regarding the issue in dispute i.e. interest received, it is held by the Id. CIT(A) that such interest is not derived by the undertaking. Rather, it was seen that the F.Ds kept in the bank for more than 90 days which goes on to prove that surplus fund of the assessee company was utilised for the purpose of investment in the FDs Therefore, interest on FDs has been rightly treated as income from other sources. Thus, the CIT(A) upheld the order of the A.O treating the interest income on FDs as income from other sources denying deduction u/s10B of the Act.

3. We find that Pune Tribunal addressing identical issue whether benefit of section 10B can be given on the interest from bank deposits in ITA No. 719 and 947/PN/2012 dated 31-03-2015 has observed and held as follows:

*“32. The issue in ground of appeal No.2 raised by the assessee is against the treatment of bank interest of Rs.1,13,93,655/- while determining the exemption under section 10B of the Act.*

*33. It was pointed out by the learned Authorized Representative for the assessee that the issue is covered by the ratio laid down by the Hon'ble Karnataka High Court in CIT & Another Vs. Motorola India Electronics (P) Ltd. in ITA No.428/2007, judgment dated 11.12.2013. In the facts of the case before the Hon'ble Karnataka High Court, the assessee had earned interest from deposits lying in EEFC account and advancing of inter-corporate loans out of funds of undertaking of which, the assessee had claimed that since the said income related to its business, the assessee was entitled to the exemption under section 10A and 10B of the Act. The Hon'ble High Court held that the said income since took part take of the nature of profits and gains of business, hence, the same was construed as income of the business undertaking and the assessee was entitled to the claim of deduction under section 10A and 10B of the Act. The learned Authorized Representative for the assessee further pointed out that the Tribunal in assessee's own case relating to assessment year 2008-09 had considered the alternate plea of the assessee for netting off of interest income and set-aside the issue back to the file of Assessing Officer.*

*34. The learned Departmental Representative for the Revenue placed reliance on the orders of authorities below.*

*35. We have heard the rival contentions and perused the record. The Tribunal in assessee's own case in ITA No.114/PN/2013 relating to assessment year 2008-*

09 vide order dated 12.09.2014 had considered the issue of computation of quantum of eligible exemption under section 10B of the Act on account of the receipts of interest of Rs.1.05 crores and sale of scrap of Rs.23,58,831/-. After deliberating upon the issue and after considering the submissions of the assessee that the interest in question was on account of deposits, which has arisen only from the surplus of eligible business and there was direct nexus of profits of eligible business and also the alternate plea of the assessee that the only net interest income should be disallowed for claim of deduction under section 10B of the Act, the matter was restored back to the file of Assessing Officer vide para 8, which reads as under:-

“8. We have considered the rival arguments made by both the sides, perused the order of the AO/TPO and the DRP on this issue and the paper book filed on behalf of the assessee. We have also considered the various decisions relied on by the Ld. Counsel for the assessee. Since the assessee has not justified before the AO the reasons for not excluding the other income while working out the exemption u/s.10B and since nothing is coming out of the records as to what has happened finally in the preceding assessment years, therefore, we deem it proper to restore this issue to the file of the AO for passing a speaking order on this issue. It is not known whether the stand of the department in the past has been accepted by the assessee or not. If not, then what is the outcome in appeal. The AO is therefore directed to adjudicate the issue afresh and in accordance with law. He is also directed to consider the alternate argument of the Ld. Counsel for the assessee for netting off of interest income. The AO shall decide the issue in accordance with law after giving due opportunity of being heard to the assessee. We hold and direct accordingly. Ground of appeal No.2 by the assessee is accordingly allowed for statistical purposes.”

36. The issue raised before us is identical to the issue in assessee's own case relating to assessment year 2008-09 and following the same parity of reasoning, we remit this issue also back to the file of Assessing Officer to decide the same in accordance with the directions of Tribunal (supra) relating to assessment year 2008-09.”

