

**आयकर अपीलीय अधिकरण, कोलकाता पीठ "ए", कोलकाता**

**IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH: KOLKATA**

श्री राजेश कुमार, लेखा सटस्य एवं श्री प्रदीप कुमार चौबे, न्यायिक सदस्य के समक्ष  
[Before Shri Rajesh Kumar, Accountant Member & Shri Pradip Kumar Choubey, Judicial Member]

**I.T.A. No. 2064/Kol/2024**  
**Assessment Year: 2015-16**

|  |     |                            |
|--|-----|----------------------------|
| West Bengal Industrial Development Corporation Ltd.<br><br>(PAN: AAACW 3043 Q) | Vs. | DCIT, Circle-7(1), Kolkata |
| Appellant / (अपीलार्थी)  |     | Respondent / प्रत्यर्थी    |

|  |                            |
|--|----------------------------|
| Date of Hearing / सुनवाई की तिथि             | 16.12.2024                 |
| Date of Pronouncement/ आदेश उद्घोषणा की तिथि | 17.01.2025                 |
| For the assessee / निर्धारिती की ओर से       | Shri B. R. Dutta, FCA      |
| For the revenue / राजस्व की ओर से            | Shri Subhendu Datta, CITDR |

**ORDER / आदेश**

**Per Pradip Kumar Choubey, JM:**

This is the appeal preferred by the assessee against order of Commissioner of Income Tax (Appeal)-NFAC, Delhi (hereinafter referred to as the Ld. CIT(A)] dated 09.08.2024 for AY 2015-16.

2. Brief facts of the case of the assessee is that the assessee being a company filed its return of income for AY 2015-16 declaring total income of Rs. 18,98,37,730/- with deemed total income u/s 115JB of the Act of Rs. 25,34,54,750/-. The case of the assessee was selected for scrutiny and notices u/s 143(2) and 142(1) of the Act were issued. The case was discussed with the Ld. A.R and after that the AO added an amount of Rs. 7,81,40,620/- treated as an income of the assessee as the same was received from the State Government by way of grant. The AO has further disallowed the deduction claimed u/s 36(1)(viia) and 36(1)(vii) an amount of Rs. 1,87,66,374/- and assessed the total income of Rs. 28,64,44,724/-.

3. The said order has been challenged by the assessee before the Ld. CIT(A) wherein the appeal of the assessee has been partly allowed as the Ld. CIT(A) has allowed the appeal of the assessee on the issue of nature of the grant but dismissed the claim of deduction u/s 36(1)(viia) and 36(1)(vii) of the Act an amount of Rs. 1,87,66,374/-.

Being aggrieved and dissatisfied with the impugned order, the assessee has preferred the present appeal.

4. The Ld. Counsel appeared on behalf of the assessee has submitted that the AO as well as the Ld. CIT(A) did wrong in denying the claim of deduction u/s 36(1)(viia) and 36(1)(vii) in spite of fact that the assessee company a public company entitled to claim deduction. The Ld. Counsel further submits that the main object of the company is to advance loans and participate in the share capital of the companies to be established for industrial development and generation of employment in the State. The Ld. Counsel further submits that deduction claimed u/s 36(1)(viia) and 36(1)(vii) of the Act have already been accepted by the department consistently over the AY 2010-11 to 2014-15. He has brought the assessment order for AY 2010-11 and 2014-15 before us. The Ld. Counsel has also filed general Circular No. 10/2012 issued by Government of India, Ministry of Corporate Affairs and subject matter was for declaring financial institution as a public financial institution u/s 4A of the Companies Act, 1956. The Ld. Counsel

further submits that the assessee company is recorded public financial institution. Since it specifies the guidelines framed by the Ministry of Corporate Affairs, hence the company is entitled to claim deduction u/s 36(1)(viia) and 36(1)(vii) of the Act.

5. Contrary to that, the Ld. D.R supports the impugned order.

6. We have perused the order of the AO as well as Ld. CIT(A). The AO has assessed the total income of the assessee at Rs. 28,67,44,724/- by adding income received by the assessee between grant from the State Government and also after disallowing claimed deduction u/s 36(1)(viia) and 36(1)(vii) of the Act. The Ld. CIT(A) has allowed the appeal of the assessee on the issue of grant received but dismissed the claim of deduction u/s 36(1)(viia) and 36(1)(vii) of the Act. We have gone through the order passed by the AO against the same issue for AY 2010-11 up to AY 2014-15 and find that the deduction with respect to claim u/s 36(1)(viia) and 36(1)(vii) of the Act has consistently be accepted by the department. We have also gone through the general circular no. 10/2012 filed by the assessee and the circular is as follows:

**General Circular No. 10/2012**

**F. No. 3/2/2011-CL V  
Government of India  
Ministry of Corporate Affairs**

5<sup>th</sup> Floor, A Wing, Shastri Bhavan,  
Dr. R.P. Road, New Delhi,  
Dated the 21<sup>st</sup> May, 2012

To

All Regional Director,  
All Registrars of Companies.

