

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD BENCH

**Before: Shri Rajpal Yadav, Judicial Member
And Shri Amarjit Singh, Accountant Member**

**ITA No. 1878/Ahd/2014
Assessment Year 2006-07**

The ACIT, Circle-4, Baroda (Appellant)	Vs	M/s. Zest Aromas Pvt. Ltd., 230, Akashganga, Near Vanijya Bhawan, Race Course Circle, Baroda-07 PAN: AAACZ0601M (Respondent)
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**Revenue by: Shri Mudit Nagpal, Sr. D.R.
Assessee by: Shri Tushar Hemani, A.R.**

Date of hearing : 20-11-2017
Date of pronouncement : 27-11-2017

आदेश/ORDER

PER : AMARJIT SINGH, ACCOUNTANT MEMBER:-

This Revenue appeal for A.Y. 2006-07, arises from order of the CIT(A)-III, Baroda dated 27-03-2014, in proceedings under section 143(3) r.w.s. 263 of the Income Tax Act, 1961; in short the Act.

2. The revenue has raised following ground of appeal:-

"1. On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in deleting the disallowance u/s 80IB of the Act by holding that the Assessing Officer had not found out any discrepancy in the claim of deduction made by the assessee u/s 80IB of the Act on the basis of form No. 10CCB during the remand proceedings without appreciating the fact that the Assessing- Officer in his remand report had merely stated the observation contained in the report and not admitted on merit, the issue of deduction u/s 80IB of the Act."

3. In this case, assessment u/s. 143(3) of the act was finalized vide order dated 22nd December, 2008 determining the total income at Rs. 1,75,94,778/-. The aforesaid order was subsequently set aside by the Id. CIT-2, Baroda vide his order u/s. 263 dated 25th March, 2011 on the reasoning that the assessee has not filed form no. 10CCB for claiming deduction u/s. 80IB of the act. In view of the above reason the CIT-2, Baroda vide order u/s. 263 held that the assessment order passed u/s. 143(3) by the assessing officer was erroneous and prejudicial to the interest of the revenue. The ITAT had upheld the order of the CIT passed u/s. 263 directing the assessing officer to make a fresh assessment and also issued following directions:-

"It is clear from the above that the audit report was to be filed by the assessee in case it is demanded by the AO during the assessment proceedings. In this case, there is no evidence to show that the AO demanded the audit report before deciding the issue of allowability of deduction u/s. 80IB of the Act. As per the requirements of section 80IA(7) read with section 80IB(13) and rule 18IB(13) and rule 18BBB, no deduction u/s 80IB will be admissible unless the audit report of the undertaking for the previous year relevant to the assessment year for which the deduction is claimed, have been audited by an Accountant and the report of such audit in prescribed form duly signed and verified by such Accountant is furnished. Since in this case, deduction u/s 80IB has been allowed by the AO admittedly without such report, we have no hesitation in holding that the learned CIT was justified in holding the order of the AO as erroneous in so far as it was prejudicial to the interests of Revenue. Therefore, invocation of provisions of section 263 of the Act by the learned CIT, cancelling the assessment order and directing the AO to make a fresh assessment is hereby upheld.

Before we depart, it is made clear that since the audit report has been filed by the assessee before the learned CIT during 263 CIT proceedings and has also been filed before us, we are of the view that the AO while framing the fresh assessment,

will examine the admissibility of the claim of deduction u/s 80IB taking into consideration the audit report filed before the Ld. CIT. This view of ours gets support from the decision of the Hon'ble Gujarat High Court in the case of Zenith Processor (219 IR 721), wherein the audit report filed during the course of 253 proceedings was held to be valid."

On the basis of remand report received from the assessing officer, the Id. CIT(A) has held that assessment order has not filed any discrepancy in the claim of deduction made by the assessee u/s. 80IB of the act, therefore, appeal of the assessee was allowed."

Subsequently, the assessing officer has made assessment u/s. 143(3) r.w.s. 263 of the act on 5th December, 2011 and disallowed the claim of deduction u/s. 80IB of the act.

4. Aggrieved against the order of the assessing officer, the assessee preferred appeal before the Id. CIT(A). The Id. CIT(A) has allowed the appeal of the assessee.

5. We have heard rival contentions and perused the material on record carefully. We have noticed that Co-ordinate Bench of the ITAT has directed that assessing officer to examine the admissibility of the claim of deduction u/s 80IB after taking into consideration the audit report filed before the Ld. CIT. Therefore, the Id. CIT(A) has asked the assessing officer to examine the issue of allowable deduction on merit after examination of the report on form no. 10CCB during the remand proceedings. The Ld. CIT(A) has allowed the appeal of the assessee by stating that the assessing officer has not reported any discrepancy in the claim of deduction made by the assessee u/s. 80IB of the act in the remand report. After considering the above facts and detailed findings of the Ld. CIT(A), we do not find

any reason to interfere in the decision of the Id. CIT(A), therefore, the appeal of the revenue is dismissed.

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

Order pronounced in the open court on 27-11-2017

Sd/-
(RAJPAL YADAV)
JUDICIAL MEMBER
Ahmedabad : Dated 27/11/2017

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

आदेश क०० तालम अ० षत / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपील अ० अधिकरण,
अहमदाबाद