4. In the aforesaid decision, the Tribunal had relied on assessee's own case where the matter was restored to the Id. A.O to consider along with the arguments of the assessee for netting off of interest income. Resultantly, in the consequential order passed by the Id. A.O following the direction from the Tribunal, netting off of interest income was allowed to the assessee vide order dated 11-12-2015 for A.Y. 2008-09 by observing as follows:

“However, the direction given by the Hon'ble ITAT on the same issue for 'netting off of interest income' should be considered. The total interest earned by the assessee during the year was Rs. 2.3 Cr. The interest expenditure incurred by the assessee was Rs. 74.24 lakh. Relying upon the decision of the Hon'ble High Court in the case of C.I.T. Vs. Krishan Kumar Aggrawal, High Court of Delhi, (2008) 170 TAXMAN 23 (del), netting off of interest expenses incurred for business purposes is allowed to an extent of Rs.74.24 lakhs to the assessee.”

5. So, therefore, in assessee's own case for A.Y. 2008-09 the netting off of expenses being the alternate argument of the assessee was allowed following the directions of the Tribunal (supra).

6. In the second round of proceedings on perusal of the assessment order, we find that this issue has been addressed by the Id. A.O at para 5 of his order. However, the Id. A.O has not discussed anywhere in his order regarding the netting off of expenses. The assessee has further relied on the decision of the Hon'ble Karnataka High Court in the case of Motorola India Electronics (2014) 265 CTR 94 has also not been discussed by the Id. A.O in his order. The Id. A.O in his findings ultimately held that what is to be allowed u/s 10B are the income derived from export of articles and things whereas interest income earned by the assessee is not income derived from export activities and therefore, claim of the assessee was rejected. The Id. CIT(A) has discussed this issue from para 6.2.1 onwards in his order dated 29-08-2018 and held as follows:

*"6.2.1 The appellant alternatively claimed that the netting of the interest be allowed. It was claimed that it borrowed funds under the export packing credit, an interest was paid thereon. The said interest is deducted for arriving at the profits of the eligible business. Keeping fixed deposits in the same business at the same time of availing loan is a business strategy. It claimed that the netting of the interest should be allowed.*

6.3 *The various submissions of the appellant have been considered. It is seen that the appellant had shown the interest income of Rs. 1.14 crores under the head "other income along with other misc. incomes. The appellant had treated this amount s business income only for the purpose of computation of deduction u/s 10B of the Act. The immediate source of the interest income is the fixed deposits made with the bank and thus it is not directly derived from the industrial undertaking. The sources of the funds for making the deposits are attributable to the income of the undertaking. That by itself does not make the interest income of fixed deposits as derived from the industrial undertaking. In this context, the supreme Court has held in the case of Pandian Chemicals Ltd. Vs. CIT reported in 262 ITR 278 (SC) that interest on deposits with electricity department cannot be held to have been derived by the Industrial undertaking even though it is statutory to treat a deposit with electricity authority for supply of electricity to the undertaking. The appellant had tried to distinguish this judgment by relying on the judgment of Bombay High Court in M/s. Tema Exchangers Manufactures Pvt. Ltd. Vs. ACIT in appeal No. 4215 of 2004 dt. 18-07=2018. In this case, the High Court has held that the interest on fixed deposits is eligible for deduction under section 80IA by relying on the judgment of CIT Vs. Jagdish Prasad M. Joshi 318 ITR 420, which in turn relied on the Delhi High Court decision in the case of CIT Vs. Etek SGS Pvt. Lt. 300 ITR 06. The Delhi High Court in that case has distinguished the language in sec. 80HH and section 80IB i.e. "profits and gains derived in industrial undertaking" with profits and gains derived from any business of an Industrial undertaking". Relying on this distinction, the Bombay High Court has held that it be application to sec. 80IA also. The above decision is not applicable to the appellant's case, as the wordings in sec. 10B are "a deduction of such profits and gains as are derived by 100% EOU from the export of articles or things or computer software". Thus the profits and gains have to be derived from the industrial undertaking in the case of sec. 10B for any deduction to be allowed. The Supreme Court has already held in*

*the Pandian case cited supra that the interest income is not derived from the industrial undertaking and the same would be applicable to deduction u/s 10B. On the same issue, the Madras High Court has also ruled against the appellant as brought out by the A.O. therefore, I am of the considered opinion that the appellant is not entitled to any deduction u/s 10B on the interest income.*

*6.3.1 As regards the alternate plea, that the netting of interest should be allowed is also not permissible as the interest income has no relevance to the interest expenditure made. It was not statutory obligation on the part of the appellant to make the fixed deposit to avail the export packing credit loan. Thus, there is no link between the fixed deposit and the loan. Under such circumstances, netting is not permissible.*

*7. In the result, the appeal is dismissed.”*

7. We have already examined that in the assessee's own case for A.Y. 2008-09 the Id. A.O has allowed the netting off of expenses following the directions of the Tribunal (supra). We also find that the Id. A.O in the second round of proceedings has not discussed anything regarding the netting off of expenses and allowability in that regard vis-à-vis section 10B of the Act. The Id. CIT(A) in his order has also not considered the findings of the Tribunal on the issue which was relied on by the Id. A.O. in assessee's own case for A.Y. 2008-09. When the facts are similar in this year also, the decision of the Tribunal which was followed by the Id. A.O in assessee's own case for A.Y. 2008-09 should have been considered by the revenue authorities and if they are not considering the reasons should have been specified in their respective orders. However, we do not find that this exercise has been done in this case. In the interest of justice, therefore, we are of the considered view that once the view has been taken by the Tribunal which was followed in assessee's own case by the A.O for A.Y. 2008-09, therefore, this matter should also be restored back to the file of the Id. A.O to re-adjudicate in the light of judgment of the Tribunal in ITA No. 719 and 947/PN/2012 dated 31-03-2015 complying with the principles of natural justice.

8. At the time of hearing, the parties submitted that the facts and circumstances for both the assessment years are absolutely identical and similar and therefore, these cases were heard together and are disposed of by

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this consolidated order. Therefore, the facts being similar except for the amount involved our decision in ITA No. 1740/PUN/2018 for A.Y. 2006-07 shall apply mutatis mutandis to ITA No. 1741/PUN/2018 for A.Y. 2007-08 and the matter is similarly restored to the file of the Id. A.O with the same directions for this year also.

9. In the combined result, both the **appeals of the assessee are allowed for statistical purposes.**

Order pronounced in the open Court on this 10<sup>th</sup> August 2022.

Sd/-  
**(DR. DIPAK P. RIPOTE)**  
**ACCOUNTANT MEMBER**

sd/-  
**(PARTHA SARATHI CHAUDHURY)**  
**JUDICIAL MEMBER**

Pune; Dated, this 10<sup>th</sup> day of August 2022  
Ankam

**Copy of the Order forwarded to :**

1. The Appellant.
2. The Respondent.
3. The Pr. CIT - 5, Pune.
4. The CIT(A)-6, Pune
5. The D.R. ITAT 'A' Bench Pune.
6. Guard File

BY ORDER,

Sr. Private Secretary  
ITAT, Pune.

**/// TRUE COPY ///**

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 Sigma Electric Mfg. Corpn.  
 A.Y. 2006-07 & 2007-08

		Date	
1	Draft dictated on	27-07-2022	Sr.PS
2	Draft placed before author	29-07-2022	Sr.PS
3	Draft proposed and placed before the second Member		JM/AM
4	Draft discussed/approved by second Member		AM/JM
5	Approved draft comes to the Sr. PS/PS		Sr.PS/PS
6	Kept for pronouncement on	10-08-2022	Sr.PS/PS
7	Date of uploading of order	10-08-2022	Sr.PS/PS
8	File sent to Bench Clerk	11-08-2022	Sr.PS/PS
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R		
11	Date of dispatch of order		