

**IN THE INCOME TAX APPELLATE TRIBUNAL
"G" BENCH,
MUMBAI**

BEFORE SHRI PRASHANT MAHARISHI, AM
AND
SHRI SANDEEP SINGH KARHAIL, JM

ITA No. 3160/Mum/2019

(Assessment Year: 2013-14)

Gateway Terminals Pvt. Ltd.
Raigad, GTI House, Jawaharlal
Nehru Port,
NHAVA Sheva,
Taluka-Uran,
Dist. Raigad,
Maharashtra-400707

Vs. The Deputy Commissioner of
Income Tax
Panvel-Circle Panvel
3rd Floor, Aaykar Bhavan,
Plot No.2 & 2A, Sector 17,
Opp.Khanda Colony,
New Panvel, Panvel
Maharashtra-410206

(Appellant)

(Respondent)

PAN No. AACCG1899E

Assessee by : Manish Kant
Kiran Nisar, ARs
Revenue by : Dr. Kishor Dhule, CIT DR
Date of hearing: 26.09.2023
Date of pronouncement : 30.11.2023

ORDER

PER PRASHANT MAHARISHI, AM:

01. This appeal is filed by Gateway Terminals India Pvt. Ltd [Assessee/ Appellant] for A.Y. 2013-14, against the appellate order passed by The Commissioner of Income-tax (Appeals)-2, Thane [the learned CIT (A)], on 8th March, 2019. By this appellate Order appeal filed by the assessee against the assessment order dated 30th December, 2016, passed under Section 143(3) read with

section 92CA(3) of the Income-tax Act, 1961 (the Act) by the Dy. Commissioner of Income Tax, Panvel, Circle Panvel (the learned Assessing Officer), was partly allowed.

02. The assessee has raised following grounds of appeal :-

"Ground 1: Denial of deduction u/s. 801A for interest on Fixed Deposit with bank: Rs. 20,19,07,418/-

1.1 The learned CIT(A) has erred in law and facts of the case in confirming the action of the AO by denying the benefit u/s. 801A for interest income from FDs with bank.

1.2 The learned CIT(A) failed to appreciate that the monies were kept in FDs with bank for the business reason and hence such interest income should be considered as profits derived from the eligible business for calculating deduction u/s. 801A.

1.3 The learned CIT(A) ought to have respected the Jurisdictional High Court's decision wherein the Bombay High Court has allowed deduction u/s. 801A on interest income

Ground II: Denial to consider only net interest income after reducing finance cost

2.1 Without prejudice to the Ground I above, the learned CIT(A) erred in not considering an alternate argument to consider only net interest income after reducing finance cost

Ground III: Denial of benefit u/s. 80IA on income from sale of scrap Rs. 46,06,161

3.1 The learned CIT(A) has erred in law and facts of the case in confirming the action of the AO by denying the benefit u/s. 80IA for income from sale of scrap

The appellant craves leave to add to, alter, by deletion, substitution, modification or otherwise all or any of the foregoing grounds of appeal either before or during the hearing of this appeal."

03. The only dispute before us is

- a. Whether interest on fixed deposit with bank amounting to ₹20,19,07,418/- is income derived from the industrial undertaking and thereby eligible for deduction under Section 80IA of the Act or not.
- b. Alternatively, assessee has also challenged that if the interest income is not held to be eligible for deduction u/s 80 IA [4], then interest received should also be net off against the interest paid and net amount should be held to be not eligible for deduction.
- c. Whether sale of scrap of ₹46,06,161/- generated out of sale of wire ropes, M S Scrap and waste oils should be held to be income generated eligible for deduction u/s 80 IA [4] of The Act.

04. Brief facts of the case shows that assessee is operating a container freight terminal at Jawaharlal Nehru Port Trust. It filed its return of income for A.Y. 2013-14 on 30th November, 2013, declaring taxable income of

₹1,25,42,260/-. Assessee has claimed deduction under Section 80IA(4) of the Act of ₹118,44,088/-. The return of income was picked up for scrutiny. The scrutiny assessment culminated into an assessment order passed on 30th December, 2016. Against this assessment order an appeal was preferred which was decided on 8th March, 2019. After the assessment and appellate orders, the only issue remain is as stated in grounds of appeal.

05. First issue is of interest income earned from fixed deposits, whether eligible for deduction under Section 80IA of the Act or not. During the year, assessee has earned fixed deposit interest of ₹20,19,07,418/-. Before the learned Assessing Officer, it was stated that these are the surplus funds available with the company and therefore, such interest is earned. The learned Assessing Officer questioned that how this interest income is derived from specified infrastructure facilities and eligible for deduction. Assessee submitted that these fixed deposits interest has direct nexus with the business of the assessee. Fixed Deposits are made from the surplus funds available, which are from the eligible business, and therefore, it is eligible for deduction. The learned Assessing Officer held that interest received from fixed deposits kept in the bank account is not income derived from specified activity and therefore, it is not eligible for deduction under Section 80IA of the Act. The learned Assessing Officer referred to the several judicial precedents to held so. When the matter reached before the learned CIT (A), the learned CIT (A) following his own

decision in assessee's own case in earlier years held that interest income is not eligible for deduction. Accordingly, as per Para no.8.5 to 8.7 of appellate order, interest was held to be not eligible for deduction. Thus, deduction under Section 80IA of the Act on the above interest income was denied.

