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IN THE HIGH COURT OF ORISSA AT CUTTACK

ITA Nos.1, 2, 3 of 2015 and ITA Nos.24 and 25 of 2009

ITA No.1 of 2015

Odisha Power Generation Corporation Ltd. .... ***Appellant***

-versus-

Asst. Commissioner of Income Tax, Circle 2(2), Bhubaneswar and Others .... ***Respondents***

ITA No.2 of 2015

Odisha Power Generation Corporation Ltd. .... ***Appellant***

-versus-

Asst. Commissioner of Income Tax, Circle 1(1), Bhubaneswar and Others .... ***Respondents***

ITA No.3 of 2015

Odisha Power Generation Corporation Ltd. .... ***Appellant***

-versus-

Joint Commissioner of Income Tax, Range-I, Bhubaneswar and Others .... ***Respondents***

ITA No.24 of 2009

Odisha Power Generation Corporation Ltd. .... ***Appellant***

-versus-

Asst. Commissioner of Income Tax, Circle 2(1), Bhubaneswar .... ***Respondents***

AND

ITA No.25 of 2009

Odisha Power Generation Corporation Ltd. .... ***Appellant***

-versus-

Asst. Commissioner of Income Tax, Circle 2(1), Bhubaneswar .... ***Respondents***

Advocates, appeared in these cases:

For Appellant(s)	:	Mr. Satyajit Mohanty Advocate
For Respondent(s)	:	Mr. T.K. Satapathy Senior Standing Counsel (IT)

CORAM:
THE CHIEF JUSTICE
JUSTICE R.K. PATTANAIK

JUDGMENT
11.03.2022

Dr. S. Muralidhar, CJ.

1. These appeals by the Odisha Power Generation Corporation Ltd. (hereafter the 'Assessee') are directed against the orders of Income Tax Appellate Tribunal (ITAT) pertaining to the Assessment Years (AYs) 2002-03 (ITA No.24 of 2009), 2003-04 (ITA No.25 of 2009), 2007-08 (ITA No.1 of 2015), 2008-09 (ITA No.2 of 2015) and 2009-10 (ITA No.3 of 2015). As regards ITA Nos.24 of 2009, 25 of 2009, 1 of 2015 and 2 of 2015 the following question of law has been framed for consideration:

> "Whether the ITAT was justified in disallowing deduction towards 'power profit' under Section 80-IA (4)(iv) of the Income Tax Act, 1961?"

2. In ITA No.3 of 2015 (for AY 2009-10) the sole question that has been framed for determination is as follows:

> "Whether the ITAT was justified in disallowing the expenditure incurred by the Assessee on development of periphery of the industry claimed by the Assessee to be wholly and exclusively for the purposes of business?"

3. The relevant facts are that the Assessee is a Government of Odisha enterprise solely engaged in the business of generation of power. The Assessee has set up power plants including Thermal Power Stations and Mini Hydel Projects in Odisha. The power generated by the Assessee's plants is sold exclusively to the Grid Corporation of Odisha Limited (GRIDCO) under a Power Purchase Agreement (PPA). In terms of the said agreement, the Assessee is obliged to sell the entire power produced only to GRIDCO and cannot sell the power to any other entity or agency.

4. In each of the AYs in question, initially a return of income was filed disclosing the total income at NIL. Thereafter, a revised return was filed disclosing the income after claiming deduction under Section 80-IA of the Income Tax Act ('Act').

5. For both the AYs 2002-03 and 2003-04, the sum shown under 'other income' was not allowed to be claimed towards deduction under Section 80-IA of the IT Act. As far as AY 2002-03 is concerned, a sum of Rs.24,97,18,456/- was claimed under the head "other income" whereas for AY 2003-04, a sum of Rs.21,77,36,307/- was claimed. The said figures included the sum towards interest on the bonds issued by GRIDCO to the Assessee in lieu of unpaid energy bills. In other words, this was the interest

received for delayed payment of the power bills by GRIDCO. The ground on which the ITAT rejected the claim under Section 80-IA was that the Assessee had not been able to show "any nexus between the impugned interest received by it with interest payable". Holding that the issue was covered by the decision of the Supreme Court in ***Pandian Chemicals Ltd. v. Commissioner of Income Tax (2003) 262 ITR 278 (SC)*** followed by this Court in ***Tata Sponge v. CIT 292 ITR 175***, the ITAT held that a sum of Rs.9 crores was earned by the Assessee from investment of funds in GRIDCO bonds and cannot be considered as income received for late payment of electricity. Accordingly, the deduction of the entire sum of Rs.24,97,18,456/- for the AY 2002-03 and the sum of Rs.21,77,36,307/- for the AY 2003-04 was disallowed.

