

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "SMC" : DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER

ITA.No.6016/Del./2017
Assessment Year 2013-2014

Conventional Fastners, C/o. Shri Ranveer Sharma, Advocate, 1 st Floor, Shri Ganesh Complex, Ranipur More, Haridwar, Uttarakhand. PIN 249 401.PAN AAFFC8403N	Vs	The Income Tax Officer, Ward-1, Income Tax Office, (Aayakar Bhavan) Industrial Area, Haridwar. Uttarakhand.
(Appellant)		(Respondent)

For Assessee :	Shri Salil Kapoor and Ms. Soumya Singh, Advocates.
For Revenue :	Ms. Ashima Neb, Sr. D.R.

Date of Hearing :	10.05.2018
Date of Pronouncement :	18.05.2018

ORDER

This appeal by assessee has been directed against the order of the Ld. CIT(A), Haldwani, dated 21st February, 2017, for the A.Y. 2013-2014, challenging the order of Ld. CIT(A) in not allowing benefit of deduction under section 80IC of the I.T. Act, 1961.

2. Briefly, the facts of the case are that assessee filed return of income declaring NIL income after claiming deduction under section 80IC of the I.T. Act. The assessee is a firm consisting of four partners. The factory of the firm is located at Industrial Area of Haridwar which is notified Khasra for claiming deduction under section 80IC of the I.T. Act. The assessee was asked to explain as to why deduction under section 80IC claimed on interest income of Rs.44,69,949/- may not be disallowed and added to the total income of the assessee. The assessee submitted before A.O. that interest income was on account of interest received from Bank on FDRs pledged as security deposit/performance guarantee with the Government Department in lieu of tender of contracts. The amounts are pledged in terms of the awarded contracts. Furnishing of FDRs arising in direct nexus and co-relation to the primary business of manufacture and supply of electrical metres to the various bodies and hence, qualifies for deduction under section 80IC of the I.T. Act. The assessee relied upon certain decisions in support of the contention. However, the A.O. noted that the

decisions relied upon by assessee are distinguishable on facts. A.O. noted that the deduction is to be allowed on the profits derived from eligible business. The interest earned on the FDRs cannot be said that interest income earned from manufacturing activities of the assessee. It can only be said that interest income on FDRs is attributable to business activities but cannot be said that it derived from manufacturing activity of the assessee. The A.O, therefore, disallowed deduction under section 80IC on interest earned on FDRs and made the addition.

3. The assessee challenged the addition before Ld. CIT(A) and same submissions have been reiterated. The Ld. CIT(A) also noted that interest income is merely incidental to the industrial undertaking cannot be considered to have a direct nexus with it and if the industrial undertaking is the direct source of the income, then, it can be said that income has been derived from the industrial undertaking. The Ld. CIT(A) also noted that industrial undertaking should be the direct and

immediate source of the income and not merely incidental to that income. The appeal of assessee was accordingly dismissed.

4. The appeal of assessee is time barred by four months. Assessee filed application for condonation of delay in which it is explained that assessee firm has four partners and is managed by the family member Shri Surender Gupta who was looking after finance, accounts and administration and was maintaining files for the income tax matters including filing of appeals. He was unwell and hospitalized in Dehradun and later on he expired. Learned Counsel for the Assessee, therefore, submitted that there was a sufficient cause for delay in filing the appeal.

5. The Ld. D.R. disputed the contention of the assessee.

6. Considering the explanation of assessee, I am satisfied that assessee was prevented by sufficient cause in not filing the appeal within the period of limitation. The delay is accordingly condoned.

7. Learned Counsel for the Assessee reiterated the submissions made before the authorities below.

8. On the other hand, the Ld. D.R. submitted that in earlier and subsequent years, the claim of deduction under section 80IC have been denied in the case of the assessee. In A.Y. 2009-2010, the ITAT, SMC Bench in the case of same assessee in ITA.No.6685/Del./2015 vide order dated 25.01.2017 dismissed the appeal of assessee on the identical issue. The Ld. D.R, therefore, submitted that issue is covered against the assessee.

