

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "D" : DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI O.P. KANT, ACCOUNTANT MEMBER

ITA.No.6139/Del./2014
Assessment Year 2011-2012

The DCIT, Circle-16(1), C.R. Building, I.P. Estate, New Delhi.	vs.	M/s. Tulip Infratech Pvt. Ltd., 1201 to 1204, Indraprakash Building, 21-Barakhamba Road, New Delhi – 110 001. PAN AACCT3755E
(Appellant)		(Respondent)

For Revenue :	Shri Amit Jain, Sr. D.R.
For Assessee :	Shri Shailesh Gupta, Advocate

Date of Hearing :	31.10.2017
Date of Pronouncement :	31.10.2017

ORDER

PER BHAVNESH SAINI, J.M.

This appeal has been directed against the order of the Ld. CIT(A)-19, New Delhi, dated 29th August, 2014 for the A.Y. 2011-2012, challenging the deletion of addition of Rs.8,53,50,105 made by A.O. under section 80IB of the I.T. Act, 1961.

2. Briefly the facts of the case are that the assessee has claimed deduction under section 80IB(10) of the I.T. Act, amounting

to Rs.8,53,50,105. The A.O. was of the view that there is no provision for claiming proportionate deduction under section 80IB(10) of the I.T. Act. The A.O. noted that either the allowance has to be given in full or to be rejected. In this case, since the assessee has failed to comply the terms and conditions of under section 80IB(10) of the I.T. Act, hence, the claim of assessee for deduction under this Section was rejected and addition was accordingly made. The A.O. also noted that similar addition has been made in the case of the assessee in A.Y. 2007-2008. Although, the Ld. CIT(A) deleted the addition so made, the department has not accepted the decision of the Ld. CIT(A) and has filed appeal before ITAT.

3. The assessee contended before the Ld. CIT(A) that similar addition so made in A.Ys. 2007-08, 2008-09, 2009-10 and 2010-2011 and the addition have been deleted by the Ld. CIT(A) in all the years. The order of the Ld. CIT(A) is reproduced in the appeal order. The assessee therefore, submitted that the issue is covered in favour of the assessee by earlier years orders. The Ld. CIT(A) considering the history of the assessee and earlier orders, allowed the appeal of

assessee. His findings in para 3.3 of the order are reproduced as under :

“3.3 The submissions of the appellant and the facts have been carefully considered. The Appellant has argued that a similar addition was made in AY 2007-08, 2008-09, 2009-10 and 2010-11 and the addition has been deleted by the CIT(A) in all these years. In the asstt. year under consideration, the facts are similar and the A.O has only followed her decision in earlier years. In the asstt. order, the A.O. has stated that "Similar addition was made in the case of assessee in the A. Y. 2007-08. Although, the CIT(A) deleted the addition made, the department has not accepted the decision of CIT (A) and has filed appeal before ITAT". The A.O. has not brought any material on record to controvert the appellant's claims and justify the addition. She has not pointed out any new facts or judicial decisions, or given any reason, why the decision of the CIT(A) in earlier years should not be followed. The appellant has relied on several judicial decisions in support of his claim and has pointed out that they constitute a binding precedent. Considering the facts and judicial

decisions on the subject, and the orders of the CIT(A) in earlier years, the decision of the A.O. to disallow the pro-rata deduction u/s 80IB claimed by the appellant in his return, is not sustainable in law. The addition is therefore, deleted and the Grounds are accordingly allowed.”

4. The Learned Counsel for the Assessee at the outset submitted that the departmental appeals for A.Ys. 2007-08 and 2009-10 have been dismissed by the ITAT, Delhi Bench in ITA.No.2325/Del./2010 and ITA.No.5045/Del./2012 vide order dated 18th February, 2016. He has also submitted that departmental appeal for A.Y. 2008-2009 have also been dismissed by the Tribunal in ITA.No.3842/Del./2014 vide order dated 28th February, 2017. He has submitted that the issue is now covered in favour of the assessee by above orders of the Tribunal. The copies of the orders have been supplied to the Ld. D.R. who after going through the same have stated that the issue is now been decided in favour of the assessee by the Tribunal in preceding assessment years mentioned above.

5. Considering the facts of the case in the light of earlier orders of the Tribunal in the case of the same assessee referred to

above, it is clear that in earlier years the deduction under section 80IB(10) of the I.T. Act have been allowed to the assessee by the Ld. CIT(A) on fulfilling the conditions of Section 80IB(10) of the I.T. Act. The A.O. made addition in assessment year under appeal because the appeals of the department for earlier year are pending before the Tribunal. Now the departmental appeals have already been dismissed, meaning thereby, the assessee would be entitled for deduction under section 80IB(10) of the I.T. Act. The issue is now covered in favour of the assessee by the earlier orders of the Tribunal referred to above. The departmental appeal has no merit and the same is accordingly dismissed.

6. In the result, appeal of the Revenue is dismissed.

Order pronounced in the open Court.

Sd/-
(O.P. KANT)
ACCOUNTANT MEMBER

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Delhi, Dated 31st October, 2017

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'D' Bench, Delhi
6.	Guard File.

// By order //

Asst. Registrar : ITAT Delhi Benches :
Delhi.