

अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई
**IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH, CHENNAI**

श्री जॉर्ज जॉर्ज के, उपाध्यक्ष एवं श्री एस.आर.रघुनाथा, लेखा सदस्य के समक्ष
**BEFORE SHRI GEORGE GEORGE K, VICE PRESIDENT AND
SHRI S.R. RAGHUNATHA, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.: 1792/CHNY/2024
निर्धारण वर्ष/Assessment Year: 2017-18

**The Assistant Commissioner of
Income Tax,**
Circle – 1,
Tirunelveli.

**VVD and Sons Private
Limited,**
No.182, Palayamkottai Road,
Tuticorin – 628 003.

PAN: AAACV 8438J

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri Shiva Srinivas, Addl.CIT
प्रत्यर्थी की ओर से/Respondent by : Shri S. Sridhar, Advocate

सुनवाई की तारीख/Date of Hearing : 21.11.2024
घोषणा की तारीख/Date of Pronouncement : 26.11.2024

आदेश /O R D E R

PER S.R. RAGHUNATHA, ACCOUNTANT MEMBER:

This appeal filed by the Revenue is directed against the order passed by the learned Commissioner of Income Tax (Appeals), Chennai - 19, dated 30.04.2024 and pertains to assessment year 2017-18.

2. The revenue has raised the following grounds of appeal:

1. *The order of the learned CITA) is opposed to law on the fact and in the circumstances of the case.*
2. *The learned CIA) erred in deleting the disallowance of deduction u/s 80IA claimed towards interest income o Rs. 2.3423.637- by holding that interest income partakes of the character of profits and gains of eligible business*
3. *The learned CITA) failed to appreciate that Section 80IA provides for allowing of deduction in respect of profits & gains "derived from" eligible business and that Section 80IA does not provide for allowing of deduction in respect of income "attributable to" eligible business.*
4. *The learned CITA) failed to appreciate that interest received by assessee far delayed payment by TANGEDCO falls under income from other sources since it is the income "attributable to" eligible business and not derived from" eligible business.*
5. *The learned CIT(A) failed to note that Hon'ble Supreme Court in the case of Liberty India Vs Commissioner of Income Tax [2009] 183 Taxman 349 had held that the words "derived from" was narrower in connotation as compared to the words "attributable".*
6. *The learned CITA) failed to note that in the case of Liberty India Vs Commissioner of Income 20097 183 Taxman 349, the Hon'ble Supreme Court had held that duty drawback receipts DEPB benefits do not form part of net profits of eligible industrial undertaking for the purposes of section 80I /80IA/ 80IB and hence, that on the same analogy, the interest received by the assessee from TANGEDCO towards belated payments cannot form part of net profits of eligible industrial undertaking for the purposes of section 80IA.*
7. *For these and such other grounds that may be adduced at the time of hearing it is prayed that the order of the learned CITIA) may be reversed and that of the Assessing Officer be restored.*

3. The assessee is a company engaged in the business of production and selling of coconut oil, salt, etc. The assessee company also has windmills and solar power producing facilities and has entered into power purchase agreement (PAA) with Tamilnadu Electricity Board (TNEB). The assessee company filed its return of

income for the assessment year 2017-18 by admitting a total income of Rs.12,27,11,750/-. The case was selected for scrutiny under CASS and accordingly, statutory notices were issued to the assessee. During the assessment proceedings, the assessee submitted the details called for from time to time and also explained the details of receipt of interest income amounting to Rs.2,34,23,637/- and stated that this amount has been received from TNEB towards interest on delayed payment of sales bills made by TNEB to assessee and hence, claimed as deduction u/s.80IA of the Income-tax Act,1961 (hereinafter the 'Act') along with the income from sale of power. However, the AO was not convinced and disallowed the deduction claimed by the assessee u/s.80IA of the Act by holding as under:-

6 As seen above, the assessee is in receipt of a sum of Rs. 756.52lakhs/- due to sale of power to M/s, TANGEDCO-a Govt. undertaking along with an other income of Rs. 234.27lakhs under the head other income/ interest for delay payment. While claiming deduction u/s 80IA, he has taken the above receipts cumulatively which comes to 990.78 lakhs. After making appropriate admissible debit entries income from windmill, eligible for deduction u/s 80IA was arrived at Rs. 840.96 lakhs. This was deducted from the other source of taxable income arriving at total assessable income of Rs. 12, 29,6,570/-.

