

IN THE INCOME TAX APPELLATE TRIBUNAL DELHI
(DELHI BENCH 'F' : NEW DELHI)
BEFORE SH. SHAMIM YAHYA, ACCOUNTANT MEMBER
AND
SH. ANUBHAV SHARMA, JUDICIAL MEMBER
ITA No. 220/Del/2018, A.Y. 2014-15

M/s. Viramgam Mahesana Project Ltd. E-9, 3 rd Floor, South Extension Part-II, New Delhi 110049 PAN : AABCV7027L	Vs.	ACIT CC-14, New Delhi
(APPELLANT)		(RESPONDENT)

Appellant by	Sh. G.S.Grewal, CA & Ms Harsimran Grewal, CA
Respondent by	Ms. Princy Singla, Sr.DR

Date of hearing:	04.05.2023
Date of Pronouncement:	15.05.2023

ORDER

PER ANUBHAV SHARMA, JM:

The appeal has been preferred by the Assessee against the order dated 28.11.2017 of CIT(A)-XXVI, New Delhi (hereinafter referred as Ld. First Appellate Authority or in short Ld. 'FAA') appeal no. 10432/16-17 arising out of an appeal before it against the order dated 19.12.2016 passed u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred as 'the Act') by the ACIT, CC-14, New Delhi (hereinafter referred as the Ld. AO).

2. The facts in brief are the assessee company is engaged in the business of developing of any infrastructure facility and claims that it is eligible for a deduction of an amount equal to 100% of the profits and gains derived from

such business for any ten consecutive assessment years out of 20 years from the year, in which it develops or begins to operate. During the course of assessment proceedings, Ld. AO noticed that the assessee company has claimed deduction u/s 80IA amounting to Rs.3,52,36,118/-. The assessee was asked to furnish the details in support of its claim and after going through the details filed by the assessee company in support of its claim, a letter dated 22/ 08/2016 was issued specifically asking as under:-

“During assessment proceedings in your case. After examination of ITR and computation of Income for A, Y. 2014-15, it has been observed that you have included the income of interest from fixed deposits of Rs.9122663/- in your business income and on that basis the assessee company have calculated profit before tax and deduction u/s 80IA of the I.T. Act, 1961. From this it appear that the assessee company have calculated profit before tax and deduction u/s 80IA of the LT. Act, 1961 from this it appear that you have taken into account interest income (income from other sources) into income of your eligible business income. While it should be taken separately under the head of income from other sources. Hence the credentials of the assessee company as per provision of sec. 80IA of the I.T.Act do not appear satisfactory. In view of this the assessee company are show caused as to why the computation of income and ITR of the assessee company should not be rejected and in consequence with this there should be rejection of your claim for deduction of your claim for deduction 80IA.”

3. The assessee company replied to Ld. AO but unsatisfied with the submissions. The Ld. AO disallowed the deduction u/s 80IA. Ld. CIT(A) has sustained the same observing in para 5 as;

“...In terms of the Concession Agreement, the appellant was required to open an Escrow Account with Bank.

These accounts always remained under the control of the Bank as the appellant was never permitted to use the amount at its discretion but continued to earn interest on the same. The ld. AR made detailed submission in this respect. The primary factor is in respect of the earning of such income which has direct nexus with the business. For such allowances, the income has to bear direct nexus with the main business activity of the assessee. The assessee earns this interest from bank FDR albeit mandatory, the relatability or base nexus with the business is absent here.”

4. The assessee is in appeal raising following grounds :-

“1. The Ld. AO has erred in holding that Rs. 91,22,663/- is not eligible for deduction u/s 80IA of the Act and the CIT(A) has erred in upholding the disallowance.

2. The appellant craves to add or delete any ground of appeal before the appeal in heard.”

5. Heard and perused the record.

6. It can be appreciated that in pursuance of clause 9.2 of the Concessionaire Agreement with Western railways available at page no.69 of the paper book Escrow Account and retention account was open. The relevant clause is reproduced below :

“9.2 Escrow Account

9.2.1 Opening of Escrow Account: *The Concessionaire shall within 60 days from the date of this Agreement open and establish the Escrow Account with a Bank (the Escrow Bank) all funds constituting the Financing Package for meeting the Total Project Cost shall be credited to such Escrow Account. On achieving COD the Railway shall credit all Access Charges exclusively to such Escrow Account. The payments due to*

be received by the Concessionaire on account of claim of insurance's Terminal Agreements etc. shall also be credited to Escrow Account.

