

आयकर अपीलीय अधिकरण "F" न्यायपीठ मुंबई में।

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND
SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No. 6861/Mum/2013

(निर्धारण वर्ष / Assessment Year : 2009-10)

Dy. Commissioner of Income tax -5(3), 573, Aayakar Bhavan, 5 th floor, Mumbai 400 020.	बनाम/ v.	M/s Vadinar Power Co. Ltd., 15, Essar House, 11, Keshavrao Khadye Marg, Mahalaxmi, Mumbai- 400 034.
स्थायी लेखा सं./PAN : AAACV5226C		
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)

Revenue by	Shri Airju Jaikumar
Assessee by :	None

सुनवाई की तारीख /**Date of Hearing** : 12-01-2016

घोषणा की तारीख /**Date of Pronouncement** : 29-01-2016

आदेश / O R D E R

PER RAMIT KOCHAR, Accountant Member

This appeal, filed by the Revenue, being ITA No. 6861/Mum/2013, is directed against the order dated 17-9-2013 passed by the learned Commissioner of Income Tax (Appeals)- 9, Mumbai (Hereinafter called "the CIT(A)"), for the assessment year 2009-10.

2. The ground raised by the Revenue in the memo of appeal filed with the Tribunal reads as under:-

"1. Whether on the facts, and circumstances of the case and in law the, Ld.CIT(A) erred in allowing the contention of the assessee that only the net interest income should be taxed under the head income from other sources, without appreciating the facts that assessee has failed to

produce any details to prove nexus between the so called interest expenditure and interest income.

2. The appellant prays that the order of the Ld. CIT(A) be set aside and the order of the AO be restored.

3. At the time of hearing before us, none appeared on behalf of the assessee company. As per the order sheet, the appeal was adjourned two times earlier since April, 2015 as the assessee company was not appearing despite notices issued to the assessee company and duly served upon the assessee company. Therefore, we proceed to dispose of the appeal after hearing the ld. D.R.

4. The brief facts of the case are that the assessee company has set up and operates 77MW captive co-generation power and steam plant at Vadinar, Distt. Jamnagar, Gujarat. This plant was capitalized on 1st May, 2008 and caters to the power and steam requirements of Essar lol Ltd.'s refinery. During the assessment proceedings u/s 143(3) read with Section 143(2) of Income Tax Act,1961(Hereinafter called "the Act") , the learned assessing officer (hereinafter called "the AO") observed that the assessee company has shown interest receipt of Rs. 4,33,16,023/- which was shown as business income, the details of which are as follows:-

S No.	Particulars	Amount
1	Interest on fixed deposits with banks	Rs. 17,85,886
2	Interest @ 8% on deposit with EPOL	Rs. 98,63,014
3	Interest @ 8% on deposit with EOL	Rs. 61,36,986
4	Interest @ 11% on deposit with EIL	Rs. 49,27,397
5	Interest @ 8% on deposit with EPOL	Rs. 2,06,02,740
	TOTAL	Rs. 4,33,16,023

The assessee company was asked by the AO to explain as to why interest income should not be assessed under the head 'income from other sources'

and there by deduction be disallowed u/s 80IA of the Act. In reply, the assessee company submitted that with respect to the claim of the assessee company u/s 80IA of the Act, the interest income is nothing but profits and gains from business or profession, hence, the deductions as claimed and as per the certificate provided by an independent Chartered Accountant may be considered for the assessment year under reference. . The assessee company relied on the decision of Hon'ble Madras High Court in the case of CIT v. Madras Refinery Ltd. , 228 ITR 354 whereby it was held by the Hon'ble Court that where the deposit of money was interlinked with the carrying on of business, any income earned by the funds employed would automatically be treated as business income. The assessee company also relied on the decisions of Hon'ble Supreme Court in the case of Bokaro Steel Ltd., 236 ITR 315 and in the case of Tuticorin Alkali Chemicals & Fertilisers Ltd. v. CIT, 22 ITR 172. Without prejudice, the assessee company submitted that if it is to be held that the interest income earned by the assessee company is to be considered as income from other sources, then the interest income earned from the funds that was borrowed for the purpose of construction of the power plant is allowable as deduction as per section 57(iii) of the Act since there is a direct nexus between the interest paid on the loans borrowed and the interest earned on the ICDs, the interest paid on the loan borrowed must be allowed as a deduction before taxing the interest earned on ICDs as income from other sources. The assessee company also submitted that if the interest income is treated as income from other sources and not profit and gains from business or profession, the expenditure laid out or expended wholly and exclusively for the purpose of making or earning the income should be allowed as deduction. With regard to the query with regard to allowability of deduction u/s 80IA of the Act vis-à-vis the interest earned during the financial year under consideration, the assessee company submitted that interest earned during the assessment year is a business income and is eligible for deduction u/s 80IA of the Act. However, the A.O.

rejected the contentions of the assessee company that interest received should be assessed as business income allowing deduction u/s 80IA of the Act on the ground that the assessee company has failed to explain as to how the interest income is derived from its business of generating power and interest income does not constitute income derived from industrial undertaking and deduction u/s 80IA of the Act was denied to the assessee company by the AO vide assessment order dated 29.12.2011 passed u/s 143(3) of the Act.