7. In connection with the above, it is pertinent to note the relevant provisions of sub section (1) of sec.80IA.

“Where the gross total income of an assessee includes any profits and gains derived by an undertaking or an enterprises from any business referred in sub sec.4 (such business being hereinafter referred to as the eligible business) there shall, in accordance with and subject to the provisions of

the section, be allowed, in computing the total income of the assessee, a deduction of an amount equal to 100% of the profits and gains derived from such business for ten consecutive assessments.

7.1 As seen above, deduction u/s. 80IA(4) is applicable only to the profits and business arising out of the specific business as provided in this sub section 4. In the case of assessee, the assessee is eligible to claim deduction in respect of sub clause iv of clause 4 of 80IA – dealing with generation and distribution of power.

7.2 The assessee's claim thus is to be restricted only to the activity of sale of power and not extendable to the activity of interest for delay payments. It is a separate head of receipt which can no way be attributable to the eligible deduction as mandated under sub clause iv of clause 4 under section 80IA. The assessee has not offered any explanation except by claiming this interest payment by TANGEDCO is mandated by the dictum of Apex Court. The dictum of apex court is only in respect of rate of compensation and not in respect of admissibility of deduction for the purpose of provisions of sec.80IA(4). Taking a holistic view of the circumstances in its entirety, this claim of deduction attributable to interest for delay payment /other income by TANGEDCO is not an admissible one and is assessed @ Rs.2,34,23,637/- u/s.56 of the IT Act, 1961.

In view of the above, the assessment is completed as under:

<i>Total Income Returned</i>	<i>Rs.12,27,11,750/-</i>
<i>Add: Income from other sources as discussed in para no.7.2</i>	<i>Rs.2,34,23,637/-</i>
<i>Assessed Income</i>	<i>Rs.14,61,35,387/-</i>

Aggrieved by the order of the AO, the assessee preferred an appeal before the Id. CIT(A).

4. Before the Id.CIT(A), the assessee submitted that the company had maintained separate books of accounts for transactions of windmills and solar operations and has earned income of

Rs.9,90,78,148/- during the year, which includes amount of Rs.2,34,23,637/- towards interest for the delayed settlement of power charges by TNEB. Since the interest is for the delayed payment of sale of power charges, it is taken as additional revenue in the form of interest from the windmill operation and hence, the same has been claimed as deduction u/s.80IA of the Act. Further, the assessee relied on the various judicial pronouncements which is in support of claim of interest income as eligible for deduction u/s.80IA of the Act –

- i) *Nirma Industries Ltd., vs. DCIT, [2006] 155 Taxman 330 (Guj)*
- ii) *Gujarat Paguthan Energy Corporation (P.) Ltd., vs. DCIT, [2014] 45 taxmann.com 564 (Guj)*
- iii) *CIT vs. Jackson Engineers Ltd., [2010] 231 CTR 348 (Delhi)*
- iv) *CIT vs. Poddar Pigments Limited, ITA 347/2010 (Delhi)*
- v) *CIT vs. Advance Detergents Ltd., [2010] 33 DTR 185 (Delhi)*
- vi) *Phatela Cotgin Industries (P.) Ltd., vs. CIT, [2008] 303 ITR 411 (P&H)*
- vii) *Tata Sponge Iron Ltd., vs. CIT, [2007] 292 ITR 175*
- viii) *CIT vs. Flender Macneill Gears Ltd., [1984] 41 CTR (Cal) 60*
- ix) *CIT vs. Indo Matsushita Carbon Co. Ltd., [2006] 205 CTR 293 (Mad)*

4.1 Further, the assessee also argued that the text of 80IA of the Act, states that the assessee is eligible for deduction of an amount equal to 100% of the profit and gain derived from such business. Therefore, the interest income from customers on account of

delayed payment towards credit sales purely form part of profit or gains from business and therefore, is eligible for forming part of computation of profit and gains for deduction u/s.80IA of the Act. Considering the submissions and arguments of the assessee, the Id.CIT(A) allowed the appeal of assessee by deleting the disallowance of Rs.2,34,23,637/- u/s.80IA of the Act by holding as under:-

6.3.4 While going through the grounds raised by the Appellant and the various judicial decisions relied upon, the issue to be decided is whether the interest received on account the delayed payments by TNEB for the sale of power in the FY 2014-15 constitute income attributable to power generation to facilitate the assessee to claim deduction u/s 80IA of the Act or not.

