

आयकरअपीलीयअधिकरण, 'सी' न्यायपीठ,चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH, CHENNAI

श्रीमहावीर सिंह, उपाध्यक्ष एवंश्री मनोज कुमार अग्रवाल, लेखा सदस्यके समक्ष
BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENTAND
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER

आयकरअपीलसं./**ITA No.: 93/CHNY/2020**

निर्धारण वर्ष/Assessment Year: 2015-16

Swelect Solar Energy P Ltd.,
No.5, Numeric House,
Sir P.S. SivasamiSalai,
Mylapore,
Chennai – 600 004.

The Income Tax Officer,
vs. Corporate Ward 6(4),
Chennai.

PAN: AADCN 3843J

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थीकीओरसे/Appellant by
प्रत्यर्थीकीओरसे/Respondent by

: ShriN. Arjun Raj, CA
: Ms. Jancy Elizabeth, JCIT

सुनवाई की तारीख/Date of Hearing : 02.02.2023

घोषणा की तारीख/Date of Pronouncement : 02.02.2023

आदेश /ORDER

PER MAHAVIR SINGH, VICE PRESIDENT:

This appeal by the assessee is arising out of the order of the Commissioner of Income Tax (Appeals)-15, Chennai in ITA No.86/2017-18/CIT(A)-15 dated 28.11.2019. The assessment was framed by the Income Tax Officer, Corporate Ward 6(4), Chennai u/s.143(3) of the Income Tax Act, 1961 (hereinafter the 'Act') for the assessment year 2015-16 vide order dated 29.09.2017.

2. The only issue in this appeal of assessee is as regards to the order of CIT(A) sustaining the assessment of interest income by the AO under the head 'income from other sources' while rejecting the computation of income related to the main activity / core business under the head 'income from business' without any reason. For this, assessee has raised various grounds which need not to be reproduced.

3. Brief facts are that the assessee company filed its return of income for the relevant assessment year 2015-16 admitting total loss of Rs.11,63,887/-. The AO during the course of assessment proceedings noticed that pending commencement of business, proceeds from short term borrowing was invested by the assessee partly in non-current investment and the balance offered as long term loans and advances to its subsidiary. The interest earned from subsidiary company has been shown under other income and also claimed the interest expenses to the holding company on the borrowings for an amount of Rs.37,47,953/-. According to AO, the business has not commenced and there is no set up of business and accordingly the interest expenses claimed are to be capitalized. Further the assessee explained before AO that the assessee has declared interest income from subsidiary on loan given out of the

amount borrowed for the purpose of acquiring fixed assets as well as short term borrowings which are kept in fixed deposits and hence, the interest income should be allowed set-off against interest payment. The AO was of the view that since the business was yet to commence, the interest income has to be taxed separately under the head 'income from other sources' and the expenditure incurred before the commencement of business i.e., the interest expenses needs to be treated as pre-operative as held by the Hon'ble Supreme Court in the case of Tuticorin Alkali Chemicals and Fertilizers Ltd., vs., CIT, 227 ITR 172. Aggrieved, assessee preferred appeal before CIT(A).

3. The CIT(A) also confirmed the action of the AO by observing that the assessee does not hold any physical inventory and its business operation has not started yet. It was noted by CIT(A) that company has not earned any income and no expenditure except interest expenditure has been incurred. According to CIT(A), the company exist only on paper and no fixed asset has been purchased and moreover no plant and machinery has been set up for the purpose of its business. The CIT(A) relying on the decision of Tuticorin Alkali Chemicals and Fertilizers Ltd., *supra*, confirmed the action of the AO in making assessment of interest income under the

head 'income from other sources' and allowed pre-operative expenditure to be capitalized and interest payment not to be set-off from interest income. Aggrieved, now assessee is in appeal before Tribunal.

4. We have heard rival contentions and gone through facts and circumstances of the case. We noted that this issue has been considered by Hon'ble Supreme Court in the case of Karnal Cooperative Sugar Mills Ltd., 243 ITR 2 and Bokaro Steels Ltd., 236 ITR 315, wherein it is held that interest income has to be capitalized as the deposit of money was directly linked with the purpose of plant and machinery. The Id. Senior DR argued that the matter can be referred back to the file of the AO to ascertain the direct nexus of amount borrowed on which interest is paid and amount invested in FDRs i.e., idle funds has direct nexus or not. To this preposition, the Id.counsel for the assessee agreed. After hearing both the sides, we remit this issue back to the file of the AO with a specific direction that in case if there is direct link of the deposit of money with the purchase of plant & machinery and purpose of loan and temporary advance to these on temporary basis for earning of interest, the AO will follow the decision of Hon'ble Supreme Court in the case of Karnal Cooperative Sugar Mills Ltd., and Bokaro Steels

Ltd., *supra*. In term of the above, this appeal of the assessee is allowed for statistical purposes.

5. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 2nd February, 2023 at Chennai.

Sd/-

(मनोज कुमार अग्रवाल)

(MANOJ KUMAR AGGARWAL)

लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-

(महावीर सिंह)

(MAHAVIR SINGH)

उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,

दिनांक/Dated, the 2nd February, 2023

RSR

आदेशकीप्रतिलिपिअग्रेषित/Copy to:

1. अपीलार्थी/Appellant

2. प्रत्यर्थी/Respondent

3. आयकरआयुक्त (अपील)/CIT(A)

4. आयकरआयुक्त /CIT

5. विभागीयप्रतिनिधि/DR

6. गार्डफाईल/GF.