

IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH: KOLKATA
[Before Shri Mahavir Singh, JM & Shri Waseem Ahmed, AM]

I.T.A No. 124/Kol/2012
Assessment Year: 2005-06
&
I.T.A No. 155/Kol/2012
Assessment Year: 2004-05
&
I.T.A No. 156/Kol/2012
Assessment Year: 2006-07

Income-tax Officer, Wd-43(4), Kolkata. Vs. M/s. Sainath Packaging
(/Appellant) (PAN: AAQFS2601F)
(Respondent)

Date of hearing: 16.09.2015
Date of pronouncement: 24.09.2015

For the Appellant: Shri Soumesh Kr. Das, JCIT, Sr. DR
For the Respondent: Shri S. M. Surana, Advocate

ORDER

Per Bench:

All these appeals by revenue are arising out of common order of CIT(A)-XXX, Kolkata in Appeal Nos. 245, 336 & 338/CIT(A)-XXX/Ward-43(4)/2010-11 dated 29.09.2011. Separate assessments were framed by ITO, Ward-43(4), Kolkata u/s. 143(3)/254 of the Income-tax Act, 1961 (hereinafter referred to as the Act) for AY 2005-06, u/s. 143(3)/147 of the Act for AY 2004-05 and u/s. 147/143(3) of the Act for A.Y. 2006-07 vide his orders dated 27.12.2010 and 30.12.2009 respectively.

2. Appeal for AY 2005-06 is delayed by 03 days, appeal for AY 2004-05 is delayed by 11 days and appeal for AY 2006-07 is delayed by 11 days. Revenue has filed condonation petition along with affidavits explaining the reasons for the delay in above three appeals. Since Ld. Counsel for the assessee did not raise any objection, we condone the delay and admit the appeals for hearing.

3. The only common issue in these three appeals of revenue is against the order of CIT(A) allowing exemption u/s. 80IB of the Act. The following are the grounds in all the years:

“Grounds of appeal in the cases of M/s. Sainath Packaging For AY 2005-06, 2004-05 and 2006-07.

1) That the Ld. CIT(A)-XXX, Kolkata has erred in allowing the 100% claim of exemption u/s. 80IB of the I. T. Act, 1961 to the tune of Rs.1,21,30,176/-, Rs.17,59,250/- and Rs.95,90,600/-.

2) That the only issue for allowing exemption u/s. 80IB involves substantial question of law of importance in this cases, which were exclusively narrated in the assessment order itself.

3) That the tax effect in this cases are Rs.57,95,476/- for the AY 2005-06, Rs.10,66,611/- for the AY 2004-05 and Rs.46,80,884/- for the Ay 2006-07. ”

4. At the outset, Ld. counsel for the assessee stated that the issue of allowing deduction u/s. 80IB of the Act is squarely covered in favour of assessee and against revenue by the decision of this Tribunal in the case of ITO Vs. M/s. Sharp Prints in ITA No. 135/K/2012 for AY 2005-06 & ITA Nos. 157 & 158/K/2012, Ays 2004-05 & 2006-07 vide order dated 17.06.2013 exactly on similar facts.

5. We have heard rival submissions and gone through facts and circumstances of the case. Briefly stated facts are that the AO during the course of assessment proceedings disallowed deduction claimed by assessee u/s. 80IB of the Act and treated the profit earned as taxable income u/s. 68 of the Act for the reason that the firm is non-existent and also the manufacturing activities allegedly carried out are not genuine. The AO narrated the fact that 3 plot nos were mentioned in Form 3CD as well as in partnership deed from where the assessee is carrying on manufacturing activity (allegedly) the business premises could not be verified from the available documents. The AO disallowed the same in AY 2005-06 by observing as under:

“Considering the above anomalies and in view of the points raised, it is crystal clear that the assessee firm did not confirm any specific premise number as their manufacturing premise. The submission is highly puzzling and dumbfounding. And upon examination of all transactions and submission of documents that have been filed for the firm, carrying of business activities and also existence of proper business premises could not be adduced from the available evidences and documents. In view of above findings, it could not be established that any manufacturing activity was in fact carried out at the so-called premise, rather it is false and claim for existence of the firm itself could not be proved. However, he was given sufficient opportunity to establish the existence of firm. It is the burden of the assessee to establish the existence of the firm & genuineness of the manufacturing

activities as well. But the onus has not been discharged. It is evident that the assessee has used colourable device to defraud revenue by claiming 100% deduction u/s. 80IB, hence, deduction claimed u/s. 80IB of the Act is a bogus claim and accordingly disallowed in view of above facts and findings. So, in absence of manufacturing business activities as detailed above, Rs.1,21,30,176/- credited in the books in the form of net profit is taxed u/s. 68 of the Act as unexplained cash credit.”

