आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, JAIPUR

श्री विजय पॉल राव, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI VIJAY PAL RAO, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA. No. 154/JP/2018
निर्धारण वर्ष/Assessment Years : 2013-14

M/s OMIL JSC (JV) Kameng. Kota	बनाम Vs.	Dy. CIT Circle-2, Central Revenue Building Statute Circle Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAAJO0083B		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/ Assessee by : Shri B. V. Maheshwari (CA)
राजस्व की ओर से/ Revenue by: Shri J. C. Kulhari (JCIT)

सुनवाई की तारीख/ Date of Hearing : 24/07/2018
उदघोषणा की तारीख/Date of Pronouncement : 25/07/2018

आदेश/ ORDER

PER: VIKRAM SINGH YADAV, A.M.

This is an appeal filed by the assessee against the order of ld. CIT(A)-1, Jaipur dated 06.11.2017 for Assessment Year 2013-14 wherein the assessee has taken the following ground of appeal:

"That Ld. AO as well as Ld. CIT(A) grossly erred on facts and Law in not considering the interest as part of business income of the company and have not considered the interest on income tax refund Rs. 33,51,35/- as part of business income & there by denied to allow the deduction u/s 80IE of I.T. Act, 1961."

2. Briefly, the facts of the case are that the assessee is a joint venture concern engaged in manufacturing, fabrication, erection, commissioning of pen stock steel liner, steel Radial Gates of Hydro-mechanical works/equipments in the State of Arunachal Pradesh. During the year under consideration, the assessee has declared gross total income of Rs. 14,22,58,195/- and the same has been claimed as exempt u/s 80IE and total income has been declared at Nil.

3. During the course of assessment proceedings, the Assessing Officer observed that the assessee has shown income under the head "Other sources" amounting to Rs. 4,47,166 which consists of interest on income tax refund amounting to Rs. 3,53,135/- and miscellaneous receipts of Rs. 94,031/-. As per Assessing Officer, in order to claim deduction u/s 80IE, the profits should have been derived by the undertaking from manufacture or production of eligible article or thing. It has been held by the Assessing Officer that there must be direct nexus between profit and manufacturing activity of the industrial undertaking. The income from other sources may constitute profit of business u/s 28 but it cannot be construed as profits derived by the industrial undertaking. Accordingly, the AO held that the assessee is not eligible to claim deduction u/s 80IE in respect of income from other sources amounting to Rs. 4,47,165/-.

4. Being aggrieved, the assessee carried the matter in appeal before the ld. CIT(A) who following the decision of the Co-ordinate Benches in the earlier years allowed partial relief to the assessee in respect of miscellaneous receipt which is in the nature of provision made in the

earlier years which were written back amounting to Rs. 94,031/-. However, as far as interest on income tax refund was concerned, the action of the AO was confirmed by the ld. CIT(A) and his relevant finding are contained at Para-2 which is reproduced as under:-

"(ii) The AO has also disallowed deduction u/s 80IE of the Act on account of interest amounting to Rs. 3,35,135/- received by the appellant on income tax refund by treating the same as income not derived from the business of the undertaking. The contention of the appellant that advance tax or self assessment tax is to be deposited by an assessee on suo-moto but TDS is deducted and thus earning of interest income on income tax refund, is directly related with the business of the company and the receipts are part and parcel of business income and is directly derived from business is devoid of any merit. I fail to understand how the interest on tax refund can be said to be derived from the manufacturing business of the undertaking under consideration. Therefore, it is held that the AO was justified in not allowing deduction u/s 80 IE of the Act on the amount of interest received by the appellant on income tax refund."

5. During the course of hearing, the ld. AR submitted that the entire income of the assessee is eligible for deduction u/s 80IE of the Act. It was submitted that NEEPCO has deducted TDS @ 2% in AY 2012-13 which was refunded by the Income Tax Department since there was no tax liability and the TDS was refunded along with interest. It was submitted that if the said TDS would not have been deducted, in that case, the financial expenses such as interest expenses would have been

reduced or the income would have been increased. It was submitted that the said surplus fund would have given extra income to the assessee which would have been taxable as business income eligible for deduction u/s 80IE of the Act.