9.2.2 *Disbursements from Escrow Account The Concessionaire shall, at the time of the opening of the Escrow Account, give irrevocable instructions by way of an Escrow Agreement instructing that the deposits into the Escrow Account shall be appropriated in the following order every month and if not due in a month, then appropriated proportionately in such month and retained in the Escrow Account and paid out therefrom in the month when due unless otherwise expressly provided in the instruction letter in the order stated below:*

- (a) All Lease rentals due to Railway from the Concessionaire company under this Agreement;*
- (b) Any payments and Damages due and payable by the concessionaire to Railway pursuant to this Agreement; and*
- (c) Balance in accordance with extant applicable laws and as per terms & conditions mutually agreed between Tie concessionaire and the Senior Lenders) / Lender(s);*

9.2.3 *The Concessionaire shall not in any manner modify the order of payment specified in this Article 9.2 except with the prior written approval of Railway.*

9.2.4 *Any Termination Payment made by Railway into the Escrow Account shall not be withdrawn therefrom for any purpose whatsoever until the Vesting Certificate has been issued by the Railway. Provided, however, that the aforesaid restrictions shall not apply to withdrawals from the Escrow Account in favour of the Senior Lenders to the extent of Debt Due.*

9.2.5 *On termination of this Agreement, notwithstanding anything to the contrary contained in the Escrow Agreement and subject to the provisions contained in Article 14.6, the following disbursements from all amount standing to the credit of Escrow Account shall be appropriated in the order stated below:*

- (a) All Lease rentals due to Railway from the*

Concessionaire Company under this Agreement.

(b) Any payments and damages due and payable by the concessionaire to Railway pursuant to this agreement.

(c) Balance in accordance with extant applicable laws and as per terms and conditions mutually agreed between the concessionaire and the Senior Lender(s)/ Lender(s).

9.2.6 The first order of disbursements stated in Articles 9.2.2 & 9.2.5 shall be incorporated in the Escrow Agreement. The instructions contained in the Escrow Agreement shall remain in full force and effect until the obligations set forth in Article 13.1 have been discharged.”

7. The project for which Concession Agreement was executed with the Western Railway, Mumbai was financed by UTI Bank, by way of subscribing to the non convertible debentures and for which appellant had Escrow account with this Bank. Clause 9.2.1 of Concession agreement provided that all funds constituting the Financing Package for meeting the Total Project Cost shall be credited to such Escrow Account.

8. The Escrow and Retention Agreement is available at page no. 255 to 369 of the paper book and which mentions that the concerned bank will be empowered to deploy the surplus funds of the appellant in permitted investments mentioned in the schedule. The clause 4.11 of the agreement available at page no. 287 of the paper book provided that the investments of amount deposited in Escrow account shall be invested in permitted investments. This clause further provided sub clause (iii) that such investments are to be in the name of company and shall be deemed to be amount to the credit of Escrow account. Permitted Investment Escrow Sub-account was a condition to finance the project as the sub accounts were required to be open by virtue of clause 4.3 (g) and (h) of

9. Assessee had no independent control of the investments and the deposits under the Escrow Account were restricted in sources as appear from clause 4.4 of the Escrow account agreement available at page no275-276 of the paper

book. The permitted investment was primarily invested in high security investment to protect the interest of lender bank which has subscribed to the NCD. The disbursement from the Escrow account was in terms clauses 9.2.2 to 9.2.6 reproduced above. This all establish that what was derived in the form of return from permitted securities was very much part of the business income from eligible business allowed deduction under Section 80IA of the Act.

10. Thus, the investments in permitted investments under the Escrow Account opened in pursuance of Concession agreement with Western Railways, was by way of mandate under the Concession agreement and same establish the business exigencies for having escrow account. The Bench is of considered opinion that as the primary objective of investment in permitted securities was not generating return but investment was incidental recourse to performance of a Concessional agreement, the business exigency has to be presumed.

11. The Id. CIT(A) has relied judgment in **CIT vs. Advanced Detergents Ltd. (2010) 33 DTR Delhi 185** and **Conventional Fastners vs. CIT, Dehradun (2017) 88 taxmann.com 163 (Uttrakhand)** to hold that there is no business exigency in earning interest on investment. However, the matter of the fact is that they were not the cases where assessee had to maintain a Escrow account as a condition to the Concession Agreement and where funds in the escrow account were not the own funds, but those generated for and under the Concession agreement.

12. Reference can be made to judgment of *Hon'ble Gujarat High Court in CIT vs. Shah Alloys Ltd. [2017] 84 taxmann.com 256 (Gujarat)* where interest received on margin money placed for business purpose was held to be eligible for deduction u/s 80-IA being incidental to business of assessee. *Hon'ble Bombay High Court in CIT vs. Jagdishprasad M. Joshi [2009] 318 ITR 420 (Bombay)* following decision of Hon'ble Supreme Court of India in the case of **Pandian Chemicals Ltd. vs. CIT [2003] 262 ITR 278** has held

that interest income earned by the assessee on fixed deposits with the bank and other interest income were eligible for deduction u/s 80IA.

13. Thus bench is of firm opinion that the Ld. Tax Authorities have fallen in error in denying the benefit of Section 80IA to the assessee/appellant. The Grounds are sustained and **the appeal is allowed.**

Order pronounced in the open court on 15th May, 2023.

Sd/-

(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Sd/-

(ANUBHAV SHARMA)
JUDICIAL MEMBER

Date:-15.05.2023

Binita, SR.P.S

Copy forwarded to:

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



ASSISTANT REGISTRAR
ITAT, NEW DELHI