Aggrieved, assessee preferred appeal before CIT(A), who after considering the submissions of the assessee allowed deduction u/s. 80IB of the Act by observing in para 4 and 4.1 as under:

“4. The submissions in Appeal have been considered. The AO concluded that evidence of the existence of the business premises and carrying on of the business activities was not established therefore it was false claim for the existence of the firm itself. He concluded that on examination of the documents it could not be proved that the assessee carried on any manufacturing activity, that the address and existence of the business was not established that the genuineness of the business was not established. It was held that the onus was not discharged by the assessee and hence the income was assessed as unexplained cash credit and consequently the deduction u/s 80IB was denied. It is seen that in re-assessment proceedings the AO has rejected the various evidences produced by the Appellant in the form of Registrations and licenses obtained by the firm from different Government departments, however the AO has without making any fresh enquiries or bringing on record any fresh evidences has without even cross verifying these evidences once again has relied on the report of JDIT(Inv), Surat and the alleged discrepancy regarding the address of the unit. He has in fact again based himself on suspicion and premises rather than bringing any fresh evidence on record or cross verifying the evidence submitted by the Appellant let alone controvert the same. On the contrary the available evidence proves the appellant's contention that manufacturing business was conducted at plot 39. No further evidence has been brought on record in reassessment proceedings by the A.O. The appellant thereafter on taking of lease of the aforesaid premises for factory applied for inclusion of new place of business at Plot No. 39 and the same was duly recorded by different Government departments and that the same address was mentioned in Tax Audit Report, whereas the number of plot 38 in form 3CD was by mentioned by mistake. It is submitted that all purchase bills and bills of machinery also had correct address i.e Plot 39. The appellant has however provided copies of Form 'B' dated 25-02-04 & Form S.T.V of Safe Tax Department dated 25-03-2004 as well as letter of Department of Industries dated 10-03-04 regarding additional place of business at Plot No.39 and copies of electricity bills for the same address. It may also be mentioned here that in the original appeal for A.Y 2005-06 by the CIT(A) all these issues had been considered and it had been held that from perusal of the details and the report sent by the JDIT it could not be said that that the appellant firm did not have its manufacturing business operation at plot 39 during the relevant year and its claim for manufacturing from this address was upheld. This had been arrived at after considering all issues including the matter of the Plot number which has again been explained in the reassessment proceedings and substantiated by documentary evidence for the additional place of business on plot No. 39. Therefore, since no fresh evidence is there in reassessment proceedings to disprove the same, there is no need for the above findings to be reconsidered. It may also be mentioned in respect of the enquiry report, that the enquiry had been conducted by the JDIT after a lapse of time by which Appellant shifted the business and hence no operation was noticed at the premises. This is clear from the fact that

the accounting period is FY. 2004-05 whereas the enquiry was marked for investigation in August, 2007. Therefore, since the enquiry was conducted at a later date it cannot be the sole basis for concluding that the firm or manufacturing activity of the firm did not exist at the relevant point of time.

4.1. On the other hand the Appellant in reply to the queries raised in reassessment proceedings has given its submission to the AO vide letter dt. 20.9.2010. The evidences filed along with this letter included letter from Electricity Department dated 12-03-04. Daman for electricity connection and Electricity bills, Registration under Sales Tax Act in form S.T.V dated 25-03-04, etc. Regarding Plot No. 39 as place of business, Form 'B' dated 25-03-04 and S.T.V has also been filed mentioning Plot 39 as the new place of business. As mentioned earlier the AO has relied on minor discrepancies in respect of the plot no. of the Appellant to simply reject the evidences produced by the Appellant without bringing any positive evidence. It may be mentioned here that in the reassessment proceedings the appellant has once again explained the alleged discrepancies pointed out in the original assessment and on the basis of which the claim of the appellant had been disallowed including the alleged discrepancy of the manufacturing unit's address and the conclusions of JOT's report. The Appellant has submitted detailed evidences before the AO which have been ignored including evidence of existence of its business on the plot no 39, the electricity bills and details of purchases etc. The AO has simply ignored even the evidence filed in reassessment proceedings whereas it is seen that the onus of establishing the existence of the firm has been discharged by the Appellant in reassessment proceedings. As mentioned earlier the AO has relied on minor discrepancies in respect of the plot number to totally reject these evidences produced by the Appellant before the A.O in reassessment proceedings on 20.09.2010, whereas the appellant has given detailed explanation in reassessment proceedings regarding all the discrepancies pointed out in original assessment proceeding to establish its claim of genuineness of firm and its manufacturing activities and has therefore discharge its onus put on it. In view of these evidences the Appellant's contention regarding the manufacturing business conducted plot no. 39 Silver Industrial Estate Himpur, Daman for the relevant accounting period is acceptable and the AO is directed to compute the profit of the Appellant and grant deduction u/s.80-IB.

