

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

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND
SHRI RATNESH NANDAN SAHAY, ACCOUNTANT MEMBER**

**ITA No. 137/M/2024
Assessment Year: 2014-15**

Mr. Arun Bende Asst. Commissioner of Income Tax, Circle-6(1)(1), Mumbai. Room No.504, 5 th Floor, Aayakar Bhavan, M.K.Road, Mumbai- 400020.	Vs.	M/s. Essar Power Gujarat Ltd. 11 th Floor, Essar House, 11 K.K. Marg, Mahalaxmi, Mumbai- 400034. PAN:AABCE7510K
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Vijay Mehta, A.R.
Revenue by : Shri P. D. Chougule (Addl. CIT), D.R.

Date of Hearing : 21 . 05 . 2024
Date of Pronouncement : 29 . 05 . 2024

O R D E R

Per: Ratnesh Nandan Sahay, Accountant Member:

1. This appeal has been filed by the revenue against the order of the Ld. CIT Appeal passed u/s 250 of the Income Tax Act ("Act" in short) vide order No. ITBA/NFAC/S/250/2023-24/1058193153(1) dated 23.11.2023 for assessment year 2014-15.
2. Following grounds of appeal have been raised:

- “1. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in giving finding that interest of Rs.5,19,42,755/- on margin money kept for obtaining bank guarantee/letters for credit for power business is to be assessed under the head "Business Income" and upholding the action of the assessee in reducing the above amount from work in progress (WIP) account, ignoring the detailed reasoning given by the Assessing Officer in the assessment order that it is taxable under the head "Income from Other Sources"*
- 2. The Appellant prays that the order of the Ld. CIT (A) on the NIL above grounds be set aside and that of the Assessing Officer be restored.*
- 3. The appellant craves leave to amend, or amend, or alter NIL any grounds or add a new ground, which may be necessary.”*

2. The only ground of appeal raised by the revenue is that the Ld. CIT Appeal has erred in holding that interest of Rs.5,19,42,755/- on margin money kept for obtaining bank guarantee/letters for credit for power business is to be assessed under the head ‘Business Income’ instead of ‘income from other sources’.
3. The facts of the case, in brief, are that the assessee is engaged in the business of operating imported coal based power plants of 1200 MW in Phase-I and is in process of construction and implementation of 1320 MW in Phase-II near Salaya (Dist. Devbhumi Dwarka), Gujarat. In this case, a reference u/s.92CA (1) of the Act for A.Y. 2014-15 was made to the TPO vide letter dated 29.11.2016 for determination of Arms length Price (ALP). Subsequently, the jurisdictional TPO, DCIT (TP)-2(1)(1), Mumbai has passed, an order u/s.92CA(3) of the act

dated 30/06/2017. TPO in his order has not made any adjustment and said that considering the facts and circumstances of the case and documents furnished by the assessee, the value of the assessee's international transactions as well as specified domestic transactions with regards to arms length price is not being disturbed. Also assessee has not claimed u/s 801A (4) and there will be no effect on taxable income.

4. On going through the details furnished by the assessee, the assessing officer noticed that interest of Rs.5,19,42,755/- earned on margin deposit has not been offered for taxation for the year under consideration. During the course of assessment proceedings, assessee was asked to explain as to why interest earned on margin deposits be allowed as deduction from closing work-in- progress, instead of taxing the said interest under the head 'Income from Other Sources'.
5. In response to that, the assessee, vide letter dated 13/11/2017, submitted that Interest of Rs.5,19,42,755/- was earned from margin deposits and same was reduced from Capital WIP as per accounting standard. The Company owns and operates imported coal based power plants of 1200 MW in Phase-I, in which unit-I was capitalized on 01st April 2012 and Unit-II was capitalized on 15th June 2012. Assessee company was in process of implementation of another 1320 MW in Phase-II near Salaya (Dist. Devbhumi Dwarka), Gujarat during F.Y.