6. It was further submitted that interest on income tax refund in the case of the assessee which is eligible for deduction u/s 80IE is business income and not income from other sources. The amount of refund against TDS or excess tax paid is a capital receipt, therefore statutory accretion to the same should also be considered as capital receipt or if the business funds are invested in TDS, then it is in the nature of business income.

7. In support reliance, the ld AR placed on the decision of Hon'ble Karnataka High Court in case of Hubli Electricity Supply Co. vs. DCIT (2018) 404 ITR 462 (Kar) wherein it was held that interest income on fixed deposits was eligible for deduction u/s 80IA of the Act. It was accordingly submitted that the assessee earned interest on the TDS amount which otherwise would have been available to the assessee and which would have yielded business income. Therefore, interest refund is received in view of the business income and it is eligible for deduction u/s 80IE of the Act.

8. The ld DR is heard who has relied on the order of the lower authorities. It was further submitted by the ld. DR that the decision of the Hon'ble Karnataka High Court is distinguishable on facts and not applicable in the instant case.

9. We have heard the rival contentions and purused the material available on record. The limited issue under consideration relates to whether interest on income tax refund is eligible for deduction under section 80IE of the Act. The contention of the assessee is that it has only one business undertaking and the only business of the undertaking is that of manufacturing activity and any income derived by the undertaking, including the interest income, can only be derived by the undertaking whole of which is eligible for deduction under section 80IE of the Act. It was accordingly contended that any interest even if the same has accrued on account of excess deduction of taxes at source, the same would be in nature of "business income" and not income under the head "Income from other sources".

10. In this regard, useful reference can be drawn to the decision of the Coordinate Bench in case of **Atria Power Corporation Ltd.*v.* DCIT [2011] 128 ITD 322 (Bang.)** wherein similar contentions have been advanced on behalf of the assessee and it was held that the interest earned on income-tax refunds was not assessable as part of the profits and gains of the power generation business eligible for deduction u/s section 80-IA(4)(iv) and interest was assessable under the head "Income from other sources". The relevant findings are reproduced as under:-

"9. We must now turn to the other argument which is that the interest income of Rs. 9,82,050 must be considered as part of the profits and gains of the business and is entitled to the relief under section 80-

IA(4)(iv). This argument is an alternative to the argument referred to in the preceding paragraphs and which we have not been able to accept. The alternative argument proceeds this way. It is contended that the interest income is really derived by the undertaking from the eligible business and is, therefore, entitled to the deduction. It is pointed out that section 80-IA(1) uses the phraseology "any profits and gains derived by an undertaking or an enterprise from any business referred to in sub-section (4)" and the same is contrasted with the phraseology employed in section 80HH(1), section 80HHA(1), etc., where the phraseology used is "any profits and gains derived from an industrial undertaking" and "any profits and gains derived from a small scale industrial undertaking" respectively, the argument being that the only business of the undertaking is that of power generation and any income derived by the undertaking, including the interest income, can only be derived by the undertaking and it is not necessary for the undertaking to also show that the interest income is traceable to the undertaking. It is submitted that any income derived by the undertaking from the business of power generation is eligible for the deduction and the interest income falls under this category. It is also pointed out that the income-tax is paid by the undertaking and not the assessee. In contrast, the argument of the revenue is that the interest received by the assessee is on account of fixed deposits with bank and income-tax refund and these two items of income have nothing to do with the business of the undertaking, which is that of power generation and, therefore, the interest cannot be considered as profits derived by the undertaking from the eligible business. Both sides have drawn our

attention to certain authorities which we shall refer at the appropriate stage.