In the result the appeal is allowed.

Appeal No. 336/CIT(A)-XXX/Wd-43(4)/2009-10

Assessment Year: 2004-05

Decision

The facts for this year are identical to those of Assessment Year 2005-06 and the AO has reopened the case in this year u/s. 148 on the basis of findings and enquiries made for Assessment Year 2005-06. The issue is similar in this year also and pertains to disallowance of deduction claimed by the Appellant u/s. 80-IB and taxation of its income u/s. 68 of the I.T.Act. Considering the facts and submissions are identical to those of Assessment Year 2005-06 the decision in appeal for this year is being followed in the current year i.e. 2004-05.

The appeal is accordingly allowed.

Appeal No. 338/CIT(A)-XXX/Wd-43(4)/2009-10

Assessment Year: 2006-07

Decision :

The facts for this year are identical to those of Assessment Year 2005-06 and the AO has reopened the case in this year u/s. 148 on the basis of findings and enquiries made for Assessment Year 2005-06. The issue is similar in this year also and pertains to disallowance of deduction claimed by the Appellant u/s. 80-IB and taxation of its income u/s. 68 of the I. T. Act. Considering the facts and submissions are identical to those of Assessment Year 2005-06 the decision in appeal for this year is being followed in the current year i.e. 2006-07.

The appeal is accordingly allowed.”

Aggrieved, revenue preferred appeal before us.

6. We find that the assessee has complied with rules and regulations and obtained industrial license as SSI unit, Pollution Clearance Certificate from Pollution Control Board towards industrial undertaking, it is registered under Sales tax/VAT. It has also obtained electricity connection on the same address. The assessee contended that the lease of plot no. 39 (wrongly mentioned in the audit report as 3 no. of plots) was registered and copy of the same was filed before AO as well as before CIT(A). The assessee also produced details of sales and purchase invoice during the course of original assessment proceedings, during the course of set aside proceedings and even before CIT(A) and which were verified by issuing notices u/s. 133(6) of the Act. The AO also verified the transactions of purchase of machinery and sales as well as manufacturing of goods have been accepted. In such circumstances and the above evidences, we feel that the CIT(A) has rightly allowed the claim of assessee u/s. 80IB of the Act to the assessee being a manufacturing unit and all rules and regulations and necessary permission also obtained on the same plot no. 39. However, Honøble Calcutta High court in G.A. No. 114 of 2014 in ITAT No. 10 of 2015 in the case of CIT Vs. M/s. Sharp Prints vide its judgment dated 06.01.2015 has confirmed the order of ITAT and allowed the claim of assessee by holding as under:

“The question for consideration was whether the business of the assessee was situated at the premises which was declared by him. In support of the aforesaid claim of the assessee, he, it is not in dispute, submitted bills, licenses, telephone bill, registration certificate granted by various state authorities.

The Assessing Officer was of the opinion that these pieces of evidence were not enough but the Appellate Authority was of the opinion that these pieces of evidences were enough to prove the existence of the business. The Tribunal has evidently concurred with the views of the Appellate Authority. The question was a pure question of fact on which a concurrent findings has been given by the Appellate Authority and the Tribunal. It is not possible to even suggest that the

finding is perverse. There is, as such, no scope to entertain the appeal which is accordingly dismissed.”

Accordingly, we need not to interfere in the order of CIT(A) as this being a covered matter on identical facts. This appeal of revenue is dismissed.

7. Similar are the facts in AYs 2004-05 and 2006-07. Since we dismiss the appeal of revenue for AY 2005-06 and the facts for AYs 2004-05 and 2006-07 are exactly identical to the facts for AY 2005-06, the appeals of revenue for AYs 2004-05 and 2006-07 are also dismissed.

8. In the result, appeals of revenue are dismissed.

9. Order is pronounced in the open court on 24.09.2015

Sd/-
(Waseem Ahmed)
Accountant Member

Sd/-
(Mahavir Singh)
Judicial Member

Dated : 24th September, 2015

वरुठ ङजि सऱवुव Jd.(Sr.P.S.)

आदेश कऱ ङतऱलऱड आऱषतऱ:- Copy of the order forwarded to:

1. अऱीलऱथऱ/APPELLANT- ITO, Ward-43(4), Kolkata.
2. ङऱयथऱ/ Respondent ó M/s. Sainath Packaging, 13, Noormal Lohia Lane, 2nd floor, Kolkata-700 007.
3. आयकर कऱडशनुनर (अऱील)/ The CIT(A), Kolkata
4. आयकर कऱडशनुनर/ CIT Kolkata
5. वऱडडऱगुड ङतऱनीधी / DR, Kolkata Benches, Kolkata

सऱडडऱडत ङतऱ/True Copy,

आदेशऱनुसऱर/ By order,

सडऱडक डंऑीकर/Asstt. Registrar.