

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH: 'G' NEW DELHI**

**BEFORE SHRI N. K. SAINI, ACCOUNTANT MEMBER  
AND  
MS SUCHITRA KAMBLE, JUDICIAL MEMBER**

**ITA No. 205/DEL/2013 ( A.Y 2009-10)**

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| DCIT<br>Circle-9(1), Room No. 163,<br>C. R. Building<br>New Delhi<br><br><b>(APPELLANT)</b> | Vs | SMS Paryavaran (P) Ltd.<br>SH-2, Vardhaman Grand<br>Plaza, Plot No-7, Mangalam<br>Place, Sector-3, Rohini<br>Delhi AAACS2177F<br><br><b>(RESPONDENT)</b> |
|---|----|--|

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|----------------------|---------------------------------------|
| <b>Appellant by</b>  | <b>Sh. Kaushlendra Tiwari, Sr. DR</b> |
| <b>Respondent by</b> | <b>Sh. V. V. Kale, CA</b>             |

|                              |                   |
|------------------------------|-------------------|
| <b>Date of Hearing</b>       | <b>30.05.2018</b> |
| <b>Date of Pronouncement</b> | <b>05.06.2018</b> |

**ORDER**

**PER SUCHITRA KAMBLE, JM**

This appeal is filed by the Revenue against the order dated 18/10/2012 passed by CIT(A)-XII, New Delhi for Assessment Year 2009-10.

2. The grounds of appeal are as under:-

1. *The Ld.CIT(A) erred on facts and in law in deleting the addition on the ground of deduction u/s 80IA by Rs.49,25,706/-."*

3. The assessee company was engaged in the business of Developing, Maintaining and Operating of Infrastructure Facilities. Return declaring an

income of Rs. 29,53,100/- was filed on 30/09/2009. The same was processed u/s 143(1) on 13/09/2010. Case was selected for scrutiny under CASS and notice u/s 143(2) was sent on 20/08/2010. Subsequently, notices u/s 143(2) & 142(1) along with questionnaire were issued in response to which Chartered Accountant/Authorized Representative appeared from time to time and submitted the requisite details which were verified and placed on record by the Assessing Officer. During the year the assessee claimed deduction u/s 80-IA for profit earned of Rs.5,26,17,182/-. The Assessing Officer observed that perusal of the P&L account as on 31.03.2009 revealed that assessee credited "other Income" to the tune of Rs. 49,25,706/-. In the present case, the company derived profit of Rs. 5,26,17,182/- from the business of providing infrastructural facilities of design and construction of water treatment plant, sewage treatment plant and water supply scheme and also earned income from other sources in the form of interest & miscellaneous income of Rs. 49,25,706/-. The Assessing Officer held that in view of the ratio of the decisions and particularly of the Hon'ble Madras High Court decision in the case of Pandian Chemicals Ltd (in which SLP rejected), and of ITAT, Pune Bench in the case of *"Kirpa Chemicals (P) Ltd. Vs. Deputy Commissioner of Income-tax' (88 ITD 200)*, the interest income and miscellaneous Income cannot be held to be derived from the business of providing infrastructural facilities as there is no direct nexus between the interest earned and the business of providing infrastructural facilities. The Assessing Officer further observed that income can be said to be derived from an activity if the said activity is immediate and effective source of the said income. Income cannot be said to be derived from an activity merely by reason of the fact that activity was performed to earn the said income in an indirect, incidental or remote manner. Thus, the Assessing Officer held that the interest income earned on FDRs and misc. income cannot be considered as profit derived from the business of developing, operating or maintaining infrastructural facilities and thereby not eligible for deduction u/s 80IA of the Act, 1961. Interest income was held to be assessable under the head 'Income from Other Sources' along with the miscellaneous income on

which 80IA deduction is not eligible. Thus, the profit from developing, maintaining or operating infrastructural project which is eligible for deduction u/s 80IA, was computed at Rs. 4,76,91,476/- as against Rs.5,26,17,182/- as claimed by the assessee thereby reducing the claim of 80IA by Rs.49,25,706/-

5. Being aggrieved by the assessment order, the assessee filed appeal before the CIT(A). The CIT(A) partly allowed the appeal of the assessee.

