

आयकर अपीलिय अधीकरण, न्यायपीठ – “C” कोलकाता,
*IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH “C” KOLKATA*

Before **Shri N.V.Vasudevan, Judicial Member** and
Shri Waseem Ahmed, Accountant Member

ITA No.1628/Kol/2014
Assessment Year :2006-07

DCIT, Cicle-12, P-7, Chowringhee Square, Aayakar Bhawan, 7 th Floor, Kol-69	V/s.	M/s India Glycols Ltd., 3A, Shakespeare Sarani, Kolkata-71 [PAN No.AAACI 7246 P]
अपीलार्थी /Appellant	..	प्रत्यर्थी/Respondent

अपीलार्थी की ओर से/By Appellant	Shri Goulean Halgshing, CIT-DR
प्रत्यर्थी की ओर से/By Respondent	None
सुनवाई की तारीख/Date of Hearing	29-08-2017
घोषणा की तारीख/Date of Pronouncement	15-09-2017

आदेश /ORDER

PER Waseem Ahmed, Accountant Member:-

This appeal by the Revenue is directed against the order of Commissioner of Income Tax (Appeals)-XIX, Kolkata dated 13.06.2014. Assessment was framed by ACIT, Range-12, Kolkata u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') vide his order dated 26.12.2008 for assessment year 2006-07.

2. None appeared for and on behalf of the assessee- respondent when its appeal was called out for hearing, nor any adjournment application stands received. At the very outset, it was observed by the Bench that the disposal of the issue under reference is possible without the appearance of assessee or by Ld. AR on behalf of the assessee.

3. Grounds raised by Revenue per its appeal is as under:-

“1. That is the facts and in law of the case the Ld. CIT(A) erred in allowing the claim of the assessee u/s 80IC amounting to Rs.8,52,227,373/- claimed by the assessee at the time of assessment which was not claimed in the IT return or revised return.”

2. “That is the facts and in law of the case the Ld. CIT(A) erred in allowing the claim the assessee u/s. 80IA. The assessee had set off loss from arising from one unit against the profit from another unit while calculating deduction u/s. 80IA.”

4. First issue raised by Revenue in this appeal is that Ld. CIT(A) erred in granting deduction u/s. 80IC of the Act for ₹8,52,27,373/- though same was not claimed either in the original return of income or revised return of income.

5. Briefly stated facts are that assessee is a limited company and engaged in manufacturing of glycols and other chemicals. During the year, assessee has claimed deduction u/s. 80IC of the Act for ₹8,52,27,373/- in respect of its plant established in Kashipur in the state of Uttaranchal. The assessee claimed such deduction u/s 80IC of the Act by way of filing a letter during the course of assessment proceedings which was not claimed by assessee in its original return of income as well as in the revised return of income. Therefore, AO disallowed the deduction claimed by assessee u/s 80IC of the Act after having reliance in the principles laid down by the Hon'ble Supreme Court in the case of *Goetze (India) Limited vs. CIT* (2006) 284 ITR 323 (SC) wherein it was observed that Assessing Officer cannot entertain the claim of the assessee otherwise than by filing a revised return of income. Hence, AO disallowed the claim of assessee for deduction of ₹8,52,27,373/- u/s. 80IC of the Act.

6. Aggrieved, assessee preferred an appeal before Ld. CIT(A). The assessee before Ld.CIT(A) submitted that it failed to incorporate the deduction u/s. 80IC of the Act while entering the data in “e” filing return inadvertently. The assessee is entitled to claim its deduction without filing the revised return of income in terms of judgment of Hon'ble Supreme Court in the case of *Jute Corporation of India Ltd. vs. CIT* (1990) 187 ITR 688 (SC). Moreover the Hon'ble Supreme Court in the case of *Goetze (India) Limited* (supra) has

made it clear that the appellant authority can entertain and allow the additional claim of the assessee. After considering the submission of the assessee Ld. CIT(A) granted relief to assessee by observing as under:-