2013-14 and all the expenditure incurred during the pre-commencement stage related to under construction Plant was reflected under the head "Capital work in progress" and "preoperative expenses" in the books of accounts. During the project phase, the assessee was required kept Margin deposits with bank for opening Letter of credit, Bank Guarantee, LC for coal mining equipment, Security Deposits for water connection, etc. In view of this requirement, assessee was required to make deposit with the bank. The said deposit was on account of categorical requirements of the bankers to place such deposits for the purpose of opening of Letter of Credit, BG etc. It is submitted that the amount so deposited would partake the characteristics of trade related deposits made for the purpose of the Power Generation business. During the tenure of the said margin deposit, company had earned interest which is incidental and interlinked with the business of the assessee, and consequently goes to reduce the cost of the project. Since all the expenditure incurred towards construction of the plant have been clubbed under closing WIP and preoperative expenses, the interest received on the fixed deposits have been rightly reduced from the same. With regard to the accounting or the finance cost relating to the borrowings as mentioned above and corresponding interest income earned from deposits earmarked against financing facilities during construction period, it

was submitted that all the finance cost till commencement of commercial production was capitalized. The interest income earned from deposits earmarked against financing facilities during construction period was deducted from the same.

6. The explanations of the assessee, submitted as above, were considered by the AO but the same was not found to be tenable. The margin money was not derived from the business activity of the assessee company. Various Courts have, time and again, held that the said income has to be taxed as 'income from other sources.' In the case of South India Shipping Corporation Ltd. v. CIT [1999] 240 ITR 24 (Madras), the Hon'ble Madras High Court has held that when the assessee was carrying on business, the interest earned by it from loans and bank deposits was assessable under the head 'Income from Other Sources.' The High Court had followed the Hon'ble Apex Court's Judgment in the case of Tuticorin Alkali Chemicals & Fertilizers Ltd. v. CIT 227 ITR 172, wherein, it was held that 'in usual course' interest received by the Company on loans and bank deposits would be taxable as income under the head "Income from Other Sources" under section 56 of the Act." In case of Godavari Sugar Mills Ltd. v. CIT 191 ITR 359 (Bom), the Jurisdictional High Court has held that no evidences are furnished that amounts had been advanced in the course of assessee's business; hence the interest income is assessable as Income

from Other Sources. This has further been affirmed by the Apex Court in the case of CIT v. Bokaro Steel Ltd. 236 ITR 315. In the case of Murli Investment Co. CIT 167 ITR 368 [Raj.], the Rajasthan High Court has held that the activity indulged in by the assessee did constitute not money-lending business since the assessee merely invested its funds when they were not required for the time being and, therefore, the interest earned by the assessee was assessable as 'Income from Other Sources.' Reliance in this regard was also placed by the AO on the following judgments:

- i. Godavari Sugar Mills Ltd. v. CIT 191 ITR 359 (Born)
 - ii. Shree Krishna Pollyester Ltd. v. Dy. CIT 274 ITR 21 (Bam)
 - iii. CIT Vs. Radko Khaitan Ltd. 274 ITR 354 (All)
 - iv. CIT Vs. Rajasthan Land Development Corporation 211 ITR 597 (Raj.)
 - v. CIT Vs. Ravi Ratna Exports Pvt. Ltd., 246 ITR 443 (Born)"
7. Aggrieved by the order of the Assessing office, the assessee filed appeal before the Ld. CIT Appeal who allowed the claim of the assessee that this is a 'business income' as has been held by it in assessee's own case for the assessment year 2011-12 and 2012-13.
8. During the course of appellate proceedings before us, the assessee company submitted a paper book and placed on record that the issue of earning interest income on margin deposits has always been

considered as “Business income” in the case of the assessee itself both by the Ld. CIT Appeal as well as the Hon’ble ITAT (Mumbai) in the assessment year 2007-08 and 2008-09.

9. We have considered the facts of the case and the rival submissions and it is found that the assessee’s case is squarely covered by the order of the Hon’ble ITAT (Mumbai) “E” Bench in ITA No.2614/M/2010 for the assessment year 2007-08, ITA No.7438/M/2011 for the assessment year 2008-09, ITA No.2536/M/2010 for the assessment year 2007-08, ITA No.4020/M/2016 for the assessment year 2011-12, ITA No.4019/M/2016 for the assessment year 2012-13 & ITA No.397/M/2018 for the assessment year 2013-14. Thus, respectfully following the order of the various coordinate Benches of Hon’ble ITAT (Mumbai), we also hold that the interest earned on margin money kept for obtaining bank guarantee/letters for credit for power business is to be assessed under the head of ‘business income’ and not the ‘income from other sources’.

10. In the result, the appeal of the revenue is dismissed.

Order pronounced in the open court on 29.05.2024.

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Sd/-
(RATNESH NANDAN SAHAY)
ACCOUNTANT MEMBER

Mumbai, Dated: 29.05.2024.
Snehal C. Ayare, Stenographer

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.