6. The Ld. DR submitted that the Assessing Officer was right in holding that interest income on FDRs and Miscellaneous income cannot be considered as profit derived from the business of developing, operating or maintaining infrastructural facilities and thereby no eligible for deduction u/s 80IA of the Income Tax Act 1961. To support the Revenue's case the Ld. DR submitted that Apex Court decision in case of Conventional Fastners Vs. CIT 2018-TIOL-2002-SC- IT Judgment dated 16<sup>th</sup> May 2018. The Ld. DR submitted that the Hon'ble Supreme Court in this particular case held that the interest has to be taxed under the head "income from business and profession", but deduction u/s 80IC is not allowable.

7. The Ld. AR submitted that the Hon'ble Apex Court decision is not applicable in the assessee's case because the assessee is undertaken government infrastructure projects and as per the requirements of projects the assessee is duty bound to give bank guarantee which is a pre-condition for undertaking any activities and processing of any payment against such work. This results, into requirement of the bank to compulsory make some FDR. The Ld. AR further submitted that the interest is part of the business activity carried out by the assessee. The Ld. AR relied upon following decisions:

1. Cambay Electric Supply Industrial Co. Ltd. vs. CIT 1978 SCC (2) 644
2. Sterling Foods vs. CIT 150 ITR 292 (Kar)
3. CIT vs. Jameel Leathers & Ors. 246 ITR 97 (Mad)
4. M/s Ashok Leyland vs. CIT (SC) decision dated 19.12.1996

5. CIT vs. Cement Distributors Ltd. 208 ITR 355 (Del.)
6. CIT vs. Pandian Chemicals Ltd. 233 ITR 497 (Mad)

8. The Ld. AR made an alternative plea that Section 37 of the Income Tax Act lays down that expenses incurred and income should be set off against that particular income. The Ld. AR further submitted that in the present case, the assessee company had only a negative bank balance/bank over draft and the FDRs made by them only out of such over draft bank balances. The bank interest on such over draft is generally 2% to 4% more than bank interest on FDRs meaning thereby that no surplus income can result under this head. Therefore, the Ld. AR prayed that the order of the CIT(A) is just and proper and the appeal of the Revenue be dismissed.

9. We have heard both the parties and perused the material available on record. The basic structure of the Section 80HH, 80IC, 80IA is in respect of exemption/benefit claimed by the assessee. The Hon'ble Supreme Court has taken cognizance about all the aspects regarding the interest earned on fixed deposits for the performances of bank guarantee for carrying on the business for providing performance guarantee. The Hon'ble Supreme Court in case of *Conventional Fastners vs. CIT* (supra) made it clear that interest earned on fixed deposit maintained with bank for obtaining bank guarantee is not derived from business, hence not entitled to deduction. The decision of the Apex Court is applicable in the present case which also considered the decision relied by the Ld. AR i.e. *Pandian Chemicals*. The decision relied upon by the Ld. AR are factually different and are not applicable in the present case while the decision of the Apex Court passed on 16.05.2018 (*Conventional Fastners*) is more apt in the present case. Therefore, the order of the CIT(A) is set aside and appeal of the Revenue is allowed.

10. In result, appeal of the Revenue is allowed.

**Order pronounced in the Open Court on 05<sup>th</sup> June, 2018.**

Sd/-

**(N. K. SAINI)**  
**ACCOUNTANT MEMBER**

Sd/-

**(SUCHITRA KAMBLE)**  
**JUDICIAL MEMBER**

Dated: 05/06/2018  
R. Naheed

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR

ITAT NEW DELHI

|     |  | Date       |       |
|-----|--|------------|-------|
| 1.  | Draft dictated on                                | 30/05/2018 | PS    |
| 2.  | Draft placed before author                       | 31/05/2018 | PS    |
| 3.  | Draft proposed & placed before the second member | .2018      | JM/AM |
| 4.  | Draft discussed/approved by Second Member.       |            | JM/AM |
| 5.  | Approved Draft comes to the Sr.PS/PS             | 05.06.2018 | PS/PS |
| 6.  | Kept for pronouncement on                        |            | PS    |
| 7.  | File sent to the Bench Clerk                     | 05.06.2018 | PS    |
| 8.  | Date on which file goes to the AR                |            |       |
| 9.  | Date on which file goes to the Head Clerk.       |            |       |
| 10. | Date of dispatch of Order.                       |            |       |