5. Aggrieved by the orders dated 29.12.2011 passed by the AO u/s 143(3) of the Act, the assessee company carried the matter in appeal before the CIT(A) and made detail submissions which were made before the A.O. The assessee company contended that it has earned interest income from bank of Rs17,85,866/- on FDR's with bank kept as margin money for issuing Letter of Credit and Bank guarantees and Interest of Rs.4,15,30,137/- as interest from Inter corporate deposit(ICD) with group companies . The assessee company submitted that the assessee company has received funds for the purpose of acquisition of plant and machinery for its power generation plant and since the funds will be deployed in 3-5 years gradually, the surplus funds were invested in ICD with group companies to reduce cost of borrowings. The CIT(A) rejected the contention of the assessee company so far as the deduction 80IA of the Act as the same could not be held as derived from the eligible business of the undertaking as the assessee company has deployed surplus funds with various group companies and the banks with an intention to earn interest and also most of the deposit are made for longer period of time. However, the CIT(A) accepted the alternative claim that only after the netting off , the interest income of the assessee company should be taxed under the head income from other sources because the assessee company has made huge borrowings therefore when the assessee company on one hand paid interest on the borrowings and on the other hand received interest

on FDRs/advances, the part deposits have come out from the borrowed capital. Thus, the CIT(A) partly allowed the appeal vide orders dated 17.09.2013.

6. Aggrieved by the orders of the CIT(A) dated 17.09.2013, the Revenue is in appeal before us.

7. The Id. D.R. submitted before us that the CIT(A) was not correct in agreeing with the claim of the assessee that only after netting off the interest income should be taxed under the head income from other sources without verifying the record.

8. We have heard the Id. D.R. and also perused the material available on record and the case laws relied upon. We have observed that the assessee company has earned interest on ICD/ FDRs amounting to Rs. 4,33,16,023/-. We have further observed that the assessee company has set up and operates 77MW captive co-generation power and steam plant at Vadinar, Distt. Jamnagar, Gujarat which was capitalized on 1st May, 2008. We have further observed that the assessee company has made borrowings for setting up of the plant which is stated to have been utilized for taking FDRs/ICD. Section 57(iii) of the Act stipulates that any expenditure incurred (not being in the nature of capital expenditure) laid out or expended wholly and exclusively for the purpose of making or earning such income has to be allowed as deduction. The assessee company has earned interest income of Rs. 4,33,16,023/- on FDR's/ICD and it is incumbent on the assessee company to correlate the expenses incurred wholly and exclusively for the purpose of earning the income to get the necessary deduction provided all conditions as stipulated u/s 57(iii) of the Act are complied with. Thus, it is incumbent on the assessee company to demonstrate before the AO with cogent evidences and material that interest bearing funds are utilized for making FDR/ICD's on

which interest income is earned to get the deduction as stipulated u/s 57(iii) of the Act. In our considered opinion, the matter needs to be set aside and restored to the file of the AO for de-novo determination of the issue in light of our above discussions and reasoning given above and the assessee company is directed to produce cogent material and evidences before the AO to prove that there is a direct nexus of the utilization of the interest bearing borrowed funds for the purposes getting the ICD/FDRs. Needless to say that the AO will grant the assessee company sufficient opportunity of being heard to comply with principles of natural justice in accordance with law.

9. In the result, the appeal filed by the Revenue in ITA NO. 6861/Mum/2013 for the assessment year 2010-11 is allowed for statistical purpose.

Order pronounced in the open court on 29th January, 2016.

आदेश की घोषणा खुले न्यायालय में दिनांक: 29-01-2016 को की गई ।

Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER

sd/-
(RAMIT KOCHAR)
ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated 29-01-2016

I

व.नि.स/ R.K., Ex. Sr. PS

आदेश की प्रतिलिपि अग्रहित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)- concerned, Mumbai
4. आयकर आयुक्त / CIT- Concerned, Mumbai
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai H Bench
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai