

IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH: KOLKATA
[Before Shri A. T. Varkey, JM & Shri Waseem Ahmed, AM]

I.TA No. 2786/Kol/2013 Assessment Year: 1999-2000		
Deputy Commissioner of Income-tax, Central Circle-XXV, Kolkata.	Vs.	M/s. Warren Tea Ltd. (PAN: AAACW2894H)
Appellant		Respondent

Date of Hearing	12.01.2017
Date of Pronouncement	29.03.2017

For the Appellant	Shri Rajat Subhra Biswas, CIT, DR
For the Respondent	Shri Agnibesh Sengupta, Advocate

ORDER

Per Shri A.T.Varkey, JM

This is an appeal filed by the revenue against the order of Ld. CIT(A)-IV, Kolkata dated 30.08.2013 for AY 1999-2000.

2. The first ground of appeal is against the deletion of notional interest of Rs.50,43,764/- against interest free advance to M/s. Warren Industrial Ltd. (WIL) on the ground of commercial expediency.

3. At the outset itself the Ld. Counsel for the assessee drew out attention to the fact that the Ld. CIT(A) has taken note of the Tribunal's order in the earlier years wherein the Tribunal was pleased to allow the claim of the assessee and that the Ld. CIT(A) has only followed the Tribunal's order. He drew our attention to page 7 and 8 of the CIT(A)'s order. The Ld. DR could not controvert this fact that the Tribunal has consistently allowed this claim of the assessee and so, we do not find any infirmity in

the order passed by the Ld. CIT(A) on this issue and, therefore, we confirm the order of the Ld. CIT(A) and dismiss this ground of appeal of the revenue.

4. The second ground of appeal is against the deletion of the disallowance of Rs. 1 crore as revenue expenditure

5. Brief facts on this issue is that the AO observed during the assessment proceedings that there has been a considerable increase in the revenue expenditure on repairs and maintenance to the tune of Rs.3,84,33,816/- and the assessee's explanation was that the said expenses were incurred for development of the tea estate and since there was reasonable profit in this year, developments and improvements were made in the tea estate. It was brought to the notice of the AO that the tea gardens are having 13 factories and more than 7 bungalows and residence of staff and labourers in the garden. Every year the tea estates required water services, repairs of bridges and roads because there are mainly kuchha roads. Due to the adverse climatic conditions the wear and tear of the roads and bridges takes place and requires constant repairs and renovation. The expenses claimed were basically for repairs of the roads, bridges, bungalows, office, staff quarters, water services etc. However, the AO did not accept the assessee's contention and he was of the opinion that the repairs of bridges and roads result in the erection of permanent structures which adds to the capital asset, therefore, he treated Rs. 1 cr. out of the expenditure borne on different heads of repairs as capital expenditure and consequently disallowed the same. Aggrieved, the assessee preferred an appeal before the Ld. CIT(A), who was pleased to allow the claim of the assessee. Aggrieved, the revenue is before us.

6. We have heard rival submissions and gone through facts and circumstances of the case. We note that the assessee owns 13 number of tea estates in Assam having an area of tea garden at about 7185.32 hectares. Apart from the areas covered under tea plants other areas also are used for roads, bridges, cultivation, building and factory. The assessee company incurred expenditure regularly on maintenance of the drainage

system and the roads which are mostly kuchha in nature requires regular maintenance expenses. The assessee incurs expenses on fencing of the tea estates and the staff quarter requires to be maintained properly. Therefore, for the smooth operation of the factories and the business of the assessee, these expenses are necessary and these are for the running of the business of the assessee and, therefore, it is a revenue expenditure. The Ld. CIT(A) accepted the contention of the assessee and was of the opinion that the AO ought not to have capitalized the revenue expenditure which we concur. We do not find any infirmity in the order of the Ld. CIT(A) and on the facts and circumstances of the case, the assessee company's explanation is for effectively running and smooth operation of the factories of the assessee, therefore, it is a revenue expenditure and we confirm the order of the Ld. CIT(A) and dismiss this ground of appeal of revenue.

7. Ground No. 3 of the revenue is against the relief given by the Ld. CIT(A) for the claim made by the assessee of Rs.4,13,431/- which was disbursed by the assessee for guards/chowkidars.