“4.3 The issue in this ground has been analysed after considering both the assessment order and the submission of the appellant for coming to a decision. I find that the AO disallowed the claim of the appellant since the claim u/s. 80C was never incorporated in the original return or even at the time of revised return being filed. It was only at the assessment stage that the appellant brought to the notice of the AO that the omission to claim the deduction was due to inadvertence. The pertinent question in such a situation is whether the claim of the appellant at the assessment stage could be entertained or not which was not claimed earlier. As has been contended by the appellant in its submission that based on the various court decisions as narrated (supra), the appellate authority can entertain the claim of the appellant even if a claim is not made before the AO and that it can be made before the appellate authorities. The jurisdiction of the appellate authorities to entertain such a claim which was not admitted by the AO has not been negated by the Supreme Court in this judgment i.e. the case of Goetze (India) Ltd. In fact the Supreme Court made it clear that the issue in the case was limited to the power of the assessing authority and the judgment does not impinge on the power of the Appellate Authority to entertain and allow additional claim. In the light of the court rulings as narrated (supra), in my opinion the claim of the appellant can be entertained even at the appellate stage since if the appellant had fulfilled the requirements as contained in the provisions of section 80C with all the attendant ingredients as stipulated, there is no cause for rejecting the claim merely on the basis that the claim was not made in the original or revised return of income. It is not a case that the appellant never undertook the business undertaking as envisaged in the section 80C. The limited issue in this ground as to whether the belated claim of the appellant can be entertained or not has been well dwelt upon by the various courts as discussed (supra). In my opinion even if the assessee has not made a claim of deduction as per the Act in its return and the AO finds that such a deduction or deductions were legitimately allowable, the AO is bound to allow such deduction or deductions while making the assessment. The Bombay High Court in the case of Prithvi Brokers & Shareholders (P) Ltd. (the tax payer) has held that the taxpayer is entitled to claim the deduction before the Appellate Authorities which was not claimed in the original or revised return but was claimed in course of assessment and appellate proceedings. In the light of the facts and the court decisions, I am inclined to agree with the submission of the appellant and therefore, the AO is directed to allow the appellant's claim of deduction u/s. 80C of the Act accordingly if the appellant has fulfilled all the criteria as envisaged in that section.”

The Revenue, being aggrieved, is in appeal before us.

7. Before us Ld DR heavily relied on the order of AO and prayed before the Bench to confirm the same.

8. Having heard Ld. DR and also gone through the orders of the Authorities Below and the case laws relied upon before us by the assessee. The issue in the instant case before us is that assessee has claimed deduction u/s. 80IC of the Act by way of filing a letter to AO at the time of assessment proceedings but AO rejected the same on the ground that he cannot entertain the claim of deduction as the assessee failed to claim the same in its return of income. However, Ld. CIT(A) observed that the appellant authority are entitled to admit the claim of assessee which was not made in the income tax return.

Now the limited issue before us for our adjudication arises so as to whether the assessee can make a fresh claim during the assessment proceedings which was not claimed in the return of income. On this issue, the law is fairly settled by the judgment of Hon'ble Supreme Court in the case of *Goetze (India) Ltd.* (supra), wherein it was held as under:-

“4. The decision in question is that the power of the Tribunal under section 254 of the Income-tax Act, 1961, is to entertain for the first time a point of law provided the fact on the basis of which the issue of law can be raised before the Tribunal. The decision does not in any way relate to the power of the Assessing Officer to entertain a claim for deduction otherwise than by filing a revised return. In the circumstances of the case, we dismiss the civil appeal. However, we make it clear that the issue in this case is limited to the power of the assessing authority and does not impinge on the power of the Income-tax Appellate Tribunal under section 254 of the Income-tax Act, 1961. There shall be no order as to costs.”

From the above precedent, we find that Hon'ble Supreme Court has prohibited the Assessing Officer to entertain any claim / deduction of the assessee otherwise than claiming in the return / revised return. However, this restriction was not imposed by Hon'ble Supreme Court in the case of appellant authority. Thus, it can be concluded that the appellant authority are very much entitled to admit the fresh claim of the assessee which was not made in the income tax return.

8.1 We also find that assessee is entitled to raise additional claim which was not made in its return of income in terms of judgment of Hon'ble Supreme

Court in the case of *Jute Corporation of India Ltd.* (supra), wherein it was held that the additional claim of assessee can be admitted by the appellant authority though the same was not made in the income tax return. In the instant case, the deduction was omitted to be claimed by the assessee in its income tax return filed electronically inadvertently. The AO has not brought anything on record showing any infirmity in the amount of deduction claim by the assessee by way of filing a separate letter during the course of assessment proceedings. In the background of the above discussions and precedent we do not find any infirmity in the order of Ld. CIT(A) and accordingly we uphold the same. This ground of Revenue's appeal is dismissed.

9. Next issue raised by Revenue in this appeal is that Ld. CIT(A) erred in not setting off the loss of a unit eligible u/s. 80IA of the Act with another unit eligible u/s. 80IA of the Act.