**Subject: Guidelines for declaring a financial Institution as Public Financial Institution under section 4A of the Companies Act, 1956**

Sir,

Section 4A of the Companies Act, 1956 was inserted by the Companies (Amendment) Act, 1974 (41 of 1974) with effect from 01<sup>st</sup> February, 1975. Sub-section (2) of Section 4A of the Act empowers the Central Government, subject to the provision of sub-section (1) of section 4A of the Act, to notify in the official Gazette such other institution as it may think fit to be Public Financial Institutions (PFI).

2. The Ministry had framed certain criteria for declaring a Financial Institution as PFI under section 4A, of the Companies Act, 1956 vide General Circular No. 34/2011 dated 2.6.2011. The issue has since been revisited and it has been decided that any Financial Institution applying for declaration as PFI shall fulfill the following criteria:-

(a) A company or corporation should be established under a special Act or the Companies Act, 1956 being a central act;

(b) Main business of the company should be industrial/infrastructural financing;

(c) the company must be in existence for atleast 3 years and its financial statements should show that its income from industrial/infrastructural financing activities exceeds 50% of its total income.

(d) the net-worth of the company should be minimum of Rs.1000 (Rs. One Thousand) crore.

(e) company is registered as a Infrastructure Finance Company (IFC) with RBI or as a Housing Finance Company (HFC) with National Housing Bank;

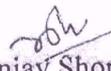
(f) NOC from RBI/NHB, in the case of IFC/HFC, with regard to supervisory concerns, if any, must be obtained and enclosed with the application.

(g) Such IFCs/HFCs, after being declared as PFIs are required to disclose in their audited Financial Statements that they are complying with the directions and conditions laid down by this Ministry.

3. It is, however, clarified that in the case of Central Public Sector Undertakings/State Public Sector Undertakings, no restriction shall apply with respect to financing specific sector(s) and net-worth as stated in para 2(c) and (d) above respectively.

This issues with the approval of the competent authority.

Yours faithfully,

  
(Sanjay Shorey)  
Joint Director

Copy to:

1. All concerned
2. PS to CAM and PS to MOS
3. PPS to Secretary, Special Secretary, Joint Secretaries

7. Going over the facts of the case, we find that West Bengal Industrial Development Corporation Ltd (WBIDCL) formed in 1967 under the Companies Act is the premier nodal agency of West Bengal Industry, WBIDC provides support to industry through facilitation, financing, operationalizing, incentive policy and setting of the industrial part. The object clause of the memorandum of Article of Association has also been brought before us that goes to show that WBIDC is engaged in advancing loans and participating in the share capital of the companies, firm and association involved in Industries to be established within the State in order to secure and assist in the expeditious and orderly establishment the growth and development of industries in the State of West Bengal. We further find that WBIDC is regarded a public financial institution as it satisfies the guidelines framed by the Ministry of Company Affairs for declaring financing institution u/s 4A of the Act,1956. We further find that WBIDC has advanced long term loans of expenditure of Rs. 3,09,47,61,000/- till 31.03.2015 for AY 2015-16 and interest earned on long term finance (loans) during the year ended 31.03.2015 amounting to Rs. 6,93,46,000/- has been duly offered to tax. It is further pertinent to mention herein that specified entity as defined in Explanation (a)(i) & (ii) to Section 36(1)(viii) meaning a financial corporation specified in Section 4A of the Companies Act, 1956 and WBIDC satisfies this criterion as we have already discussed in the preceding paragraph that the object clause of memorandum of article of association established that WBIDC is engaged in advancing loans and participating in the share capital of the companies, firms and association involved in the industries to be established within the state in order to secure and assist in the expeditious and orderly establishment, growth and development of industries in the State of West Bengal. The said section has been accepted by the Department consistently. **Keeping in view, the above discussion, we find substance in the argument of Ld. Counsel for the assessee that disallowance of claim of deduction u/s 36(1)(viiia) and 36(1)(vii) is erroneous and hence liable to be deleted.**

8. The next issue raised by the Ld. A.R with regard to tax credit and submit that the necessary direction for giving credit for the same. We find that there is no adjudication

neither by the AO nor by the Ld. CIT(A) on this issue. Hence, we are not inclined to pass any order in this context.

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

Order is pronounced in the open court on 17<sup>th</sup> January, 2025

Sd/-

Sd/-

(Rajesh Kumar/राजेश कुमार)

(Pradip Kumar Choubey /प्रदीप कुमार चौबे)

Accountant Member/लेखा सदस्य

Judicial Member/न्यायिक सदस्य

Dated: 17<sup>th</sup> January, 2025

SM, Sr. PS

Copy of the order forwarded to:

1. Appellant- West Bengal Industrial Development Corporation Ltd., Protiti, 23, Abanindranath Thakur Sarani (Camac Street), Kolkata-700017.
2. Respondent – DCIT, Circle-7(1), Kolkata
3. Ld. CIT(A)-NFAC, Delhi
4. Ld. Pr. CIT- , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar  
ITAT, Kolkata Benches, Kolkata