10. It is necessary to notice that the interest income of Rs. 9,82,050 consists of the following :

(a)	*Interest from fixed deposits from banks*	*6,00,547*
(b)	*Interest on Income-tax refund*	*3,81,501*

The case of the assessee is that the entire interest qualifies for the deduction. However, it was agreed by all concerned that even if one of the two items of the interest income is held not eligible for the deduction then it would fall to be assessed as income from other sources, with the result that there would some tax payable in respect of the total income computed under the normal provisions of the Act which would be available for comparison with the book profit tax payable under section 115JB and, therefore, it would not be possible for the assessee to contend that the said section cannot be applied to its case. Having regard to this position, arguments were addressed on behalf of the assessee with regard to the interest of Rs. 3,81,501 which was received in respect of the income-tax refund. The contention was that it was the undertaking which carried on the power generation business which suffered the outflow of funds by payment of income-tax and that but for such outflow the funds would have been available to be used in the business of the undertaking and would have probably resulted in higher profits and in such a situation, it cannot be said that the payment of income-tax and the consequent interest on the refund had nothing to do with the eligible business. It was contended that in the aforesaid situation, the interest income actually arose out of the

power generation business and since the income was derived by the undertaking, it was eligible for the deduction. The contention of the revenue, succinctly put, was that payment of income-tax is always a personal obligation and can never be linked to the business and, therefore, whatever income is received by way of interest on the excess tax payment can never be considered as business income. It is submitted that the interest is always to be assessed under the head "Income from other sources". Our attention was also drawn to section 40(a)(ii) of the Act which prohibits any allowance being given for any sum paid on account of income-tax paid by the assessee on his profits. It is contended that the rationale of this prohibition is the principle that payment of income-tax is not a business obligation, but a personal obligation.

11. The difference in the phraseology between section 80-IA(1) on the one hand and sections 80HH(1) and 80HHA(1) on the other hand, in our opinion, does not make any difference to the position that the interest on income-tax refund cannot be assessed under the head "Profits and gains of business". We are concerned only with the question whether the interest income derived by the undertaking can be considered as income derived by the said undertaking from the business of power generation. For this purpose, which is the relevant enquiry to be carried out under section 80-IA(1), it is not necessary to examine whether the difference in the phraseology between the aforesaid sub-section and sections 80HH(1) and 80HHA(1) would make any difference to the principle. Even in a case where the assessee contends that the interest on the income-tax refund is eligible for deduction under section 80HH or 80HHA, it would be relevant to examine whether the said

interest can be considered as part of the profits and gains derived from an industrial undertaking or a small scale industrial undertaking. In all the three cases, it would be a necessary enquiry to find out if such interest can be considered as part of the profits and gains of the eligible business. Even if we are wrong in this view the position that would still remain is that it is necessary for us, while dealing with the case of deduction under section 80-IA, to examine whether the interest on the income-tax refund can be considered as income derived by the undertaking from the eligible business (i.e., power generation).

12. We may first proceed to examine the nature of the income-tax payment. The leading case in England is that of Attorney General v. Ashton Gas Co. [1904] 2 Ch. 621. In this case, it was observed that income-tax is part of the profits which the "revenue is entitled to take out of the profits. . . . But a proportionate part of the profits payable to the revenue is not the deduction before arriving at, but a part of the profits themselves". This case was affirmed by the House of Lords where the Earl of Halsbury L.C. observed that ". . . you must ascertain what is the profit that is made before you deduct the tax - you have no right to deduct the income-tax before you ascertain what the profit is. I cannot understand how you can make the income-tax part of the expenditure". In Allen v. Farquharson [1932] 17 Tax Cases 59, it was held that you have to arrive at the correct computation of the profits and then they have to be shared out and in so sharing, "there is one compulsory payment, the Crown's share ; they have got to get that ...". In India, probably the first case on this question, i.e., the nature of income-tax payment was the decision of the Madras High Court in Chief CIT v. Eastern Extension Australasia & China Telegraph Co. Ltd. [1921]

1 ITC 120, a judgment rendered under the Income-tax Act of 1918 by a Full Bench of the Court headed by Sir John Wallis, the Hon'ble Chief Justice at that time. All the three learned Judges delivered separate but concurring judgments on 14-2-1921. Hon'ble Justice Kumaraswami Sastri while delivering his judgment applied the judgment of Ashton Gas Co.'s case (supra) and held that :

> *". . . so far as profits made in India are concerned, it is clear that income-tax paid during the previous year or likely to be assessed during the current year cannot be deducted. Section 9 of the Act which relates to income derived from business and provides for the mode by which such income shall be computed, specifies the deductions that can legally be made, and it is clear that income-tax paid for the previous year cannot be deducted to arrive at an estimate of the profits on which income-tax is to be assessed."*