10. The assessee was owner of two power plants which were eligible for deduction u/s 80IA of the Act. Both power plants of assessee has declared profit as detailed under:-

1. 80IA power plant-1	₹6,60,39,030/-
2. 80IA power plant-2	₹ <u>2,52,59,146</u> /- (loss)
	₹4,07,79,893/-

The AO while allowing deduction to assessee u/s. 80IA of the Act has set off the loss of power plant-2 with the profit of power plant-1 and allowed the deduction for the amount of profit for ₹4,07,79,893/- u/s 80IA of the Act.

11. Aggrieved, assessee preferred an appeal before Ld. CIT(A). The assessee before Ld. CIT(A) submitted that deduction u/s. 80IA is to be allowed unite-wise without deducting the loss of other unit. The assessee in support of its claim has relied on the order of ITAT Bengaluru Bench in the case of *Jindal Aluminium Ltd. vs. ACIT 26 taxmann.com 317*. Ld. CIT(A) after considering the submissions of assessee has granted relief to assessee by observing as under:-

“5.4 Going by the above ruling of the ITAT, the facts of which are squarely applicable in the appellant’s case, the AO is directed to compute the deduction u/s.80IA without making any adjustment of loss of one unit with the profit of another unit and allow the deduction accordingly on the profit derived from one eligible unit.”

The Revenue, being aggrieved, is in appeal before us.

12. Before us Ld. DR heavily relied on the order of AO and prayed before the Bench to confirm the same.

13. Having heard Ld. DR and perused the material available on record. The instant issue relates to the amount of deduction claimed by assessee in respect of its power plant-2 for ₹6,60,39,039/- which was set off against the loss of power plant- of ₹2,52,59,146/- only. The AO while granting deduction u/s. 80IA of the Act in respect of power plant of the assessee has set off the loss of one unit with the profit of another unit. However, the order of AO was reversed by Ld. CIT(A) on the ground that deduction u/s. 80IA of the Act is to be allowed on unit-wise basis and without setting off the loss of other eligible unit with the profit of another eligible unit for deduction u/s 80IC of the Act.

13.1 At the outset, we find that issue is squarely covered in favour of assessee and against the Revenue by the order of ITAT Bengaluru Bench in the case of *Jindal Aluminium Ltd.* (supra) wherein the Tribunal has held:-

*“13. Coming back to the facts of our case we observe that the gross total income of the assessee is at Rs. 8,03,26,598 lakhs after adjusting the losses suffered by it in the eligible as well as profits of the non-eligible units. There are no brought forward losses or unabsorbed depreciation. The claim of deduction under section 80-IA was in respect of eligible unit 4.14 MW wind energy division at Rs. 4,72,28,143 and the deduction u/s.80HHC of the Act was claimed in respect of other units at Rs.15,51,440. Even if both the deductions are added the sum total is obviously less than the gross total income. In our considered opinion the learned Commissioner of Income-tax (Appeals) has erred in interpreting the relevant provision when he held that the losses suffered by the assessee in two eligible units be reduced from the income of the other eligible unit before granting the deduction under section 80-IA. Since the facts of the case in the case of *Synco Industries Ltd.* (supra) lie in an altogether different compartment, we hold that the ratio of that case cannot be considered for application to the assessee's case. Accordingly the impugned order is overturned and the assessee is allowed deduction under section 80-IA on the profit derived by it from eligible unit 4.14 MW wind energy unit at Rs.4,72,28,143.”*

Respectfully following the same we find no reason to interfere in the order of Ld. CIT(A). Hence, we uphold the same. This ground of Revenue is dismissed.

14. In the result, Revenue's appeal stands dismissed.

Order pronounced in the open court 15/09/2017

Sd/-
(न्यायिक सदस्य)
(N.V.Vasudevan)
(Judicial Member)
Kolkata,

Sd/-
(लेखा सदस्य)
(Waseem Ahmed)
(Accountant Member)

*Dkp, Sr.P.S

दिनांक:- 15/09/2017 कोलकाता ।

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. अपीलार्थी/Appellant-DCIT, Circle-12, P-7, Chowringhee Sq. Aayakar Bhawan, 7th Fl. Kol-69
2. प्रत्यर्थी/Respondent-M/s India Glycols Ltd. 3A, Shakespeare Sarani, Kolkta-71
3. संबंधित आयकर आयुक्त / Concerned CIT Kolkata
4. आयकर आयुक्त- अपील / CIT (A) Kolkata
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

By order/आदेश से,

Sr. Private Secretary, Head of
Office/DDO
आयकर अपीलीय अधिकरण,
कोलकाता ।