Disallowance of deduction under Section 80-IA

6. As regards the sole question framed in ITA Nos. 24 and 25 of 2009 and 1 and 2 of 2015, concerning disallowance of deduction under Section 80-IA of the Act, Mr. Satyajit Mohanty, learned counsel for the Assessee submitted that if the profits of business include certain receipts which have corresponding costs, or if the profits include certain credits and the business also has debits of the same nature, unless the same are netted out against each other, the profit of the business will present a distorted picture and may lead to injustice while implementing an incentive provision. While computing profit of the business of industrial undertaking under Section 80IA of the Act, revenue receipts should be adjusted against revenue expenditure of the like nature. It was submitted that revenue receipt in the form of interest on loans and

advances given to the employees, receipts of rent and electricity charges, receipts from sale of scrapes, receipts derived from sale of surplus stock and sundry receipts etc. would reduce the revenue expenditure of other related expenditures. Thus, according to Mr. Mohanty, the abovementioned receipts and related expenses are inextricably linked and is having direct and proximate connection/nexus with the Assessee's business of generation and distribution of power.

7. It was submitted that the amount shown under the head 'other income' is nothing but the outcome of the generation and distribution of power by the Assessee since the Assessee does not have any other source of business. Reliance was placed on the decision of the Supreme Court of India in ***Commissioner of Income Tax v. Meghalaya Steels Ltd. (2016) 6 SCC 747***.

8. Countering the above submissions, Mr. Satapathy, learned Senior Standing Counsel for the Department contended that the critical words in Section 80-IA of the IT Act were that the other income must be derived from the business of generation of electricity and not merely 'attributable' to it. In other words, such income should have a direct and active nexus to the main activity. It was contended that the income, profit or gain cannot be said to have been 'derived' from an activity merely because such activities may have helped the Assessee earn income or profit in an indirect manner. According to Mr. Satapathy, applying the test evolved in ***Pandian Chemicals Ltd.*** *(supra),* the AO, the CIT (A) and the ITAT were correct in disallowing the above sum as

deduction under Section 80-IA of the IT Act under the head "other income".

9. The relevant portion of Section 80-IA (4)(iv)(a) of the IT Act reads as under:

> 80 IA (1) Where the gross total income of an assessee includes any profits and gains derived by an undertaking or an enterprise from any business referred to in sub-section (4) (such business being hereinafter referred to as the eligible business), there shall, in accordance with and subject to the provisions of this section, be allowed, in computing the total income of the assessee, a deduction of an amount equal to hundred per cent of the profits and gains derived from such business for ten consecutive assessment years.
>
> (2) – (3) …..
>
> (4) This section applies to—
> (i) xx xx xx
>
> (iv) an undertaking which, —
>
> (a) is set up in any part of India for the generation or generation and distribution of power if it begins to generate power at any time during the period beginning on the 1st day of April, 1993 and ending on the 31st March, 2017."

10. Thus Section 80-IA (1) states that where the gross total income of an assessee includes any profits and gains derived by an undertaking or an enterprise from any business referred to in sub-section (4), which includes the business of power generation, there shall be allowed, in computing the total income of the

assessee, a deduction of an amount equal to hundred percent of the profits and gains 'derived from' such business for ten consecutive assessment years. It must be noted that this is almost similarly worded as Section 80IB and 80IC of the Act. These provisions use the expression 'profits and gains derived from any business'. The deduction of the entire profits and gains is allowed for a certain period of time to encourage the setting up of certain core or essential industries.

11. In the instant case, the Assessee has no other source of income except through generation and sale of power. All its receipts and expenditure relate to a single activity of power generation. There is no dispute that it is an industrial undertaking covered under Section 80 IA of the Act and that its net profit is otherwise eligible for deduction under Section 80-IA of the Act. The very object of enacting Section 80-IA was to encourage setting up of an industry involved in the generation and distribution of electricity or any other form of energy and the production, manufacture and construction of articles specified in the 5th Schedule to the Act. The idea was to provide incentives for promoting efficiency in the industry.

12. The Assessee offered an explanation regarding interest income earned by it, from advances given to its employees as well as provision of electricity and water charges collected from water through its employees and contractors for facilities in the township, receipt from transit hostel, sale of scrap, insurance claim etc. The facilities were given to its employees for better

conditions of employment. This was to improve the overall efficiency of the undertaking which is devoted to the single purpose of generation of power. The Court, therefore, has no difficulty in accepting the submission of the Assessee that the interest received on advances and loans given to its employees are receipts in normal course of carrying its business and should be considered as income derived from its essential business activities. Likewise, the late payment by GRIDCO for the electricity supplied, is sought to be made up by GRIDCO by issuing bonds on which the Assessee earns interest. This also therefore, has a direct nexus with the essential business activity of the Assessee.