6.3.5 The Appellant Company is engaged in the business of production of power by installing Wind Mills and Solar Power Producing facilities. The Appellant has also entered into Power Purchase Agreements (PPA) with TNEB. During the course of Appellate proceedings, the AR contended that when the profits of business include certain receipts which have corresponding costs, or if the profits include certain credits and the business also has debits of the same nature, unless the same are netted out against each other, the profit of the business will present a distorted picture and may lead to injustice while implementing an incentive provision i.e. claiming of deduction u/s 80IA of the Act.

6.3.6 The AR further contended that while computing profit of the business of industrial undertakings under Section 80IA of the Act, revenue receipts should be adjusted against revenue expenditure of like nature. In the present case of the Appellant company, the revenue receipt in the form of interest on delayed payments from TNEB on account of the delayed payments relating to the sale of power in the earlier years were considered in the claim made towards deduction u/s 80IA of the Act in the year of receipt, as the said interest income received is inextricably linked and has a direct and proximate connection /nexus with the Appellant's business of generation and transmission of power to the state grid.

6.3.7 At this juncture it is appropriate to bring on record the decision rendered by the Hon'ble Supreme Court in the case of *Vellore Electric Corpn. Ltd. v. CIT* [1997] 93 Taxman 401/227 ITR 557 (SC) where assessee-electricity distributing company had to deposit contingency reserve as stipulated in the Electricity (Supply) Act in securities authorised under the Indian Trusts Act, the Hon'ble Supreme Court held that the assessee is entitled for deduction in respect of interest earned from investment in securities there being direct and proximate connection between carrying on business as licensee under the Electricity (Supply) Act and income derived by way of interest from investment in securities.

6.3.8 In the instant case with regard to the claim of deduction u/s 80IA of the Act, all its receipts and expenditure relate to a single activity of power generation. There is no dispute that it is an industrial undertaking covered under Section 80 IA of the Act and that its net profit is otherwise eligible for deduction under Section 80-IA of the Act. The very object of enacting Section 80-IA was to encourage setting up of an industry involved in the generation and distribution of electricity or any other form of energy and the production, manufacture and construction of articles specified in the 5th Schedule to the Act. The idea was to provide incentives by way allowing deduction u/s 80IA of the Act. The Appellant has offered an explanation regarding interest income earned by it, from TNEB on account of delayed payment for purchase of power. Thus, there the interest income received are receipts in normal course of carrying its business of power generation and sale of power to TNEB and therefore should be considered as income derived from its business of power generation. Without there being any power generation activity by the Appellant company there exist no sale of power, when there is no sale, there is no liability to pay the cost for power. When the liability is discharged belatedly, obviously the interest upon can only relate to the sale of power only. Therefore, the said interest income has a direct nexus with the power generation business activity of the Appellant.

6.3.9 The AO in the order passed has made a finding that the receipt of interest payment is a separate head of receipt which can in no way be attributable to the eligible deduction as mandated under sub clause (iv) of clause 4 under section 80IA of the Act. The observation of the AO is ill conceived. As per records the actual payments made by TNEB is usually after one or two years and the interest upon the delayed payment is being paid as per the order of the Hon'ble Apex court. When interest is paid for

delayed payment as per the directions of the Hon'ble Supreme Court the same cannot partake the character of income from other sources as visualised by the AO

6.3.10 In the case of the Appellant the said interest payment received was the interest accrued to the assessee on account of delayed payments towards purchase of power from the assessee in the earlier years , this fact goes to prove the existence of a direct nexus between the interest income received and the business of the Appellant for the purpose of claiming deduction u/s 80IA of the Act. Thus, the said interest income has a direct nexus with the essential business activity of the Assessee.

