

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.233/Kol/2015
Assessment Year :2010-11

ITO Ward-1(2), P-7, Chowringhee Square, Aayakear Bhawan, 4 th Floor, Room 11, Kolkata-69	V/s.	M/s Jagati Cokes Pvt. Ltd., 115, College Street,Kolkata-12 [PAN No.AABCJ 4973 B]
अपीलार्थी /Appellant	..	प्रत्यर्थी/Respondent

अपीलार्थी की ओर से/By Appellant	Shri G. Mallikarjuna, CIT-DR
प्रत्यर्थी की ओर से/By Respondent	None
सुनवाई की तारीख/Date of Hearing	04-09-2017
घोषणा की तारीख/Date of Pronouncement	31-10-2017

आदेश /O R D E R

PER Waseem Ahmed, Accountant Member:-

This appeal by the Revenue is arising out of order of Commissioner of Income Tax (Appeals)-I, Kolkata dated 13.11.2014. Assessment was framed by ITO Ward-1(2), Kolkata u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') vide his order dated 04.03.2013 for assessment year 2010-11.

2. At the time of hearing none appeared on behalf of assessee though notice of hearing was sent to assessee through Department. However we observe that the hearing is possible without appearance of assessee or its Authorized Representative, therefore we decided to hear the present appeal where.

3. Ground No. 1 and 2 are inter-related and therefore being taken up together for the sake of convenience and brevity. The issue raised is that Ld. CIT(A) erred in allowing the deduction for ₹3,92,31,372/- and ₹6,91,08,066/- respectively on account of transport charges and excessive transport subsidy u/s 80IC of the Act.

4. Briefly stated facts are that assessee is a private limited company and engaged in manufacturing business of breeze coke. The assessee has a small scale manufacturing unit situated in Kamrup of Assam. The assessee filed its return of income declaring gross total of ₹ 23,92,22,583/- which was claimed as deduction u/s 80IC of the Act. Thus, assessee filed its return of income at **nil**. Though the assessee in its profit and loss account has declared gross sales of ₹36,05,71,950/- only, which was inclusive of transport charges received by it from the parties amounting to ₹3,92,31,372/- only.

5. During the course of assessment proceedings, Assessing Officer observed that deduction u/s. 80IC of the Act is available to the assessee fulfills the conditions as specified below :

- i. If its business falls under the category of eligible business.
- ii. The amount of deduction u/s 80IC of the Act is available to the assessee only in respect of specified eligible business.
- iii. As per the provisions of section 80IC of the Act, the deduction will be worked out considering the fact that such eligible business is the only business of assessee.

However, assessee has shown transport charges received from the parties in its income as if it has arisen from the eligible business and eventually claim deduction in respect of transport charges for ₹3,92,31,372/- u/s. 80IC of the Act.

Thus, AO was of the view that the transport charges received by the assessee are not eligible for deduction u/s 80IC of the Act and accordingly treated the same as income from other source of assessee.

6. Besides the above it was also observed that assessee has shown transport subsidy of ₹11,9147,871/- and gross total income of the eligible

business of ₹23,92,22,583/- was determined by the assessee after considering the transport subsidy of the aforesaid amount. Thus the assessee eventually claimed deduction u/s 80IC of the Act on such transport subsidy. The AO further observed that assessee has incurred following transport expenses:-

- a) Transport expense received from the assessee of ₹3,92,31,372/-
- b) Transport charges incurred on the purchase
of raw materials ₹1,08,08,433/-
₹5,00,39,805

In view of above Assessing Officer was of the view that assessee has claimed excess transport subsidy of ₹6,91,08,066/- (11914787 – 50039805).

7. Accordingly, AO called upon the assessee for clarification. In compliance thereto assessee submitted that the details of opening raw material as well as raw material purchased during the year as detailed under:-

Sl.No.	Particulars	qty.	transport charges
1.	Opening raw materials	113990.660 mt.	₹ 94645292
2.	Purchases during the year	12009.370 mt.	₹ 10808433
3.	Closing stock of raw material	24783.380 mt	- -

The assessee further submitted that the opening stock of raw material has been determined after considering the transport charges paid in the immediate preceding year i.e. financial year 2008-09. The assessee, during the year has also incurred transport expense on the purchase of raw material for ₹1,08,08,433/- only. Thus, the total transport charges are at ₹10,54,53,725/- only. The transport subsidy claimed by assessee after production and sale of finished goods which is calculated on the basis of consumption of raw material. The assessee during the year has consumed raw material for ₹10116.650 mt. and accordingly, the transport subsidy for ₹11,91,47,871/- was worked out for the purpose of deduction.

8. The transport subsidy was realized by the assessee after due verification by the Government of Assam as well as Central Government.

Once the Govt. of Assam and Central Government are satisfied about the calculation of the subsidy then only it is realized to the assessee. Thus, there is no question of excessive subsidy received by the assessee. However, AO observed that assessee failed to furnish the evidence in support of its explanation. Moreover assessee has not furnished any evidence suggesting that the opening stock of raw material was inclusive of transport charges as discussed above. Accordingly the AO denied the claim the deduction u/s. 80IC of the Act for ₹6,91,08,066/- by treating the same excessive subsidy as well as transport charges received from the customers.

9. Aggrieved, assessee preferred an appeal before Ld. CIT(A). The assessee before Ld. CIT(A) submitted that the transport charges was received from the parties for an amount of ₹3,92,31,372/- was the expense which were actually incurred by it on the supply of finished goods. The amount of transport expense for ₹3,92,31,372/- was shown in the financial statements under Schedule-O of the balance-sheet. As such, there was no effect on the profitability of the assessee on account of transport charges received by it from the parties. The transport subsidy for ₹11,91,47,871/- was received after due verification by Govt. of Assam as well as Central Government. The transport subsidy is calculated at the specified rate as mentioned in the transport subsidy scheme. Further the transport subsidy has nothing to do with the amount of transport charges incurred by the assessee in a particular year. The transport subsidy has been worked out on the basis of raw material consumed in the finished goods viz a viz sale of finished goods. The assessee further submitted that it has been claiming deduction on account of transport subsidy and transport charges in the earlier year. But the same has not been disallowed by the Revenue. The assessee in support of its claim has also relied on the order of this Tribunal in **ITA No. 667 and 668/Kol/2006** in the case of *SKJ Coke Industries Ltd.* Assessment Years 2003-04 & 2004-05 vide order dated 14.07.2006. Ld. CIT(A) after considering the submission of assessee has deleted the addition made by the AO by observing as under:-

“4.3 The submissions of the Appellant have been considered. It is seen that the issue is covered by the decision of ITAT in the SKJ Coke Industries Ltd. in A.Y 2003-04 and 2004-05 in ITA No.667 and 668/Kol/2006 dated 14.07.2006 and it has been mentioned in para-13 and the issue has been discussed and decided upon in para-13 of the above mentioned order. the operative part of the order is reproduced as under:-

‘Apart from this, the Hon'ble Supreme Court in its landmark decision of Sahney Steel & Press Works Ltd. (supra) has also held that the subsidies were production incentive and therefore were operational subsidies and not capital subsidies and were revenue in nature. We therefore, considering the above facts and circumstances and respectfully following the decision of the has in the case of Sahney Steel & Press Works Ltd. (supra) and Ponni Sugar (supra) do not find Assessment Year infirmity in the order of the Ld. CIT(A) in holding that transport subsidy received by the assessee was a part and parcel of business and manufacturing activity of the assessee and were rightly included in the P/L account by the assessee. We, therefore, do not see any reason to interfere with such order of Ld. CIT(A) on the issue of transport subsidy and accordingly reject the ground raised by the revenue in this regard.’

Therefore, respectfully following the order of the ITAT as above as the facts are identical in the Appellant's case, as well as that of CIT vs. Meghalaya Steel Ltd. & Pride Coke Pvt. Ltd. 356 ITR 235 of the Guwahati High Court as above, it is held that the Transport Charges were part of the turnover of the Appellant and therefore eligible for deduction u/s 80IC.

4.3.1 With regard to the second issue regarding the transport subsidy, it is seen that the AO has not taken the correct calculation of transport subsidy. It is seen that the Appellant had received transport charges of Rs.3,92,31,372/- against transport charges paid or outwards of Rs.3,92,31,372/-. The Appellant has also filed details of Transport Subsidy actually received by it of Rs.8,96,50,220/- in FY 2012-13 against the claimed amount of transport subsidy of Rs.11,91,47,871/- during the year. The claim of Appellant has been considered and approved by the Appropriate Authority i.e. the State Level Committee for Transport Subsidy, minutes of the meeting of which have been submitted in Appeal and the amount approved was 8,96,50,221/- and 2,94,97,650/- was outstanding. Accordingly the above claim of 11,91,47,871/- has been reflected by the Appellant in its accounts. Therefore, considering the same, the calculation made by the AO is not correct as the Subsidy was being received against the transport charges paid by the Appellant. Even otherwise, the jurisdictional ITAT clearly held that the Transport Subsidy was eligible for deduction u/s

80IC as above, and the same view is of the Gauwahati High Court in CIT vs. Meghalaya Steel Ltd. & Pride Coke (P) Ltd. supra, therefore, the entire Transport Subsidy is exempt u/s. 80IC, therefore, the net effect on the income of the Appellant would be nil. In view of the above, it is held that the disallowance made by the AO towards transport charges and the alleged excess of received of transport charges taken by the AO at Rs.6,91,08,066/- is held to be not justified and the same is deleted.”

