

IN THE INCOME TAX APPELLATE TRIBUNAL

DELHI BENCH: 'G', NEW DELHI

BEFORE HON'BLE JUSTICE C.V. BHADANG, PRESIDENT

AND

SHRI G.S. PANNU, HON'BLE VICE PRESIDENT

ITA NOS. 5768 & 5769/DEL/2018

A.YRS. : 2013-14 & 2014-15

ACIT, CENTRAL 25(1), NEW DELHI ROOM NO. 192-A, C.R. BUILDING, NEW DELHI	Vs.	TATA POWER DELHI DISTRIBUTION LTD. NDPL HOUSE, HUDSON LINES, KINGSWAY CAMP, NEW DELHI - 110 009 (PAN: AABCN6804R)
(Appellant)		(Respondent)

AND

ITA NOS. 5780 & 5781/DEL/2018

A.YRS. : 2013-14 & 2014-15

TATA POWER DELHI DISTRIBUTION LTD. NDPL HOUSE, HUDSON LINES, KINGSWAY CAMP, NEW DELHI - 110 009 (PAN: AABCN6804R)	Vs.	ACIT, CENTRAL 25(1), NEW DELHI ROOM NO. 192-A, C.R. BUILDING, NEW DELHI
(Appellant)		(Respondent)

Assessee by	Ms. Shashi Kapila, Adv. & Sh. Sushil Kumar, Adv.
Department by	Sh. H.K. Choudharay, CIT(DR)

ORDER

PER G.S. PANNU, VP:

The captioned are four appeals consisting of cross-appeals by the Revenue as well as Assessee against the respective orders of the Ld. CIT(A)-9, New Delhi both dated 25.6.2018 passed in Appeal No. 331/16-17 and 332/16-17 pertaining to assessment years 2013-14 & 2014-15 respectively.

2. At the time of hearing, it was a common ground between the parties that the issues involved in all the four appeals are otherwise, covered by the precedents in the assessee's own case. So however, in order to impart completeness to the order, the following discussion is relevant.

Assessment year 2013-14 (Revenue's Appeal)

3. We first take up the Appeal of the Revenue for the Assessment Year 2013-14 wherein, the solitary substantive Ground raised reads as under:-

"On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in allowing the deduction/s u/s. 80IA of the Act on the Late Payment Surcharge Collected (LPSC) amounting to Rs. 25,65,71,000/- and Rebate on Power purchased of Rs. 36,51,08,000/- ignoring the fact that the Late Payment Surcharge collected by the assessee is not directly derived from the business of the undertaking as it is in the nature of interest or penalty and concessional in nature.

3.1 In brief, the facts are that the assessee is engaged in the business of distribution and supply of electricity in the North and North West area of Delhi. Profits derived by the assessee from the eligible business are entitled for exemption as specified in Section 80IA of the Act, for which there is no dispute. In the assessment, the Assessing Officer differed with the assessee only with regard to certain incomes, which according to him, were not entitled to the benefits of Section 80IA. Thus, the Assessing Officer scaled down the deduction claimed by the assessee u/s. 80IA of the Act by an amount of Rs. 907113000/-, which represented incomes by way of Late Payment Surcharge, Commissions on arrears collection; commission on energy tax collection, maintenance charges, miscellaneous income, rebates, etc. As per the Assessing Officer, the aforesaid incomes are not the incomes directly derived from the eligible business of the assessee as mentioned in Section 80IA(4)(iv) of the Act.

3.2. In the context of the Ground of appeal raised by the Revenue before us, it specifically relates to decision of the CIT(A) in allowing the assessee's claim of exemption u/s. 80IA on the Late Payment Surcharge Collected (LPSC) amounting to Rs. 25,61,71,000/- and Rebate on Power purchased of Rs. 36,41,08,000/-. The CIT(A) decided the issue following his own decision for assessment years 2011-12 and 2012-13 in assessee's own case, and the following discussion in his order is relevant:-

"It is stated that LPSC is a fee charged in case the payment is not made within due date. The said fee forms part of the power bill raised on a consumer in the course of distribution business. The appellant has further clarified on this as under-

In the event of the electricity bill rendered by the licensee, not being paid in full within the time specified on the bill, a surcharge of 1.5% on the principal amount of bill which has not been paid shall be levied for each 30 days successive period or part thereof until the payment is made in full without prejudice to the right of the licensee to disconnect the supply after due date in the event of non payment in accordance with section 56 of the Electricity Act, 2003. This will also apply to temporary connections, where payment of final bill amount after adjustment of consumption deposit, is not made by due date.

In view of the above, I am of the opinion that LPSC collected is nothing but a kind of levy / interest charged to compensate the appellant for the delay in receiving payment of the electricity bill from its customers. In this regard, reliance can be placed on the judgment of Hon'ble High Court given in the case of CIT vs. Advance Detergent Ltd. 2011 339 ITR 81 Delhi. In the said judgment, Hon'ble

Jurisdictional High Court has held that the interest paid on overdue payments for goods supplied was income derived from business of industrial undertaking and was eligible for deduction u/s. 80IA. It was held that the interest becomes part of the sale price and was accordingly derived from the sale made. Following the judgment of jurisdictional High Court, it is held that the late payment surcharge collected by the appellant is income derived from the business of industrial undertaking and is eligible for deduction u/s. 80IA of the Act."

3.3 Before us, it was a common ground that the Tribunal vide its order dated 05.10.2023 passed in ITA No. 4097/Del/2017 & Others in assessee's own case for AYrs 2011-12 and 2012-13 has decided the issue in favour of the assessee. The relevant discussion in the order of the Tribunal dated 05.10.2023 (supra) reads as under:-

"29. The only ground raised by the revenue for AY 2011-12 in ITA No. 4453/Del/2017 is challenging the grant of deduction u/s. 80IA of the Act on account of late payment of surcharge collected in the sum of Rs. 17,43,87,00/-.

30. We have heard the rival submissions and perused the materials available on record. We find that the said late payment of surcharge collected by the assessee pertains to the eligible unit of the assessee. We have already narrated the purpose behind the collection of late payment of surcharge by the assessee. The only purpose of making this recovery is to ensure collection of electricity dues in time and hence this

receipt is also having possible nexus with the profit derived by the eligible unit and consequentially eligible for deduction u/s. 80IA of the Act. We do not find any infirmity in the order of the Ld. CIT(A) granting relief in this regard. Accordingly, grounds raised by the revenue are dismissed.

- 31. The additional ground for AY 2012-13 and original grounds raised by the assessee for AY 2012-13 are identical to those raised in AY 2011-12. Hence, the decision rendered in AY 2011-12 shall apply mutatis mutandis for grounds raised for AY 2012-13 except with variance in figures and in view of identical facts.*
- 32. The only issue raised by the revenue in AY 2012-13 is challenging the action of the Ld. CIT(A) in grant of deduction u/s. 80IA of the Act for late payment of surcharge collected of Rs. 21,14,39,000/- and rebate on power purchase of Rs. 35,86,54,000/-.*
- 33. We have heard the rival submission and perused the materials available on record. Both these receipts, as their names suggest, are having first degree nexus with the profits by eligible unit and accordingly would be eligible for deduction u/s. 80IA of the Act. The Ld. CIT(A) had rightly granted relief in this regard, which, in our considered opinion, does not call for any interference. Accordingly, ground raised by the revenue is dismissed.*
- 34. In the result, both the appeals of the assessee are partly allowed for statistical purposes and both the appeals of the revenue are dismissed."*

3.4 In view of the aforesaid precedent, we are of the considered view that the issue in dispute is squarely covered in favour of the assessee, and following the same, the Ground raised by the Revenue in AY 2013-14 is dismissed.

Assessment year 2014-15 (Revenue's Appeal)

4. So far as the Revenue's appeal for AY 2014-15 is concerned, the dispute and the facts relating thereto stand on identical footing to those considered by us in the earlier paragraphs for AY 2013-14. As a consequence, our decision in the Appeal for AY 2013-14 in the earlier paragraphs shall apply *mutatis mutandis* to the Appeal of the Revenue for Assessment Year 2014-15 also. Accordingly, the appeal for AY 2014-15 also stands dismissed.

5. Resultantly, the Revenue's appeals for AY 2013-14 & 2014-15 stand dismissed.

Assessment Year 2013-14 (Assessee's appeal)

6. Now we take up the Assessee's appeal for AY 2013-14. The first substantive Ground raised by the assessee is No. 3 which reads as under:-

"3. *That on the facts and circumstances of the case and in law, the CIT(A) erred in upholding the action of the AO in excluding following incomes for the purpose of computing deduction under section 80IA of the Act, on the ground that the said incomes do not have a direct nexus with the power distribution business of the appellant:*

<i>Commission on Delhi Vidyut Board arrears collection</i>	<i>Rs. 5,41,000/-</i>
<i>Commission on energy tax collection</i>	<i>Rs. 6,10,35,000/-</i>
<i>Maintenance charges</i>	<i>Rs. 15,73,71,000/-</i>

<i>Miscellaneous income in relation to installation, inspection, testing, and reconnection of electricity meters</i>	<i>Rs. 4,96,09,000/-</i>
<i>Other miscellaneous income in relation to liquidating damages, recovery from suppliers etc.</i>	<i>Rs. 1,78,78,000/-"</i>

6.1 During the hearing, Ld. Representative for the assessee submitted that the Tribunal vide its order dated 05.10.2023 (Supra) for AYrs 2011-12 and 2012-13 has decided similar issue in favour of the assessee. She further submitted that Hon'ble Delhi High Court vide its order dated 11.3.2020 in ITA 186 of 2020 for AY 2009-10 in assessee's own case has also decided similar issue in favour of the assessee. The relevant discussion in the order of the Tribunal dated 05.10.2023 (supra) reads as under:-

"24. Ground no. 5 raised by the assessee is only seeking enhancement of claim of deduction u/s. 80IA of the Act on additions made to the income of the eligible unit towards commission, maintenance charges and miscellaneous income relating to Rs. 2499.84 lakhs. This issue is no longer res integra in view of the decision of the Hon'ble Delhi High Court in assessee's own case in ITA No. 186/2020 dated 11.3.2020 and also by the CBDT Circular no. 37/2016 dated 2.11.2016 wherein, it had been categorically stated that any disallowance and additions to the total income of an eligible unit would only give rise to enhancement of profit of the eligible unit and hence consequentially would be eligible for deduction u/s.

80IA of the Act. Respectfully following the aforesaid CBDT Circular and the decision of the Hon'ble Delhi High Court referred (Supra), we direct the Ld. AO to grant enhanced deduction u/s. 80IA of the Act for the additions made in the sum of Rs. 2499.84 lakhs. Accordingly, the original ground no. 5 raised by the assessee is allowed."

6.2 In view of the aforesaid precedent by way of the Tribunal order dated 05.10.2023 (Supra) as also the Judgement of the Hon'ble Delhi High Court dated 11.3.2020 (supra), the stand of the assessee deserves to be upheld. We hold so. Accordingly, the Ground no. 3 raised by the assessee for AY 2013-14 is allowed.

7. The next substantive Ground raised by the Assessee is No. 4, which reads as under:

"That on the facts and circumstances of the case and in law, the Ld. AO has erred in giving short TDS credit amounting to INR 60,680/- (Rs. 93,57,374/ claimed in the corporate tax return less Rs. 92,96,695/- allowed by the AO)."

7.1 In the said ground, the grievance of the assessee is with regard to non-grant of credit for Tax Deducted at Source. This Ground involves factual appreciation of affairs, and therefore the same is restored back to the Assessing Officer with the directions to allow the credit of TDS in accordance with law, after due verification. Accordingly, Ground No. 4 is allowed for statistical purposes.

8. The ground no. 5 reads as under:

"That on the facts and circumstances of the case in law, the AO has erred in levying interest under section 234B and 234C of the Act."

8.1 The aforesaid ground does not require any specific adjudication being consequential in nature.

9. The ground no. 6 read as under:-

"On the facts and circumstances of the case, the Ld. CIT(A) has erred both in facts and in law in dismissing the ground for initiation of penalty proceedings under section 271(1)(c) of the Act."

9.1 The aforesaid ground is relating to the initiation of penalty proceedings u/s. 271(1)(c) of the Act, which would be premature for adjudication at this stage, hence, the same is dismissed as such.

9.2. Accordingly, the appeal of the assessee for Assessment Year 2013-14 is partly allowed for statistical purpose, as above.

Assessment Year 2014-15 (Assessee's Appeal)

10. So far as the Ground No. 3 in Assessee's appeal for AY 2014-15 is concerned, the dispute and the facts relating thereto stand on identical footing to those considered by us in the earlier paragraphs for AY 2013-14 vide para no. 6 to 6.2 as aforesaid. As a consequence, our decision in the Appeal for AY 2013-14 in the earlier paragraphs, shall apply *mutatis mutandis* to the Appeal of the Assessee for Assessment Year 2014-15 also. Accordingly, the Ground no. 3 raised in assessee's appeal for AY 2014-15 also stands allowed.

11. The Ground no. 4 reads as under:

"On the facts and circumstances of the case, the Ld. CIT(A) has erred both in facts and in law in dismissing the ground for initiation of penalty proceedings under section 271(1)(c) of the Act."

11.1 The aforesaid ground is relating to the initiation of penalty proceedings u/s. 271(1)© of the Act, which would be premature for adjudication at this stage, hence, the same is dismissed as such.

12. In the result, the Assessee's appeal for AY 2013-14 stands partly allowed for statistical purposes and appeal for AY 2014-15 is partly allowed.

The above decision was pronounced in the Open Court at the conclusion of hearing on 06.11.2023 in the presence of both the parties.

Sd/-
(G.S. PANNU)
VICE PRESIDENT

Sd/-
(JUSTICE C.V. BHADANG)
PRESIDENT

"SRB"

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asstt. Registrar, ITAT, New Delhi