9. Learned Counsel for the Assessee in the rejoinder did not dispute that in earlier year the appeal of the assessee have been dismissed by the Tribunal. He has also fairly admitted that the Hon'ble High Court of Uttara Khand has also dismissed the appeal of assessee against the order of the Tribunal reported in (2017) 88 taxmann.com 163 (Uttarakhand) vide Judgment dated 15th November, 2017 in I.T. Appeal Nos.24 of 2015 & 21 of 2017. Copy of the Judgment is filed by the Learned Counsel

for the Assessee. Learned Counsel for the Assessee, however, submitted that security were deposited of the contract value in the form of bank draft/FDR/LDR/Bank guarantee in favour of the Executive Engineer, Electricity Store Division, Dehradun. It has direct link to the securing of the orders for the business of the assessee, otherwise, no sales would have been made by the assessee. Therefore, the interest on such FDRs has a direct link with the business of the assessee. Learned Counsel for the Assessee submitted that assessee had many options to give security deposit by way of draft/FDR/LDR and in case draft is given, the money of the assessee would have been blocked for indefinite period and in case of FDRs, the assessee has earned interest. Therefore, assessee is entitled for deduction under section 80IC of the I.T. Act. Learned Counsel for the Assessee relied upon the decision of the Hon'ble Supreme Court in the case of CIT vs. Meghalaya Steels Ltd., (2016) 67 taxmann.com 158 (SC) in which it was held as under :

“Where assessee received (a) transport subsidy, (b) interest subsidy; (c) power subsidy; and (d) insurance subsidy which were reimbursements of manufacturing cost incurred by assessee, deduction of said subsidies was allowed under sections 80-IB and 80-IC.”

9.1. Learned Counsel for the Assessee submitted that this decision of the Hon’ble Supreme Court has not been considered in the case of assessee which is delivered on 09.03.2016.

10. I have considered the rival submissions. It is not in dispute that assessee earned interest on FDRs which was deposited with the concerned authorities for taking tender/contracts. Similar issue was considered in earlier year as well as in subsequent years and the authorities below have admittedly denied deduction under section 80IC to the assessee on same set of facts. In A.Y. 2009-2010 the assessee preferred appeal before ITAT, Delhi Bench which was dismissed by the Tribunal vide order dated 25.01.2017 (supra). Copy of the order of the Tribunal is placed on record. In this year also, similar

facts have been recorded that the assessee in this year has earned interest income on FDRs which was pledged as performance guarantee in terms of contract awarded by UPCL for manufacture of electronic meters. The issue before the Tribunal was, *Whether such interest income is eligible for deduction under section 80IC of the I.T. Act ?* The Tribunal followed its own order in the case of same assessee in ITA.No.2556/Del./2013 for the very same assessment year under section 263 of the I.T. Act whereby similar claim of assessee have been denied. The Tribunal following its own decision in the case of the same assessee dismissed the appeal of assessee. Learned Counsel for the Assessee, therefore, fairly submitted that the order of the Tribunal have been confirmed by the Hon'ble High Court of Uttarakhand in the case of the assessee Conventional Fastners vs. CIT, Dehradun (2017) 88 taxmann.com 163 (Uttarakhand) in which it was held as under:

“Since interest income earned from fixed deposits reserves kept as security and as a business pre-requisite had

nothing to do with carrying on assessee's business of manufacture and sale of electric meters, same would not be entitled to benefit of deduction under section 80-IC."

10.1. The issue is, therefore, covered in favour of the Revenue by the Judgment of the Tribunal as well as the Judgment of the Jurisdictional Uttarakhand High Court. The Hon'ble Uttarakhand High Court in the case of assessee held that interest income had nothing to do with the carrying on assessee's business of manufacture and sale of electric meters, same would not be entitled to benefit of deduction under section 80IC of the I.T. Act. However, in the case of CIT vs. Meghalaya Steels Ltd., (supra), the contention of the assessee had been that interest/subsidy would also go towards reducing the interest element relatable to cost, and therefore, all four subsidiaries being directly relatable to the cost of manufacture and/or sale would, therefore, necessarily fall within the language of Sections 80IB and 80IC of the I.T. Act, as they are components of cost of running a business from which profits

and gains are derived. In this case, it was held that subsidy had direct nexus between profits and gains of the industrial undertaking or business. Therefore, I am of the view that the aforesaid decision would not help the assessee specifically in view of the finding given by the Hon'ble Uttarakhand High Court in the case of assessee referred to above. In view of the above, I am of the view that the issue is covered against the assessee by the order of the Tribunal and Judgment of Hon'ble Uttarakhand High Court in the case of assessee itself. No interference is called for in the matter. I, accordingly, dismiss the appeal of assessee.

9. In the result, appeal of assessee is dismissed.

Order pronounced in the open Court.

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Delhi, Dated 18th May, 2018

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'SMC' Bench, Delhi
6.	Guard File.

// BY Order //

Assistant Registrar : ITAT Delhi Benches :
Delhi.