

Form No.(J2)

IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION (INCOME TAX)
ORIGINAL SIDE

Present :

THE HON'BLE JUSTICE T.S. SIVAGNANAM

A N D

THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA

IA NO.GA/1/2017
(Old GA/2815/2017)
ITAT/298/2017

PRINCIPAL COMMISSIONER OF INCOME TAX-11, KOLKATA
-Versus-
WEST BENGAL HOUSING BOARD (PAN: AAAJW0019K)

For the Appellant: Mr. P. K. Bhowmick, Adv.

*For the Respondent: Mr. Subhabrata Dutta. Adv.
Mr. Debashis Sarkar, Adv.
Mr. Avra Majumdar, Adv.*

Heard on : 06.12.2021

Judgment on : 06.12.2021

T. S. SIVAGANANAM, J. : The appeal filed by the revenue under Section 260A of the Income Tax Act, 1961 (the 'Act' in brevity) is directed against the order dated 22nd March, 2017 passed by the Income Tax Appellate Tribunal, Kolkata "A" Bench (the 'Tribunal' in short) in ITA No.284/Kol/2014 for the assessment year 2009-10.

The revenue has raised the following substantial questions of law for consideration:

"(a) Whether on the facts and in the circumstances of the case and under the law, the Learned Tribunal was justified in law in upholding the decision of the CIT(A) and reversing the decision of the assessing officer whereby the Learned Tribunal allowed deduction in full the assessee's claim of the entire income from the interest from fixed deposits made out of accumulated profits and reserves as income derived from the industrial undertaking for deduction, which the assessee claimed as its business income by filing a revised return subsequently?"

(b) Whether on the facts and in the circumstances of the case and under the law the Learned ITAT erred in allowing the interest income earned on fixed deposits made out of accumulated profits and reserves of the assessee as income derived from business and allowing the same to be deducted under Section 80IB of the Income Tax Act?"

(c) Whether the Learned Income Tax Appellate Tribunal was correct in facts as well as in law in giving a correct interpretation of the phrase "derived from" appearing in Section 80IA of the Income Tax Act, 1961?"

We have Mr. P. K. Bhowmick, learned counsel for the appellant/revenue and Mr. Subhabrata Dutta, learned counsel assisted by Mr. Debashis Sarkar and Mr. Avra Majumdar, learned Advocates for the respondent/West Bengal Housing Board, the assessee.

The short issue which falls for consideration is whether the accrued interest in the hands of the respondent/assessee is to be treated as income from business thereby entitling the respondent/assessee for exemption under Section 80IB(10) of the Act. Assessing Officer though did not have any material to show that the respondent/assessee had income from other sources, on a technical issue that such relief was not claimed by the assessee in its original return but only in the revised return, was of the view that this is an after-thought and denied the relief. Apart from that fact certain other observations were made by the assessing officer. The assessee being aggrieved carried the matter in appeal to the Commissioner of Income Tax (Appeals)-XIX, Kolkata (CIT(A)). The CIT(A) by the order dated 12th December, 2013 allowed the appeal. Aggrieved by the same, the revenue preferred appeal to the tribunal which was dismissed by the impugned order.

We have elaborately heard learned counsel for the parties and carefully perused the materials placed on record. We find that the order passed by the CIT(A) is sustainable both in law as well as on facts. The CIT(A) rightly construed the factual position and held that the interest earned by the assessee accrued from fixed deposits which were made out of business income of the assessee. Apart from that the assessee had no other source of

income. The assessee is a Government of West Bengal undertaking and is engaged in the development of housing projects which was initially done by the housing Department of the Government of West Bengal and in the year 1972 the respondent was established and projects were developed by the respondent by constructing LIG/MIG and HIG flats for sale to the general public. The CIT(A) on going through the facts found that the income of the respondent/assessee is only from sale of flats. The CIT(A) also examined as to whether the observation of the assessing officer that the assessee did not make such a claim in the original return but only in the revised return was considered for its correctness as to whether the same could have been a ground to reject the revised return and deny the claim for exemption. The CIT(A) noted that the earning of interest was not from the 'first degree source' and the same could not be shown by the assessee as 'income from other sources' in the original computation and hence revised computation was filed by the assessee during the course of assessment proceedings and that the reason for rejecting the same as assigned by the assessing officer was incorrect. The CIT(A) rightly noted the decision of the Hon'ble Supreme Court in *CIT vs. Calcutta National Bank Ltd.* reported in (1959) 37 ITR 171(SC) wherein the Supreme Court held that "business" is a word of very wide connotation and applying the said decision to the facts of the case it was held

that the income should be treated as business income. The tribunal on its part, examined the correctness of finding recorded by the CIT(A) and approved by same. More importantly, the tribunal noted that the assessing officer himself has allowed deduction under similar circumstances while completing the assessment for the assessment year 2006-07 under Section 143(3) of the Act.

Thus, we find that the tribunal was right in rejecting the revenue's appeal. In the result, the appeal fails and is dismissed and the substantial questions of law are answered against the revenue.

The connected application for stay (IA No.GA/1/2017, old No.GA/2815/2017)) also stands closed.

(T.S. SIVAGNANAM, J.)

I agree.

(HIRANMAY BHATTACHARYYA, J.)