

Rs.20,75,862/- which was treated by the AO as 'Income from other sources.'

3. Briefly stated, the facts of the case are that during the course of assessment proceedings, it was noticed that the assessee received interest income of Rs.20,75,862/- from fixed deposits made with bank, which was not shown separately, but, reduced from the interest expenditure. On being called upon to explain as to why the interest income of Rs.20.75 lac be not treated as 'Income from other sources' and, hence, ineligible for deduction u/s 80IB(10), the assessee contended that it is engaged in the business of real estate and a term loan was obtained from Indian Bank for the purpose of construction. The assessee claimed to have received certain funds from the flat owners. Since these amounts were not immediately required and to save the interest cost which was to be incurred on the term loan, the assessee claimed to have deposited the same in fixed deposits for short period on which interest of

Rs.20.75 lac was received. Not convinced with the assessee's submissions, the AO, applying the *ratio decidendi* of the decisions as discussed in the assessment order including *Tuticorin Alkali Chemicals and Fertilizers Ltd. vs. CIT* 227 ITR 172 (SC) and *CIT vs. Pandian Chemicals Ltd.*, 262 ITR 278 (SC), treated the interest income falling under 'Income from other sources.' No deduction was allowed u/s 80IB(10) on this amount. The Id. CIT(A) affirmed the action of the AO on this count. The assessee is aggrieved against the denial of deduction on such interest income.

4. I have heard the parties and perused the relevant material on record. It is observed that the assessee has claimed deduction u/s 80IB(10), *inter alia*, on the amount of interest received from fixed deposits, by means of netting it against the interest expenditure. The interest was earned by the assessee by depositing funds received from flat owners, which were not immediately required. The Id. AR, distinguishing the language

used in section 80HH, relied on sub-section (1) of section 80IB to contend that deduction is available in respect of profits and gains derived from any 'business.' This contention does not merit acceptance. Sub-section (1) of section 80IB provides that :`Where the gross total income of an assessee includes any *profits and gains derived from any business* referred to in sub-sections (3) to (11), (11A) and (11B) (such business being hereinafter referred to as the eligible business), there shall, *in accordance with and subject to the provisions of this section*, be allowed, in computing the total income of the assessee, a deduction from such profits and gains of an amount equal to such percentage and for such number of assessment years as specified in this section'. It transpires from the mandate of the above provision that deduction shall be allowed from sub-sections (3) to sub-sections (11), (11A) and (11B) from the eligible business. Once the business gets covered in any of the sub-sections, namely, (3) to (11), (11A) and (11B), then, the amount of deduction has to be computed as per the

relevant sub-section which governs the eligible business. Sub-section (10) of section 80IB is the relevant section for the assessee. This sub-section provides that: “The amount of deduction in the case of an undertaking developing and building housing projects approved before the 31st day of March, 2008 by a local authority shall be hundred per cent of the *profits derived* in the previous year relevant to any assessment year *from such housing project* if,—
.....”. It is apparent from the language of sub-section (10) that the deduction is available in respect ‘*of the profits derived ... from such housing project*’. It is vivid on a comparative reading of sub-sections (1) and (10) of section 80IB that whereas sub-section (1) talks of ‘business’ eligible for deduction and provides that the deduction shall be allowed ‘*in accordance with and subject to the provisions of this section*’, sub-section (10) provides for the quantum of deduction to be allowed. Thus the amount of deduction has to be *in accordance with and subject to the* prescription of sub-

section (10). Going by the instruction of sub-section (10) of section 80IB, it is palpable that the same is available only in respect of profits and gains *derived from* the eligible *housing project*. Nexus between the amount of profit and gain and the eligible housing project should be direct and immediate because of the use of the expression 'derived from' in the provision. If the relation between an income and eligible housing project turns out to be secondary, the claim of deduction is lost. The contention of the Id. AR that the language of section 80HH, as considered in certain decisions taken note of by the AO is not applicable to section 80IB(1) is no doubt true, but it is sub-section (10) which makes the eligible enterprise qualify for the amount of deduction, whose language to the extent as applicable, is identical to that of section 80HH.

5. When I advert to the facts of the instant case, it is found that interest income has not been derived from the housing project, but, from the parking of surplus funds in the bank,

albeit such funds were received from customers. Ergo, relation between the interest income and housing project slips from direct to indirect. The Hon'ble Supreme Court in *Liberty India vs. CIT (2009) 317 ITR 218 (SC)* has held that DEPB/duty drawback are incentives which flow from the Schemes framed by Central Government or from s. 75 of the Customs Act, 1962, hence, incentives profits are not profits derived from the eligible business and therefore, duty drawback receipt/DEPB benefits do not form part of net profits of the industrial undertaking for the purposes of s. 80-IA or 80-IB. No doubt, it is a DEPB/duty drawback which has been discussed in the case of *Liberty India (supra)*, but, the decision is based on the premise of the language used in the section being 'profits derived from the eligible business.' Even though duty drawback receipt/DEPB are in the nature of 'business income', but fall short of 'derived from' the eligible business. In view of the judgment of the Hon'ble Supreme Court, covering section 80IB as well which is under consideration, I

am of the considered opinion that interest earned from fixed deposits made with the banks, though out of business funds, cannot be held as derived from housing project so as to qualify for deduction u/s 80IB(10). Respectfully following the judgment of the Hon'ble Supreme Court, I uphold the impugned order.

6. In the result, the appeal is dismissed.

The order pronounced in the open court on 28.02.2017.

Sd/-

[R.S. SYAL]
ACCOUNTANT MEMBER

Dated, 28th February, 2017.

dk

Copy forwarded to:

1. Appellant
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