

Interest on FD on investing deposit received from leasing IT parks isn't eligible for sec. 80-IAB relief

Summary – The High Court of Madras in a recent case of Cyber Pearl Information Technology Park (P.) Ltd., (the Assessee) held that where assessee received interest free security deposit from persons who had taken on lease infrastructure set up in IT parks of assessee and invested such amount in fixed deposits with banks, interest income derived from fixed deposits would not amount to an income derived from business of developing SEZ

Facts

- The assessee was in the business of developing and leasing of Information Technology Parks. The assessee had claimed deduction of Rs. 4.21 crore under section 80-IAB. The said deduction included Rs. 2.52 crore which represented interest which the assessee had earned from fixed deposits in bank. These fixed deposits were made from security deposit received from persons/entities, who had taken the facilities/infrastructure set up in the IT Parks on lease. However, the assessee had filed Form 10CCB, wherein, the claim for deduction under section 80-IAB was restricted to Rs. 1.6 a crore.
- Since in Form 10CCB, assessee kept the claim restricted to Rs. 1.69 crores, the Assessing Officer passed an order whereby the deduction was restricted to Rs. 1.69 crore and the sum of Rs. 2.52 crore was treated as income from other sources.
- On appeal, the Commissioner (Appeals) and on further appeal, the Tribunal confirmed the findings of the Assessing Officer.
- On appeal to the High Court:

Held

- The submission of the assessee that the revised Form 10CCB should have been taken into account, cannot add much mileage to the case of the petitioner, for the reason that before the Assessing Officer, the assessee, despite such situation obtaining, advisedly, continued to take the stand that the claim made in the return for deduction of the entire amount, which is a sum of Rs. 4.21 crore was a mistake and that it had been made "inadvertently".
- It was open to the assessee, perhaps, at that juncture, to assert that the assessee was entitled to a deduction for the entire amount, and therefore, should be granted deduction *qua* the same under section 80-IAB. This aspect of the matter comes through quite clearly, if, one were to peruse the observations made in assessment order that during the year, the assessee had claimed deduction under section 80-IAB to the tune of Rs. 4.21 crore. On perusal of records, it is seen that the assessee is in receipt of interest income of Rs. 2.52 crore which he had included as Business Profits for the purpose of claiming deduction under section 80-IAB. As per section 80-IAB, Income generated by way of developing, maintaining & operating infrastructure facilities forms part of business profits of

the undertaking. As this was put to the assessee, the assessee had stated that it had been inadvertently claimed for the purpose of section 80-IAB and also stated that as per Certificate in Form 10CCB, 80-IAB has been claimed only to the extent of Rs.1.69 crore. Accordingly, the claim of section 80-IAB is considered only to the extent of Rs.1.69 crore and the balance amount of Rs. 2.52 crore is treated as Income from Other Sources and the assessment is completed under section 143(3).

- Therefore, the Tribunal, rightly, based on what emanated from the record, restricted the deduction to the sum of Rs.1.69 crore.
- According to the petitioner, interest derived from interest-free security deposit, which was invested in Fixed Deposits with the banks, was income derived from business of developing a Special Economic Zone, and hence, fell within the ambit of Section 80-IAB.
- In order to appreciate this aspect of the matter, one would have to extract the relevant part of Sub-Section (1) of 80-IAB and upon a bare perusal of the provision, an assessee is entitled to a deduction of the specified amount from any profits and gains, which are derived by an undertaking or an enterprise from any business of developing a Special Economic Zone.
- The term "derived", therefore, according to us, is critical in appreciating the kind of deduction, which would fall within the ambit of Section 80-IAB.
- For this purpose, the observations of the Supreme Court in *Pandian Chemicals Ltd. v. CIT* [\[2003\] 262 ITR 278/129 Taxman 539](#) may be contracted. The issue, which arose for consideration before the Supreme Court was whether the interest earned on deposits made over to the electricity board were profits and gains "derived" from an industrial undertaking and hence, eligible to the benefit available under the said provision. The Supreme Court, rejected the claim of the assessee for deduction and, while doing so, observed that in appreciating the term "derived", the enquiry should stop as soon as the effective source of the income is discovered. In other words, the Court held that there should be a 'direct or immediate nexus' with the assessee's industrial undertaking.
- The consistent view of the Courts has been that wherever, in such like sections, the expression 'derived' is used, as against attributable to", the width and the amplitude is narrower. Therefore, courts have held consistently that in order to come to a conclusion as to whether such profits or gains, *i.e.*, income, would be amenable to deduction, the effective source of such income is to be looked at. Once, it is found that the income is derived from a secondary source, which is not the effective source, it falls outside the purview of such like provisions, which provide for deductions with purpose of giving fillip to the designated activity, which, in the instant case, is the business of developing a Special Economic Zone.
- Therefore, for the foregoing reasons, there is no infirmity in the order of the Tribunal. The appeal is, accordingly rejected as no substantial question of law arises for consideration.