The Revenue, being aggrieved by the relief given by the CIT(A), is in appeal before us.

10. Before us Ld. DR heavily relied on the order of Assessing Officer and left the issue to the discretion of the Bench.

11. We have heard Ld. DR and perused the material available on record. In the instant case, there are two issues involved as detailed under:-

- i) Transport charges received by assessee for ₹3,92,31.372/- from the customers which were treated as income from other sources of the assessee.
- ii) The amount of excessive transport subsidy for ₹6,91,08,066/- received by assessee was not eligible for deduction u/s. 80IC of the Act.

12. The assessee has credited its profit and loss account by a sum of ₹3,92,31,372/- on account of transport charges received from the parties. Such transport charges was treated by the AO as income from other source. However, on perusal of the order of Ld. CIT(A) it was observed that assessee has simultaneously claimed transport expense for ₹3,92,31,372/- by debiting its profit and loss account. As such, the amount shown by assessee from its customer's on account transport charges is representing the reimbursement of expense. Therefore, such transport charges received and incurred as expenses were having a direct nexus with the business of assessee. Therefore, in our considered view, there remains no question of treating the same as income from other source. Ld. DR before us has also not brought anything contrary to the finding of Ld. CIT(A).

13. As the amount of transport charges received by the assessee represents the reimbursement of actual expenditure incurred by it in the aforesaid facts and circumstances, therefore we conclude that the amount of transport charges received by the assessee cannot be treated as income from other sources. Moreover, the transport charges received by assessee are intrinsically linked with the business of assessee. Therefore, same will be considered for the purpose of deduction u/s. 80IC of the Act.

14. Now coming to the issue of excessive transport subsidy received by assessee for ₹6,91,08,066/-, we find that the subsidy was received from the Govt. of Assam and Central Government after due verification. Therefore, it cannot be said that the assessee has received excessive subsidy from the governments.

14.1 The Assessing Officer while working out the amount of transport subsidy has taken into consideration the expense incurred by assessee on transportation though there is no nexus between the transport subsidy and transport expense as per the transport subsidy scheme. It is worked out on the basis of raw material consumed during the year. Therefore, in our considered view, there is no question of excessive transport subsidy received by assessee in the aforesaid facts and circumstance.

14.2 Now coming to the deduction claimed by assessee in respect of transport subsidy, we find that the AO has not made any disallowance on account of transport subsidy received by assessee. But AO denied the transport subsidy which was received in excess from the eligible amount. Thus, we feel that issue of deduction u/s. 80IC of the Act with respect to transport subsidy is not arising from the order of AO. However, we further find that issue of transport subsidy has been settled by the judgment of Hon'ble Guwahati High Court in the case of *CIT vs. Meghalaya Steel Ltd. & Pride Coke (P) Ltd.* reported in 356 ITR 235 (Gua), wherein it was held as under:-

“there can be no escape from the conclusion that transport subsidy was aimed at reducing the cost of production of the industrial undertakings covered by transport subsidy scheme. Thus, there was a first degree nexus between the transport subsidy, on the one hand, and cost of production, on the other. When cost is reduced, it naturally helps in earning of profit and, at

times, higher profits. Such profits and gains ought to have been treated, and has rightly been treated, by the Tribunal, to be profits and gains derived from, or derived by, the industrial undertaking concerned. [Para 88]

Thus, there is an existence of direct nexus between transport subsidy, on the one hand, and the manufacturing/production activities of industrial undertaking, on the other. Unless shown otherwise, the industrial undertakings, which have been granted transport subsidy, are entitled to claim deduction in terms of the directions of the Tribunal. [Para 94]"

From the above, it is clear that transport subsidy received by assessee is part and parcel of the business eligible for deduction u/s 80IC of the Act. In this view of the matter, we do not find any reasons to interfere in the order of Ld. CIT(A). Hence, this ground of Revenue/s appeal is dismissed.

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

Order pronounced in the open court 31/10/2017

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

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

*Dkp, Sr.P.S

दिनांक:- 31/10/2017 कोलकाता ।

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

1. अपीलार्थी/Appellant-ITO Ward-1(2),P-7Chowringhee Sq., Aayakar Bhawan, 4th Fl. Kol-69
2. प्रत्यर्थी/Respondent-M/s Jagati Cokes Pvt. Ltd. 115, College Street, Kolkata-12
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.

/True Copy/

By order/आदेश से,

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