6.3.11 In addition the Appellant in the submission made has relied upon the following decisions in this regard viz..

- (i) Nirma Industries Ltd. v. DCIT (2006] 155 Taxman 330 (GUJ.)*
- (ii) Govinda Choudhary & Sons [(1993] 2013 ITR 881,*
- (iii) Gujarat Paguthan Energy Corporation (P.) Ltd. v. DCIT (2014] 45 taxmann. Com 564 (Gujarat)*
- (iv) CIT v. Jackson Engineers Ltd. (2010] 231 CTR 348*
- (v) CIT v. M/s Poddar Pigments Limited ITA 347/2010*
- (vi) CIT v. Indomatsushita Co. Ltd. 286 /TR 201 (Mad).*
- Vi) CIT V. Advance Detergents Ltd. (decided on 30th Nov.. 2009) (reported at (2010) 33 DTR (Delhi) 185*
- (vii) Phatela Cotgin Industries (P.) Ltd. v. CIT [2008] 303 ITR 411 (P&H)*
- (ix) Tata Sponge Iron Ltd. v. CIT (2007] 292 ITR 175*
- (x) CIT v. Flender Macneill Gears Ltd. [1984] 41 CTR (Cal) 60*
- (xi) CIT V. Indo Matsushita Carbon Co. Ltd. (2006] 205 CTR (Mad) 293*
- (xii) PCIT v. Atul Ltd. (2019] 103 taxmann.com 250 (SC),*

6.3.12 In view of the above discussions and the various judicial decisions the undersigned is of the considered view that the interest received by the Appellant for the belated receipt of sale consideration can partake the character of business income of generation of power and further this receipt cannot stand alone. Accordingly the Appellant has rightly admitted the interest income and included the same in claiming deduction u/s 80IA of the Act for the year under consideration. In view of this the disallowance made by the AO is devoid of merits. In this back drop the ground raised by the Appellant upon this issue is hereby treated as allowed and the AO is directed to delete the disallowance of Rs. 2,34,23,637/- made in claiming

deduction u/s 80IA of the Act for the AY 2017-18 and treating the same as income from other sources u/s 56 of the Act.

Aggrieved by the order of Id.CIT(A), the Revenue is in appeal before us.

5. The Id.DR submitted that the Id.CIT(A) has erred in deleting the disallowance of deduction u/s.80IA of the Act claimed towards interest income by holding that interest income *par takes* the character of profits and gains of eligible business. Further the Id.DR stated that section 80IA of the Act does not provide for allowing of deduction in respect of income attributable to eligible business. Further the Id.DR stated that the interest income received from TNEB by the assessee falls under 'income from other sources' and hence, it cannot be treated as business income to allow the deduction u/s.80IA of the Act. The Id.DR also relied on the case law of Hon'ble Apex Court which is given in the grounds of appeal.

6. On the contrary, the Id.AR for the assessee stated that there is no error in the order of Id. CIT(A) in allowing the deduction claimed by the assessee u/s.80IA of the Act, towards interest received from TNEB for delayed payment. The Id.CIT(A) has considered both the provisions of law along with the judicial precedents to the facts of

the case and thereby arriving a conclusion that the assessee is eligible for deduction of interest income as it is eligible income under the head 'income from business' and not of 'income from other sources'. Further the Id.AR relied on the decision of Hon'ble Apex court in the case of Vellore Electric Corporation Ltd., vs. CIT reported in [1997] 227 ITR 557, wherein their lordship has elaborately explained the word 'attributable' to the business by holding that the interest earned by the assessee should be treated as income under the head 'income from business' as under:-