13. In ***CIT v. Meghalaya Steels Ltd.*** *(supra),* the Respondent there was engaged in manufacturing steel and ferro silicon. The interest earned on the subsidies were treated as not income derived from business of the Assessee and therefore, not having a close and direct nexus with the business of the Assessee. The subsidies, according to the Department, did not qualify for deduction. The Assessee's argument on the other hand was that the subsidies were given only in order that the cost of manufacture would be reduced. These subsidies were reimbursement for either the entire or partial costs incurred towards transporting raw materials to the Assessee's factory or finished products to its dealers, who then sell the finished products. Further, power subsidy, interest subsidy and insurance subsidy were also reimbursed, either wholly or partially, power being a necessary element of the cost of manufacture of the Respondent's products.

14. Interpreting the similar expression contained in Section 80 IB, the Supreme Court in ***CIT v. Meghalaya Steel Ltd.*** (*supra*) referred to the decisions in ***Cambay Electric Supply Industrial Co. Ltd. v. CIT (1978) 2 SCC 644; CIT v. Sterling Foods (1999) 4 SCC 98*** and ***Pandian Chemicals Ltd.*** *(supra)* and observed as under:

> "18. …..What is to be seen for the applicability of Sections 80-IB and 80- IC is whether the profits and gains are derived from the business. So long as profits and gains emanate directly from the business itself, the fact that the immediate source of the subsidies is the Government would make no difference, as it cannot be disputed that the said subsidies are only in order to reimburse, wholly or partially, costs actually incurred by the assessee in the manufacturing and selling of its products. The "profits and gains" spoken of by Sections 80-IB and 80-IC have reference to net profit. And net profit can only be calculated by deducting from the sale price of an article all elements of cost which go into manufacturing or selling it. Thus understood, it is clear that profits and gains are derived from the business of the assessee, namely profits arrived at after deducting manufacturing cost and selling costs reimbursed to the assessee by the Government concerned."

15. Extending the same analogy and reasoning to the interpretation of Section 80-IA, this Court is satisfied that on the netting principle, since there is no other activity of the Assessee except power generation, the AO, the CIT(A) and the ITAT, were in error in disallowing the aforementioned sum as deduction under 80-IA of the IT Act. There is merit in the contention of the

Assessee that the interest received from the bonds issued by GRIDCO have a direct nexus with its essential business activity and therefore, was income derived from it, thus, making it eligible for such deduction.

16. The question framed by this Court is, therefore, answered in the negative i.e. in favour of the Assessee and against the Department. The impugned orders of the ITAT and the corresponding orders of the AO and the CIT (A) to the above extent for the AYs 2002-03, 2003-04, 2007-08 and 2008-09 are hereby set aside.

17. ITA Nos.24 and 25 of 2009 and ITA No.1 and 2 of 2015 are accordingly disposed of.

Expenses on development of the periphery

18. As regards ITA No.3 of 2015 the sole question that has been framed for consideration concerns the disallowance by the AO of a sum of Rs.89,70,409/- on the ground that periphery development expenses is not related to the business of the Assessee and was voluntary in nature.

19. The CIT(A) observed that Rs.25,41,312/- had been spent through the Corporate Office, Bhubaneswar and could not be considered for the business purpose of the Assessee whereas the balance sum was incurred in connection with the business purpose as had been spent at the Thermal Station. To the above extent of disallowance, the Assessee went in appeal to the ITAT.

Following the decision on the same issue for the earlier AYs 2007-08, 2008-09, involving this very Assessee, the ITAT rejected the ground urged by the Assessee.

20. This Court has heard the submissions of Mr. Satyajit Mohanty, learned counsel for the Assessee and Mr. T.K. Satapathy, learned Senior Standing Counsel for the Department.

21. The Court notes that while the Assessee had urged the above question for two AYs i.e. 2007-08 and 2008-09 in ITA Nos.1 of 2015 and 2 of 2015, this Court did not frame any question of law in that regard while admitting those appeals by the order dated 11th December, 2019. The Court sees no reason why only for one AY i.e. 2009-10, it should entertain the question. Following the rule of consistency, the Court answers the sole question framed in ITA No.3 of 2015 in the negative i.e. in favour of the Department and against the Assessee. Therefore, ITA No.3 of 2015 is hereby dismissed.

22. The net result is that ITA Nos. 24 and 25 of 2009 and 1 and 2 of 2015 are allowed. ITA 3 of 2015 is dismissed. No costs.

(S. Muralidhar)
Chief Justice

(R.K. Pattanaik)
Judge

S.K. Jena/PA