

IN THE INCOME TAX APPELLATE TRIBUNAL
PANAJI BENCH :: PANAJI

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER &
SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER
(Through virtual hearing)

ITA No.447/PAN/2018
(A.Y. 2009-10)

VIC Industries, Plot no.78, Pissurlem Industrial Estate, Sattari, Goa. PAN: AACFV 8626 M	vs	ITO, Ward-2(5), Panaji - Goa
Appellant		Respondent

ITA No.448/PAN/2018
(A.Y. 2009-10)

M/s. Esteem Industries P. Ltd., Plot No.76-77, Pissurlem Industrial Estate, Sattari, Goa. PAN: AAACE 9474 F	Vs	ITO, Ward-2, Margao - Goa
Appellant		Respondent

Assessee by	:	Shri Mahendra Sanghvi, CA
Revenue by	:	Shri N. Shrikanth, DR
Date of hearing	:	16/08/2023
Date of pronouncement	:	21/08/2023

O R D E R

Per PARTHA SARATHI CHAUDHURY, JM:

These appeals preferred by the different assessees emanate from the separate orders of Commissioner of Income Tax (Appeals)-1, Panaji (for short, 'CIT(A)'), dated 25/09/2018 & 24/09/2018 respectively for A.Y.2009-10 as per the grounds of appeal on record.

2. At the time of hearing, it was submitted by the parties that the facts and circumstances and the issues involved in both the appeals are absolutely same and identical, and considering the submissions made, these matters were heard together and are disposed of vide this consolidated order. Ld. counsel for the assessee submitted that ITA No.448/PAN/2018 may be taken as lead case for illustration of facts regarding the issue for adjudication.

3. The only issue and dispute in both the appeals is the disallowance of bank interest u/sec. 80IB of the Income Tax Act, 1961 (for short, 'the Act')

4. Brief facts of the case are that assessee is a company engaged in the business of manufacture of chemicals, filed its return of income on 26/09/2009 declaring income of Rs.2,47,38,870/- and had claimed deduction u/sec. 80IB of Rs.1,06,02,371/-. The Assessing Officer (AO) disallowed deduction claimed u/sec. 80IB on Sales Tax Incentives of Rs.27,54,214/-, Bank Interest of Rs.11,02,117/-, Excise Refund received of Rs.1,47,99,719/-; and Entry Tax refund of Rs.11,08,224/-. Against the order of AO, assessee had preferred appeal before the Id.CIT(A), who allowed the claim made by the assessee. Aggrieved by the order of Id. CIT(A), Revenue filed appeal before this Tribunal. This Tribunal vide order dated 24/08/2015 in ITA No. 211/PAN/2014 allowed the claim of deduction u/sec. 80IB of Sales Tax Incentives,

and restored the matter back to the file of AO for allowability of claim of deduction on Excise Duty, Entry Tax refund and Bank Interest. The AO by passing order u/sec. 143(3) r.w.s. 254 of the Act dated 06/12/2016 allowed the deduction on Excise Duty refund, and refund of Entry Tax received, but had not allowed Bank Interest. Aggrieved by the order of AO, assessee preferred appeal before the Id.CIT(A).

5. When the matter went up before Id.CIT(A), after considering the assessment order and the submissions of the assessee, held as follows:-

"14. Thus, I find that various Courts have held that since the interest has not been derived from the direct operation of the industrial undertaking, such interest is not eligible for deduction u/sec. 80I/80IA/80IB of the I.T. Act.

15. The assessee can claim deduction on the income derived by the infrastructure facility. However, as far as interest is concerned in the present case, it is clear that the same has not been manufactured/produced. I find that the interest income can be said to be attributable to the business but is certainly not derived from the business. The income 'derived from' infrastructure undertaking has to be interpreted in a restricted /narrower sense as compared to 'attributable to', and hence only income earned directly from the business carried on by the infrastructure undertaking can be taken into consideration for calculating total income and deduction available under these sections.

16. The action of the AO is correct and these grounds of appeal are therefore, dismissed."

6. At the time of hearing, Id.counsel for the assessee demonstrated that Panaji Bench of this Tribunal in earlier round of litigation, vide its order dated 24/08/2015 had restored the matter to the file of the AO

with certain directions regarding allowability of claim of deduction u/sec. 80IB on Excise Duty refund, Entry Tax refund and Bank Interest. We observe that Id.CIT(A) while deciding this issue, has not considered the decision of the Tribunal (supra). Therefore, we are of the considered opinion, in the interest of justice, Id. CIT(A) is to re-adjudicate the matter considering the directions of the Tribunal given in its earlier order (supra) and then come out with a speaking order. In view thereof, we set aside the order of the Id. CIT(A) and remand the matter back to his file for re-adjudication as per law while complying with the principles of natural justice. Grounds of appeal of the assessee are allowed for statistical purposes.

7. In the result, appeal of the assessee in ITA No.448/PAN/2018 is allowed for statistical purposes.

8. At the outset, the parties have conceded that the facts and circumstances in both these appeals are absolutely similar and identical, and therefore, our decision already taken in ITA No.448/PAN/2018 for A.Y. 2009-10 shall apply *mutatis mutandis* to the appeal of the assessee in ITA No.447/PAN/2018 for A.Y. 2009-10. Grounds of appeal of the assessee are allowed for statistical purposes.

9. In the result, appeal of the assessee in ITA No.447/PAN/2018 is

allowed for statistical purposes.

10. In the combined result, both the appeals of the assesseees are allowed for statistical purposes.

Order pronounced in open Court on 21st August, 2023.

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

Sd/-
(PARTHA SARATHI CHAUDHURY)
JUDICIAL MEMBER

Dated : 21st August, 2023

vr/-

Copy to :

1. The Appellant.
2. The Respondent.
3. The Pr. CIT concerned.
5. The DR, ITAT, Panaji Bench, Panaji.
6. Guard File.

By Order

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Senior Private Secretary
ITAT, Pune.