

**आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई ।**

IN THE INCOME TAX APPELLATE TRIBUNAL  
'B' BENCH : CHENNAI

**श्री बी.आर. बास्करन, लेखा सदस्य एवं  
श्री एस. एस. गोदारा, न्यायिक सदस्य के समक्ष ।**

[BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER AND  
SHRI S. S. GODARA, JUDICIAL MEMBER]

आयकर अपील सं./I.T.A.No.1217/Mds/2014

निर्धारण वर्ष /Assessment year : 2009-10

The Dy. Commissioner of  
Income-tax  
Company Circle  
Tirupur

**(अपीलार्थी/Appellant)**

**Vs.** M/s India Dyeing Mills Pvt. Ltd  
No.16-17 Kumar Nagar South  
2<sup>nd</sup> Street, Tirupur 641 603

**[PAN AAACI 4602 B]**

**(प्रत्यर्थी/Respondent)**

आयकर अपील सं./I.T.A.No.1218/Mds/2014

निर्धारण वर्ष /Assessment year : 2009-10

The Dy. Commissioner of  
Income-tax  
Company Circle  
Tirupur

**(अपीलार्थी/Appellant)**

**Vs.** M/s Sri Vignesh Yarns P. Ltd  
88, F-17-C Kamaraj Road  
Tirupur 641 604

**[PAN AACCS 4775 P]**

**(प्रत्यर्थी/Respondent)**

अपीलार्थी की ओर से/ Appellant by

: Shri Guru Bhashyam, JCIT

प्रत्यर्थी की ओर से /Respondent by

: Shri N. Vijayakumar, CA

सुनवाई की तारीख/Date of Hearing

: 27-01-2015

घोषणा की तारीख /Date of Pronouncement

: 4 -02-2015

**आदेश / O R D E R****PER S.S.GODARA, JUDICIAL MEMBER**

These Revenue's appeals in case of different assesseees for assessment years 2009-10 and 2010-11, are directed against separate orders of the Commissioner of Income-tax (Appeals)-II Coimbatore dated 31.12.2013 and 24.12.2013 passed in Appeal Nos. 224/11-12 and 82/12-13 respectively, in proceedings under section 143(3) of the Income-tax Act, 1961 (in short the 'Act').

**2.** A perusal of the case files reveals that these appeals are time barred by 46 days and 47 days respectively. The Dy. CIT, Tirupur, has filed condonation affidavits dated 7.5.2014 explaining reasons thereof. The assesseees do not object to solemn affirmations averred therein. Therefore, we condone delay of 46 days and 47 days in filing these appeals.

**3.** The Revenue's identical grounds raised in both cases read as follows:

"1. The order of the learned CIT (Appeals-II, Coimbatore is against facts and circumstances of the case.

2. The learned CIT (Appeals)-II, Coimbatore has erred in holding that the assessee is entitled for deduction u/s-80IA.

3. The learned CIT (Appeals)-II, Coimbatore has erred in holding

that the assessment year 2005-06 is the first initial Assessment Year in which the assessee had claimed the deduction u/s-80IA, and, therefore the depreciation of earlier years (which already have been absorbed) cannot be notionally carried forward and considered in computing the quantum of deduction u/s-80IA.

4. The learned CIT (Appeals)-II, Coimbatore, should have observed that as per the provisions of section-80IA(2) an assessee can opt for deduction of any ten consecutive years out of fifteen years, reckoned from the first year in which the undertaking enterprise generates power or commences transmission or distributes power, etc.

5. The learned CIT (Appeals)-II, Coimbatore, ought to have appreciated, that as per the provisions of the section-80IA(5) the eligible undertaking should be treated as only source of income for computing the quantum of deduction allowable u/s. 80IA.

6. The learned CIT (Appeals)-II, Coimbatore, should have taken note of the fact that the Sec-80IA(5) begins with a non-obstante clause; and, therefore, the restriction therein, shall prevail in computing and allowing the deduction u/s-80IA.”

**4.** Both parties inform us that the sole identical issue involved in both these cases is that of disallowance of deduction u/s 80IA. Therefore, we treat I.T.A.No. 1217/Mds/2014 in case of M/s India Dyeing Mills Pvt. Ltd. as the 'lead' case.

**5.** The assessee-company is engaged in the business of textile processing and also generates windmill energy. It had filed its return on 28.9.2009 admitting income of ₹ 2,73,82,420/-. The Assessing Officer took-up 'scrutiny'. He inter alia noticed the assessee's claim of deduction u/s 80IA. He was of the view that section 80IA(5)

mandates computation of eligible business as if the very business is the only source of assessee's income from the initial assessment year i.e the year of commencement of business. The assessee pleaded that this meant to be the first year of claiming section 80IA deduction as per case law of Velayudhaswamy Spinning Mills P. Ltd vs ACIT [2012] 340 ITR 477(Mad). The Assessing Officer observed in assessment order dated 25.12.2011 that Revenue's special leave petition against the aforesaid decision is pending in the apex court and invoked section 80IA to disallow/add the amount in question of ₹79,66,562/-.

**6.** The assessee preferred an appeal. The CIT(A) has followed the aforesaid case law and holds that the initial year has to be the first year of claiming section 80IA deduction. Therefore, the Revenue is in appeal.

**7.** We have heard both parties and perused the case file. There is no dispute that the hon'ble jurisdictional high court has settled the law about this ambiguity sought to be projected at the Revenue's instance in interpreting 80IA(5) that the initial year has to be construed as the first year of claiming the impugned deduction. The

Revenue argues that its SLP is pending before the apex court. In our view, this itself does not form a valid basis to adopt a different approach. The CIT(A)'s order is affirmed. The Revenue's grounds are rejected.

The Revenue's appeal I.T.A.No.1217/Mds/2014 is dismissed.

8. Same order to follow in I.T.A.No.1218/Mds/2014.

9. Both these Revenue's appeals are dismissed.

Order pronounced on Wednesday, the 4<sup>th</sup> of February, 2015, at Chennai.

Sd/-

(बी.आर. बास्करन)

(B.R. BASKARAN)

लेखा सदस्य /ACCOUNTANT MEMBER

चेन्नई/Chennai

दिनांक/Dated: 4<sup>th</sup> February, 2015

RD

Sd/-

(एस. एस. गोदारा)

(S. S. GODARA)

न्यायिक सदस्य/JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF