IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH : BANGALORE

BEFORE SHRI SUNIL KUMAR YADAV, JUDICIAL MEMBER AND
SHRI ARUN KUMAR GARODIA, ACCOUNTANT MEMBER

ITA No.1687/Bang/2016
Assessment Year :2011-12

M/s. Topaz Investments Pvt. Ltd., 204, 28th Cross, 7th Cross, Jayanagar, Bangalore – 560 082. **PAN: AAACT 6199C**	Vs.	The Joint Commissioner of Income Tax (OSD), Bangalore.
APPELLANT		RESPONDENT

Assessee by	:	Shri R.G. Nahar, CA
Revenue by	:	Smt. Padma Meenakshi, JCIT (DR)

Date of hearing	:	06.11.2017
Date of Pronouncement	:	.11.2017

O R D E R

Per Shri A.K. Garodia, Accountant Member

This is an assessee's appeal directed against the order of ld. CIT(A)-7, Bangalore dated 29.07.2016 for Assessment Year 2011-12.

2. The grounds raised by the assessee are as under.

"*1. On facts and circumstances prevailing in the case and as per provisions & scheme of the Law it be held that the interest received of Rs. 2,29,86,794/- as income from business instead of considering it as income from other sources. Just in proper relief be granted to the appellant.*

2. Without prejudice to ground no. 1 & on facts and circumstances prevailing in the case and as per provisions & scheme of the Law it be held that only the net interest (gross interest receipt less interest paid) as income from other sources.

3. Without prejudice to ground no. 1 & 2 on facts and circumstances prevailing in the case and as per provisions & scheme of the Law it be held that deduction u/s 80IA(4) be allowed at Rs. 2,31,61,748/- in place of Rs. 1,72,26,213/- under the guise of restricting the same to the income from business. The deduction u/s 80IA(4) should be allowed from the gross total income.

4. The appellant prays to be allowed to add, amend, modify, rectify, delete, raise any grounds of appeal at the time of hearing."

3. It was submitted by ld. AR of assessee that ground nos. 1 and 2 are not pressed and accordingly these two grounds are rejected as not pressed.

4. Regarding ground no. 3, he submitted that as per the assessment order, the AO has determined the business income at Rs. 1,72,26,213/- after reducing interest income from total business income as per Return of income of Rs. 4,02,13,007/- He submitted that as per the computation in the page no. 5 of the assessment order also, the gross total income (GTI) of the assessee is computed at Rs. 14,59,81,627/- but still the deduction claimed by the assessee u/s. 80IA(4) was restricted to the business income computed by the AO at Rs. 1,72,26,213/- in place of deduction claimed by the assessee u/s. 80IA(4) at Rs. 2,31,61,748/-. He submitted that as per the computation of income available on page no. 19 of the paper book, the GTI is more than the income eligible for deduction u/s. 80IA (4) and therefore, the quantum of deduction u/s 80IA (4) cannot be restricted to the business income assessed by the AO. In support of this contention, he placed reliance on the tribunal order rendered in the case of Jindal Aluminium Ltd. vs. ACIT as reported in 54 SOT 283 (Bangalore), copy available on pages 99 to 106 of paper book. He also placed reliance on a judgment of Hon'ble Bombay High Court rendered in the case of CIT Vs. Tridoss Laboratories Ltd. as reported in 328 ITR 448, copy available on pages 107 to 109 of paper book. The ld. DR of revenue supported the orders of authorities below.

5. We have considered the rival submissions. We find that the issue in dispute is regarding quantum of deduction allowable u/s. 80IA (4) of the I.T. Act. For the sake of ready reference, first we reproduce the provisions of sub section 4 of section 80IA. The same reads as under.

"*(4) The amount of deduction in the case of an industrial undertaking in an industrially backward State specified in the Eighth Schedule shall be hundred per cent of the profits and gains derived from such industrial undertaking for five assessment years beginning with the initial assessment year and thereafter twenty-five per cent (or thirty*

per cent where the assessee is a company) of the profits and gains derived from such industrial undertaking :"

