

IN THE INCOME TAX APPELLATE TRIBUNAL
“E” Bench, Mumbai
Before Shri B.R. Baskaran (AM)& Shri Pawan Singh (JM)
I.T.A. No. 6467/Mum/2012 (Assessment Year 2009-10)

Sammaan Fabrics Pvt. Ltd. Rajlaxmi Complex C-Building, 1 st Floor Kalher, Old Agra Road District Thane Pin- 421 302 PAN : AADCS9527J	Vs.	ACIT 10(2) Aayakar Bhavan M.K. Road Mumbai-400020.
(Appellant)		(Respondent)

Assessee by	None
Department by	Shri V. Justin
Date of Hearing	2.11.2017
Date of Pronouncement	8.11.2017

ORDER

Per B.R. Baskaran (AM) :-

The assessee has filed this appeal challenging the order dated 03-09-2012 passed by Ld CIT(A)-22, Mumbai and it relates to the assessment year 2009-10. The assessee is aggrieved by the decision of Ld CIT(A) in confirming the penalty of Rs.3,07,235/- levied by the AO u/s 271(1)(c) of the Act.

2. None appeared on behalf of the assessee even though the case was adjourned at the specific request of assessee's counsel on the earlier occasions and thereafter the notice was also sent to the assessee by registered post. Hence we proceed to dispose of the appeal ex-parte, without the presence of the assessee.

3. We heard Ld D.R and perused the record. The assessee had claimed deduction u/s 80IB of the Act and the same was rejected by the AO and penalty was levied thereon. The facts relating to the same are that the assessee had claimed to have manufactured goods and accordingly claimed deduction u/s 80IB of the Act. The AO noticed that the assessee purchased

cloth from one the concerns belonging to one of the directors of the company and processed the same in another concern belonging to another director of the company. Further the assessee had rented out its factory building. The assessee claimed deduction u/s 80IB of the Act on the profit earned in textile business as well as on rental income. Since the assessee did not carry on any manufacturing activity in the undertaking belonging to it, the AO rejected the claim u/s 80IB of the Act and levied penalty on such rejection. The Ld CIT(A) also confirmed the same by following the decision rendered in the case of CIT Vs. Zoom Communication (327 ITR 510). Before us, the Ld D.R strongly supported the order passed by Ld CIT(A).

4. Before the Tribunal, the Ld A.R has furnished a written submission, where in it was contended that the disallowance of deduction u/s 80IB merely on disagreeing with the view of the assessee would not lead to penalty u/s 80IB of the Act.

5. We notice that the ld CIT(A) has not examined the issue from the angle whether the claim of deduction u/s 80IB, in the facts and circumstances of the case, is debatable one or not. In our view, this contention of the assessee needs examination at the end of Ld CIT(A). Accordingly we set aside the order passed by Ld CIT(A) and restore the issue to his file with the direction to examine the same afresh after affording adequate opportunity and decide the issue in accordance with the law.

7. In the result, the appeal of the assessee is treated as partly allowed.

Order has been pronounced in the Court on 8.11.2017.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Sd/-
(B.R.BASKARAN)
ACCOUNTANT MEMBER

Mumbai; Dated : 8/11/2017

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

PS

BY ORDER,

(Dy./Asstt. Registrar/Senior PS)
ITAT, Mumbai