These decisions have been referred to by the Patna High Court in the Province of Bihar v. Rai Shambulal Bose [1947] 15 ITR 176. In this case, Hon'ble Justice Manohar Lall, speaking for a Division Bench of the Court stated the law as follows :

> *"On general principles and in accordance with the practice which prevails in England, it is well-settled that income-tax paid by an assessee cannot be allowed to be deducted out of the assessable income. The reason for this practice is that income-tax is a share of the Crown in the income of the assessee and cannot be treated as an expenditure necessary to earn that income."*

In Smt. Padmavathi Jaikrishna v. Addl. CIT [1987] 166 ITR 176[1] , the Supreme Court observed as under at page 179 :

"We are inclined to agree with the High Court that so far as meeting the liability of income-tax and wealth-tax is concerned, it was indeed a personal one and payment thereof cannot at all be said to be expenditure laid out or expended wholly and exclusively for the purpose of earning income."

These observations were made with reference to section 57(iii) of the Act but it makes no difference to our view because the ratio of the judgment is that income-tax payment is a personal obligation. The following general principles emerge out of the above authorities :

(a)that income-tax is an appropriation of the profits and is paid out after the profits are earned;

(b)that it is the State's share of the profits of the assessee;

(c)that it is a personal obligation of the assessee to pay income-tax and it has nothing to do with the business; and

(d)that it is not deductible in the computation of the profits because it represents an appropriation of the profits after they have been earned and not in the course of or for the purpose of earning such profits.

It is in view of the aforesaid principles that income-tax paid is not allowed as a deduction in computing the profits of the business. Section 10(4) of the 1922 Act prohibited the allowance of income- tax payment as a deduction in computing the profits of the business. The present section 40(a)(ii) is the successor of the above sub-section. In our opinion, if income-tax payment is a personal obligation and not the obligation of the business, then it follows that the payment of tax, albeit out of the coffers of the business, has to be divorced from business

considerations and it follows further that any interest received on excess payment of income-tax can never be considered and assessed under the head "Profits and gains of business".

13. In the course of the arguments, we put it to the assessee whether the judgment of the Madras High Court in Smt. B. Seshamma v. CIT [1979] 119 ITR 314 where it was held that the interest received on excess payment of advance tax was assessable as "income from other sources" laid down anything against the contention being advanced before us now. The learned representative for the assessee after going through the judgment sought to distinguish the same. He contended that in that case, the only question argued was whether the interest was a capital receipt. It was pointed out that the argument before the Madras High Court on behalf of the assessee was that since income-tax was a personal obligation the interest paid on the excess of advance tax was in the nature of a personal compensation and, hence, capital in nature and it was this argument that was repelled by the High Court which relied on the Supreme Court judgments in Dr. Shamlal Narula v. CIT [1964] 53 ITR 151 (Mad.), T.N.K. Govindraju Chetty v. CIT [1967] 66 ITR 465 (SC) and Chandroji Rao v. CIT [1970] 77 ITR 743 (SC) and that it was never the case of the assessee that the interest partook the character of profits of the business. It is submitted that the case has to be understood in the light of the controversy for decision which was only whether the interest was capital receipt. It was further submitted that though at page 321, the Madras High Court held that the interest may not be 'an income arising from an activity', business or investment, it would come under the head "Other sources", these observations have to be understood only in the context of the precise controversy which

was before the Court. While it may be true that the judgment of the Madras High Court (supra) did not deal with the precise controversy that has arisen for decision before us and the observations made therein have to be understood only to the extent that the interest received on income-tax refund would fall to be considered under the head "Income from other sources" and where a contention is advanced that such interest having arisen because of deployment of the business funds in the payment of tax, the same is assessable under the head "Profits and gains of the business", the judgment cannot be relied on to reject the contention, the other authorities to which we have alluded have clearly held that payment of income-tax is a personal obligation and cannot be deducted in the computation of the business profits. It follows that the deployment of the funds of the power generation business for payment of income-tax must be viewed de hors business consi-derations and purely as a discharge of a personal obligation. If business considerations have to be excluded it further follows that the income arising from the deployment of the funds in payment of taxes cannot be viewed as business income assessable under the head "Profits and gains of the business".