" 20. In the present case, the assessee is carrying on business of generating electricity as a licensee under the Electricity (Supply) Act. Under section 57, the provisions of the Sixth Schedule shall be deemed to be incorporated in the license of every licensee. Under Paragraph II of the Sixth Schedule, the licensee is obliged to create from existing reserves or from the revenues of the undertaking a reserve called 'Contingencies Reserve' and under sub-para (2) of Paragraph IV the licensee is obliged to invest the sums appropriated to the Contingencies Reserve in securities authorised under the Indian Trusts Act. The requirement to create the Contingencies Reserve is a part of the obligation of the assessee as a licensee to carry on its business of generating electricity and it is also part of the obligation of the assessee as a licensee that the sums appropriated to the Contingencies Reserve are invested in securities authorised under the Indian Trusts Act. In Cambay Electric Supply Industrial Co. Ltd.'s case (supra), this Court has said

"In our view, since the expression of wider import, namely, 'attributable to has been used, the Legislature intended to cover receipts from sources other than the actual conduct of the business of generation and distribution of electricity."

This would mean that it is not necessary that the income should have been earned from the actual conduct of the business of generation and distribution of electricity. What is required is that the activity from which the income is earned must have a direct and proximate connection with the

priority industry of generation and distribution of electricity. The creation of the Contingencies Reserve and the investment of the sums appropriated to the said Reserve security authorised under the Indian Trusts Act, being a condition statutorily incorporated in the licence granted to the assessee under the Electricity (Supply) Act, is incidental to the carrying on of the business of generation and distribution of electricity by the assessee. There is thus a direct and proximate connection between the carrying on of the business of generation and distribution of electricity by the assessee as a licensee under the Electricity (Supply) Act and the income derived by way of interest from the investments in securities of the sums appropriated to the Contingencies Reserve as required under the provisions of the Sixth Schedule to the Electricity (Supply) Act which is one of the conditions of license on the basis of which the assessee can carry on its business of generating and distributing electricity. We are, therefore, of the view that the income earned by way of interest on the sums appropriated to the Contingencies Reserve which have been invested in securities can be said to be profits and gains attributable to the business of the assessee for the purpose of section 80-I. Question No. 3 in Civil Appeal Nos. 2613-14 of 1984 is, therefore, answered in the affirmative, i.e., in favour of the assessee and against the revenue.”

6.1 In light of the above, the Id.AR prayed for confirming the order of Id.CIT(A) by dismissing the appeal filed by the Revenue.

7. We have heard rival contentions and perused the materials available on record and gone through the orders of the lower authorities. It is admitted fact that the assessee has carried out the business of producing power both from windmills and solar energies and has sold the power to TNEB. The assessee has received Rs.2,34,23,637/- as interest income on delayed payments of debtors from TNEB and offered as income and claimed as deduction u/s.80IA

of the Act as eligible business during the assessment year 2017-18. The Id.AO has disallowed the same as not eligible for deduction u/s.80IA of the Act and brought to tax as 'income from other sources'. However, the Id.CIT(A) after considering the provisions of section 80IA(4) of the Act and following the decisions of various courts has allowed the appeal of assessee by deleting the disallowance of interest income earned by the assessee and claimed as deduction u/s.80IA of the Act. We note that the assessee has earned the said interest from TNEB for delayed payment of debtors as per the terms and conditions of sales made to TNEB. Since the TNEB has made payment to the assessee towards purchases belatedly, they have paid additional charges as interest for delayed payments. Therefore, we are of the considered opinion that the said interest income earned by the assessee from TNEB towards delayed payment of power sales made to them is derived from eligible business of the assessee which is claimed as deduction u/s.80IA of the Act. We also concur with the reliance placed by the Id.AR on various judicial precedents in support of the claim made by assessee that the interest income is eligible to be treated as 'income from business' are as follows:-

- i) *Nirma Industries Ltd., vs. DCIT, [2006] 155 Taxman 330 (Guj)*

- ii) *Gujarat Paguthan Energy Corporation (P.) Ltd., vs. DCIT, [2014] 45 taxmann.com 564 (Guj)*
- iii) *CIT vs. Jackson Engineers Ltd., [2010] 231 CTR 348 (Delhi)*
- iv) *CIT vs. Poddar Pigments Limited, ITA 347/2010 (Delhi)*
- v) *CIT vs. Advance Detergents Ltd., [2010] 33 DTR 185 (Delhi)*
- vi) *Phatela Cotgin Industries (P.) Ltd., vs. CIT, [2008] 303 ITR 411 (P&H)*
- vii) *Tata Sponge Iron Ltd., vs. CIT, [2007] 292 ITR 175*
- viii) *CIT vs. Flender Macneill Gears Ltd., [1984] 41 CTR (Cal) 60*
- ix) *CIT vs. Indo Matsushita Carbon Co. Ltd., [2006] 205 CTR 293 (Mad)*