8. Brief facts of the case are that due to the fact that the assessee's tea gardens which are 13 in numbers was spread over 7185.32 hectares of land. It was noticed by the assessee that there were theft happening of the tea leaves and other valuables. Therefore, the assessee deployed Chowkidars for patrolling to prevent theft of green leaves which was disallowed by the AO. We note that the expenditure incurred for deploying Chowkidars for the purpose of preventing theft of tea leaves and other valuables from the garden which is spread over 7185.32 hectares is an expenditure directly having nexus with the business of the assessee and, therefore, it is an allowable business expenditure which has been rightly allowed by the Ld. CIT(A), so we confirm the same and dismiss the ground of appeal of the revenue.

9. Ground no. 4 is against the direction given by Ld. CIT(A) to include other than tea trade income of Rs.4,56,95,208/- for calculation of deduction u/s. 33AB of the Act.

10. At the outset itself, the Ld. Counsel for the assessee brought to our notice that the issue is no longer res integra and the Tribunal was consistently allowing the issue in favour of the assessee. However, in AY 2001-02, the Tribunal did not allow the claim of the assessee. So, the assessee preferred an appeal before the Hon'ble Calcutta High Court and the Hon'ble High Court vide its order dated 24.07.2014 in ITA No. 48 of 2006 reversed the Tribunal's order and allowed the claim of the assessee.

11. The Hon'ble Calcutta High Court in Warren Tea Limited Vs. CIT-II, Kolkata & Anr., where the subject matter of the appeal was discussed as under:

"The subject matter of this appeal is a judgment and order dated 30.09.2005 passed by the learned Income tax Appellate Tribunal dismissing an appeal preferred by the assessee and agreeing with the views of the CIT(A) and the AO that the interest earned by the assessee cannot be taken into account for the purpose of giving benefit u/s. 33AB. The answer to this issue has been discussed by the Hon'ble High Court, the operative portion of which is as below:

"We have considered the rival submissions advanced by the learned advocates appearing before us. We are in agreement with the submissions advanced by Mr. Mazumder that the judgment in the case of Pandian Chemicals had no manner of application to the facts and circumstances of the case. When the matter was taken up on an earlier occasion we had requested Mr. Mazumder to produce before us a copy of the balance sheet for relevant year which he has produced today before us. From the balance sheet it appears that the assessee has, during the relevant year, paid or credited interest amounting to Rs.2,62,21,000/-. The assessee has earned interest amounting to a sum of Rs.1,85,63,000/-."

"..... It is not in dispute that the surplus commercial funds available with the company were kept in short terms fixed deposits. The company has borrowed funds for the purpose of carrying on its business. The funds may not always be necessary or may not always be blocked. Therefore, the funds which were surplus at any point of time were fruitfully invested in short term fixed deposits and the assessee thus earned interest which in a way has reduced its burden on account of interest as would appear from the two figures indicated above. It is, therefore, not possible to hold that the interest earned was not a business income. When the assessee has paid interest of nearly Rs.2.66 crores and has earned interest of nearly Rs.1.88 crores, the effective debit on that side is less than Rs.1 crore.

We are, as such, unable to see any reason why it can be said that the interest earned by the assessee should not be treated as the business income for the purpose of the benefit under section 33AB. The two judgments, cited by Mr. Majumdar, also support the contentions of the assessee. Another reason why the views expressed by the Tribunal cannot be accepted is that the benefit under section 33AB can be obtained provided the assessee has made the deposits with the national bank. Such deposits are not interest free deposits. Interest also accrues from such deposits. If the intention of

the legislature was that income arising out of interest is to be excluded then a specific provision in that regard would have been made in the section itself.

For the aforesaid reasons, the impugned judgment and order passed by the learned Tribunal is set aside. The questions framed above are answered in favour of the assessee and the appeal is allowed. ”

12. In view of the aforesaid binding precedents given by the Hon'ble jurisdictional High Court in favour of the assessee on the issue in hand, we confirm the order of the Ld. CIT(A) and dismiss the ground of appeal raised by the revenue. Accordingly, appeal of revenue is dismissed.

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

Order is pronounced in the open court on 29.03.2017.

Sd/-
(Waseem Ahmed)
Accountant Member

Sd/-
(Aby. T. Varkey)
Judicial Member

Dated : 29th March, 2017

Jd.(Sr.P.S.)

Copy of the order forwarded to:

1. Appellant – DCIT, CC-XXV, Kolkata.
2. Respondent –M/s. Warren Tea Ltd., 4B, Hungerford Street, Suvira House, Kolkata-700 017
3. The CIT(A), Kolkata
4. CIT , Kolkata
5. DR, Kolkata Benches, Kolkata

/True Copy,

By order,

Asstt. Registrar.