06. After hearing both the parties, we find that for A.Y. 2012-13, identical issue is covered against assessee in ITA No.300/Mum/2022 dated 28th May, 2020. In that case, identical issue was decided by the co-ordinate Bench as per paragraph no. 9 of the order, holding that fixed deposit interest income earned by the assessee could not be said to have any nexus with the eligible business for which deduction under Section 80IA of the Act is available. Anyway, assessee has stated before LD lower authorities that bank Fixed Deposit interest is earned where surplus sum was placed with the bank in the form of Fixed Deposits. Thus, respectfully following the decision of coordinate bench in assessee's own case for earlier years, we also hold that bank fixed deposit interest is not eligible for deduction u/s 80 IA [4] of the Act. Thus, ground no.1 of the appeal is dismissed holding that fixed deposit interest earned by the assessee cannot be said to be an income derived from the business of eligible infrastructure facility. Accordingly, ground no.1 of the appeal is dismissed.
07. Ground no.2 is with prejudice to ground no.1 stating that the learned CIT (A) did not adjudicate the alternative

ground to consider actual netting off interest income after reducing finance cost. The learned Authorized Representative submitted that for A.Y. 2014-15, the learned CIT (A) has considered this issue and has categorically held as per paragraph no.8.3 of that order netting off interest income after reducing entire finance cost should be considered for disallowance under Section 80IA of the Act.

08. Learned Departmental Representative vehemently submitted that netting off the interest could be considered only, if interest received and interest paid, both are derived from the eligible business. He submits that netting off of the interest expenditure can only be considered if these conditions are satisfied. He submits that the order of the learned CIT (A) for A.Y. 2014-15 granting of netting off the interest is without any reasoning. If netting off is allowed, then it will tantamount that interest income on fixed deposit is derived from the eligible business, which would be contrary to the decision of ITAT in assessee's own case. Therefore, it was submitted that netting off the interest could not be allowed.
09. We have carefully considered the rival contentions and perused the orders of the lower authorities. We find that income and expenditure both should be derived from the business of industrial undertaking eligible for deduction, then only, such interest can be net off. If blanket net off is directed then, it tantamount to allowance of deduction u/s 80 IA [4] of the Act on FDR interest



income, which is already held to be not eligible for deduction. Accordingly, netting off of the interest paid and interest received on FDR cannot be allowed, without verification of facts. It is not the case of taxation of interest income and interest expenditure simplicitor but issue of deduction under Section 80IA of the Act of eligible income. Order of LD CIT [A] relied up on by the LD AR for subsequent year is indeed without any reasoning. In fact, if there is any interest paid which is related to the amount invested in the fixed deposit receipts, then such interest expenditure cannot go to reduce eligible income for deduction u/s 80 IA [4] of the Act. If blanket netting off is allowed of above bank FDR interest, it will result in lower interest expenditure for determination of eligible income for deduction to that extent, thereby assessee will get the full deduction to the extent of amount of FDR interest . Therefore, the argument of the LD AR though looks attractive. But can be decided only after examination of facts. Before us, details of interest paid which has gone to reduce the eligible income for deduction, nor details of Interest on FDR as well as nexus of interest paid on funds is available. Thus, the alternative argument cannot be considered without ascertaining facts. Therefore , we restore this issue back to the file of Id AO with a direction to assessee to first show the facts about interest earned and interest paid along with nexus, and then substantiate why such netting off should be allowed and to what extent. The Id AO may examine same, and if found in accordance with law, may recompute the

deduction u/s 80 IA [4] of the Act. Accordingly, alternative ground of the appeal is allowed with above directions.

010. Third ground of appeal is with respect to allowability of benefit under Section 80IA of the Act on income from sale of scrap of ₹46,06,161/- . We find that the sale of scrap was stated by the learned Assessing Officer as not derived from the business of industrial undertaking. The learned CIT (A) vide paragraph no. 9 has upheld the order of the learned Assessing Officer.
011. After hearing both the parties, we find that assessee has earned income from sale of scrap by selling wire ropes, Scrap and Waste oil. These are the income generated out of the maintenance and operational activity of the port. These are either left over or old and used wire ropes. Necessary evidences in form of sales bills are also produced before lower authorities. Cost of these materials has already gone into the expenditure of operation of the port activities. We find that when scrap sold by the assessee has direct nexus with the business of the infrastructure facility, such income should be eligible for deduction u/s 80IA [4] of the Act. It is not the claim of revenue that such scrap sale is of totally unrelated items to the business of assessee. Therefore, income from sale of scrap is eligible for deduction under Section 80IA of the Act. Accordingly, ground no.3 of the appeal is allowed.



012. In the result, the appeal filed by the assessee is partly allowed.

Order pronounced in the open court on 30.11.2023.

Sd/-
(SANDEEP SINGH KARHAIL)
(JUDICIAL MEMBER)

Sd/-
(PRASHANT MAHARISHI)
(ACCOUNTANT MEMBER)

Mumbai, Dated: 30.11.2023

Sudip Sarkar, Sr.PS

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Mumbai