14. Reference was made on behalf of the assessee to the judgment of the Supreme Court in CIT v. Williamson Financial Services [2008] 297 ITR 17 [1]. It was held in this case that the word "derived" used in the expression "profits derived from exports" in section 80HHC would mean derived from the source and that source has to be in section 14 and since agricultural income which is not chargeable to tax does not fall in section 14, it cannot fall under the various computation provisions of sections 15 to 59. We have carefully studied the decision but find that it

is of no assistance to the assessee before us. The present assessee can succeed in the appeal only if it is able to gain acceptance of its contention that tax payment through the funds generated by the power generation business is an activity which is part of the said business. We have already seen that such a proposition cannot be accepted. At this juncture, it is necessary to refer to a somewhat recent judgment of the Supreme Court in Bharat Commerce & Industries Ltd. v. CIT [1998] 230 ITR 733[2] . In this case, the claim was that the interest paid on amounts borrowed for payment of tax in instalments and with interest was deductible under section 36(1)(iii) of the Act. Another claim was that the interest paid on delayed filing of returns was allowable as deduction under section 37. So far as this issue is concerned, the Supreme Court observed that if payment of income-tax itself is not a permissible deduction, any interest payable for delay in filing the return, which is calculated with reference to the tax on the income cannot be allowed as a deduction. As regards the claim under section 36(1)(iii), it was claimed by the assessee that this was an expense incurred wholly and exclusively for the purpose of the business and was incurred for the purpose of preserving and protecting the assessee's business since otherwise, it was contended, the assets of the business would have been open to recovery action by the income-tax authorities. The Supreme Court rejected the plea based on section 37 on the ground that the interest payment was not in any way connected to the assessee's business or incurred wholly and exclusively for the purpose of the business. It was observed that the tax is payable on the assessee's income after the income is determined and, therefore, the interest cannot be considered as expenditure for the purpose of earning

the profits. This judgment also shows that payment of tax or interest on monies borrowed for payment of tax has not been viewed as something connected to the business operations of the assessee and the Courts have been inclined to take the view that payment of tax is a personal obligation not connected with the business. The deployment of funds of the business of power generation in making tax payments cannot, therefore, be consi-dered as something connected to the assessee's business so that it can be successfully contended that the interest on excess payment of tax will partake the character of business income.

15. For the aforesaid reasons, we are unable to accept the contention of the assessee that the interest earned on income-tax refunds was assessable as part of the profits and gains of the power generation business. In our view, the interest was assessable under the head "Income from other sources" as rightly assessed by the Assessing Officer. If that is so, some tax is payable on the interest income of Rs. 3,81,501 which would be admittedly less than the book profit tax payable under section 115JB. The assessee is, therefore, liable to pay book profit tax under the section as demanded by the Assessing Officer.

16. The appeal of the assessee is, accordingly, dismissed with no order as to costs."

11. The decision of the Hon'ble Karnataka High Court referred supra is distinguishable on facts and not applicable in the instant case as the issue is regarding interest on income tax refund as against interest on fixed deposits which were placed on account of business exigency.

12. In light of above discussions and following the Coordinate Bench decision referred supra, interest on income tax refund is held not eligible for deduction under section 80IE of the Act and the action of the ld CIT(A) is hereby confirmed. In the result, sole ground of appeal is dismissed.

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

Order pronounced in the open Court on 25/07/2018.

Sd/-	Sd/-
(विजय पॉल राव)	(विक्रम सिंह यादव)
(Vijay Pal Rao)	(Vikram Singh Yadav)
न्यायिक सदस्य/Judicial Member	लेखा सदस्य/Accountant Member

जयपुर/Jaipur
दिनांक/Dated:- 25/07/2018
*Ganesh Kr.
आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:

1. अपीलार्थी/The Appellant- M/s OMIL + JSC-(JV) Kameng, Kota
2. प्रत्यर्थी/ The Respondent- M/s DCIT, Jaipur
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त/ CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर/DR, ITAT, Jaipur.
6. गार्ड फाईल/ Guard File {ITA No. 154/JP/2018}

आदेशानुसार/ By order,

सहायक पंजीकार/Asst. Registrar