6. From the provisions of sub section 4 of section 80IA as reproduced above, it is seen that the amount of deduction allowable is 100% of the profits and gains derived from undertaking for 5 years beginning with the initial assessment year and thereafter, 30% of the profits and gains derived from the eligible industrial undertaking is allowable as deduction. In the present case, the AO has held on page no. 4 of the assessment order that after exclusion of interest income, the remaining business income is from generation of electricity through windmill and in respect of this income, the assessee is eligible for deduction u/s. 80IA of the I.T. Act and therefore, no income is taxable under the head income from business in the present case. Hence, it is seen that to the extent of 100% of business income from the eligible business activity of assessee company towards generation of electricity from windmill has been allowed as deduction by the AO u/s. 80IA. As per the statement of total income available on page no. 19 of the paper book, the assessee has claimed deduction u/s. 80IA to the extent of Rs. 2,31,61,748/- and the computation of this amount is available in schedule VII as stated on page no. 19 but schedule VII is not available in the paper book. But still there is no dispute that the business income assessed by the AO is only Rs. 1,72,26,213/-. Under these facts, we find that as per the provisions of section 80IB(4) as reproduced above, the amount of deduction allowed by the AO is 100% of the profit and gains derived from eligible undertaking and in our considered opinion, as per the provisions of section 80IA (4) also, the eligible amount is only Rs. 1,72,26,213/- being business income assessed by the AO and it cannot be more than that. Now in the light of these facts, we examine the applicability of two judgments cited by ld. AR of assessee. The first judgment is tribunal order rendered in the case of Jindal Aluminium Ltd. Vs. ACIT (supra). It is noted by the tribunal on page no. 104 of paper book that it is mandatory to work out the eligible amount of deduction under various sections of Chapter VI-A individually and then such aggregate amount has to be restricted to the amount of gross total income as computed under section 80B (5), which means the income available after adjusting all the brought forward losses and unabsorbed depreciation etc. Hence it is seen that for quantifying the deduction allowable under chapter VI-A

of the I.T. Act, the relief allowable under relevant section has to be worked out first and if the total amount of deduction allowable under various sections of chapter VI A is less than the GTI than whole of the such eligible amount is to be allowed as deducted under chapter VI-A and if the total amount of eligible deduction under various sections is more than the GTI then deduction allowable under chapter VIA has to be restricted to the amount of GTI. Hence in the present case, before comparing the amount of deduction allowable to assessee u/s. 80IA (4) with the amount of GTI, we have to first see how much is the amount eligible for deduction u/s.80IB and thereafter we have to decide as to whether full such amount is allowable or it is to be subject to some upper cap if GTI is less than that. In the present case, the eligible amount of deduction is less than GTI and therefore, no upper cap less than eligible amount of deduction is required in the present case. But eligible amount of deduction cannot be more than 100% of profits and gains derived from eligible undertaking even if GTI is more. The amount of such profit and gains from eligible undertaking of the assessee company is only Rs. 1,72,26,213/- and therefore, the deduction allowable u/s. 80IA(4) cannot exceed this amount although the GTI is much more. Therefore it is seen that this tribunal order is not rendering any help to assessee in the present case.

7. The second judgment on which reliance has been placed by assessee is judgment of Hon'ble Bombay High Court rendered in the case of CIT Vs. Tridoss Laboratories Ltd. (supra). In this case, this was the argument on behalf of the revenue before the Hon'ble Bombay High Court that a major portion of the income of the assessee comprised of income from other sources and this income was not derived from the eligible business and therefore, the assessee was not entitled to a deduction under section 80-IA to the extent of the taxable income of Rs. 14.57 lakhs computed by the AO as gross total income although the profit of unit at Daman was computed at Rs. 98.43 lakhs which was found to be the eligible undertaking for the purpose of deduction u/s. 80IA(4) of the I.T. Act. Under these facts, it was held by Hon'ble Bombay High Court that the submissions made by the revenue cannot be accepted. In the result, the appeal of the revenue was dismissed. In para no. 6 of judgment of Hon'ble Bombay High Court, it was held by Hon'ble Bombay High Court that in that

case, the tribunal has noted that the gross total income of the assessee after setting off the losses from all other sources of income is Rs. 14,57,200/-, while the profit of the eligible unit was computed at Rs. 98.43 lakhs. The Tribunal in that case restricted the deduction to the extent of the gross total income, namely, Rs. 14,57,200/- and it was held by Hon'ble Bombay High Court that the decision of the Tribunal is in accordance with the provisions of the Act. Hence it is seen that in that case, the amount of deduction was restricted to the extent of gross total income because the income of the eligible unit was more than that. The ratio of this judgment is not this that if the income of eligible undertaking is less than GTI than also, deduction is allowable to the extent of GTI. The ratio of this judgment is this that to the extent of GTI, deduction is allowable if the eligible income is not less than GTI. In the present case, the AO has already allowed deduction to the extent of business income of eligible undertaking and therefore, in the facts of present case, this judgment of Hon'ble Bombay High Court is also not rendering any help to the assessee.

8. As per above discussion, we have seen that none of the judgments cited by the learned AR of the assessee is rendering any help to the assessee in the present case. We have also seen that the deduction allowed by the AO u/s. 80IA(4) is to the extent of 100% of business income of eligible undertaking of the assessee company and hence, we hold that there is no infirmity in the assessment order and in the order of CIT(A). We therefore, decline to interfere in the order of CIT(A).

9. In the result, the appeal filed by the assessee is dismissed.

Order pronounced in the open court on the date mentioned on the caption page.

Sd/-	Sd/-
(SUNIL KUMAR YADAV)	(ARUN KUMAR GARODIA)
Judicial Member	Accountant Member

Bangalore,
Dated, the 15th November, 2017.
/MS/

.Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.
6. Guard file

By order

Senior Private Secretary,
Income Tax Appellate Tribunal,
Bangalore.