7.1 Further, in the case of CIT vs. Vellore Electric Corporation Ltd., (*supra*) which is relevant to the present facts of the case, wherein the Hon'ble Apex Court has clearly stated that the interest income earned on investments made out of contingencies reserve being a condition statutorily incorporated in the licence granted to the assessee under the Electricity (Supply) Act, is incidental to the carrying on the business of generation and distribution of electricity by the assessee by holding as under:-

“ 20. In the present case, the assessee is carrying on business of generating electricity as a licensee under the Electricity (Supply) Act. Under section 57, the provisions of the Sixth Schedule shall be deemed to be incorporated in the license of every licensee. Under Paragraph II of the Sixth Schedule, the licensee is obliged to create from existing reserves or from the revenues of the undertaking a reserve called 'Contingencies Reserve' and under sub-para (2) of Paragraph IV the licensee is obliged to invest the sums appropriated to the Contingencies Reserve in securities authorised under the Indian Trusts Act. The requirement to create the Contingencies Reserve

is a part of the obligation of the assessee as a licensee to carry on its business of generating electricity and it is also part of the obligation of the assessee as a licensee that the sums appropriated to the Contingencies Reserve are invested in securities authorised under the Indian Trusts Act. In Cambay Electric Supply Industrial Co. Ltd. 's case (supra) , this Court has said

"In our view, since the expression of wider import, namely, 'attributable to has been used, the Legislature intended to cover receipts from sources other than the actual conduct of the business of generation and distribution of electricity."

This would mean that it is not necessary that the income should have been earned from the actual conduct of the business of generation and distribution of electricity. What is required is that the activity from which the income is earned must have a direct and proximate connection with the priority industry of generation and distribution of electricity. The creation of the Contingencies Reserve and the investment of the sums appropriated to the said Reserve security authorised under the Indian Trusts Act, being a condition statutorily incorporated in the licence granted to the assessee under the Electricity (Supply) Act, is incidental to the carrying on of the business of generation and distribution of electricity by the assessee. There is thus is a direct and proximate connection between the carrying on the business of generation and distribution of electricity by the assessee as a licensee under the Electricity (Supply) Act and the income derived by way of interest from the investments in securities of the sums appropriated to the Contingencies Reserve as required under the provisions of the Sixth Schedule to the Electricity (Supply) Act which is one of the conditions of license on the basis of which the assessee can carry on its business of generating and distributing electricity. We are, therefore, of the view that the income earned by way of interest on the sums appropriated to the Contingencies Reserve which have been invested in securities can said to be profits and gains attributable to the business of the assessee for the purpose of section 80-I. Question No. 3 in Civil Appeal Nos. 2613-14 of 1984 is, therefore, answered in the affirmative, i.e., in favour of the assessee and against the revenue."

7.2 In the present facts and circumstances of the case and also respectfully following the decision of the Hon'ble Supreme Court in

the case of Vellore Electric Corporation Ltd., *supra*, we are of the considered view that the assessee's claim of interest received on delayed payment from TNEB is an income derived from the business and eligible for deduction u/s.80IA of the Act. Hence, there is no need to interfere in the order of the Ld.CIT(A) on this issue. Accordingly, the grounds of appeal raised by the Revenue are devoid of merits. Therefore, we dismiss the appeal of Revenue.

8. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced in the open court on 26th November, 2024 at Chennai.

Sd/-
(जॉर्ज जॉर्ज के)
(GEORGE GEORGE K)
उपाध्यक्ष /VICE PRESIDENT

Sd/-
(एस.आर. रघुनाथा)
(S.R. RAGHUNATHA)
लेखा सदस्य/ACCOUNTANT MEMBER

चेन्नई/Chennai,
दिनांक/Dated, the 26th November, 2024

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त /CIT, Madurai
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF.