

आयकर अपीलीय अधिकरण , 'ए' न्यायपीठ, चेन्नई

**IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, CHENNAI**

श्री एनगणेशन .एस.आर., न्यायिक सदस्य एवं श्री एस जयरामन, लेखा सदस्य केसमक्ष

**BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI S. JAYARAMAN, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No. 812/Mds/2017

निर्धारण वर्ष/Assessment Year : 2011-12

M/s. Blow Packaging (India) Private Ltd.,
(Formerly M/s. Blow Packaging (India)
Ltd)
No. 55D. SIDCO Industrial Estate,
Ambattur,
Chennai – 600 098.

Assistant Commissioner of Income
Tax,
Company Circle -1(2),
Chennai.

[PAN: AAACB 3145L]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थीकीओरसे/Appellant by

: None

प्रत्यर्थीकीओरसे/Respondent by

: Ms.PavunaSundari, JCIT

सुनवाईकीतारीख/Date of Hearing

: 31.05.2017

घोषणाकीतारीख/Date of Pronouncement

: 29.08.2017

आदेश/ O R D E R

PER S. JAYARAMAN, ACCOUNTANT MEMBER:

The assessee filed this appeal against the order of the Commissioner of Income Tax (Appeals)-5, Chennai in ITA No. 46/CIT(A)-5/2014-15 dated 17.01.2017.

2. The assessee is engaged in the business of blow moulded plastic articles, injection moulded plastic articles and had erected two wind mills. In the assessment made for assessment year 2011-12, the assessee claimed deduction u/s. 80IA at Rs.2,03,40,262/-, (Rs. 1,12,85,002/- + Rs.90,55,260/, respectively), being the first year of the claim. The Assessing Officer found that if the notional depreciation is allowed to be set off against the income derived from the wind mill units, there would be no eligible profits available in that unit to become eligible for deduction u/s 80IA (4) rws 80 IA(5f) and hence disallowed the assessee's claim of deduction. Aggrieved, the assessee filed an appeal before the CIT(A). Before the CIT(A), the assessee as it did before the AO, relied on the jurisdictional High Court's decision reported in Velayudhaswamy Spinning Mills (P) Ltd V ACIT 340 ITR 477 (Mad). The CIT(A) relying on the decision of the Hon'ble ITAT Bangalore "B" Bench in the case of Assistant Commissioner of Income-tax, Circle-12 (3) vs Subhash Kabini Power Corpn Ltd [2014] 51 taxmann.com S32 (Bangalore - Trib.), dismissed the appeal. Aggrieved against that order, the assessee filed this appeal, inter alia, with the following grounds of appeal:

1. *For that the order of the Commissioner of Income Tax (Appeals) is contrary to law, facts and circumstances of the case to the extent prejudicial to the interest of the appellant and at any rate is opposed to the principles of equity, natural justice and fair play.*
2. *For that the Commissioner of Income Tax (Appeals) failed to appreciate that the order of the Assessing Officer is without jurisdiction.*

3. *For that the Commissioner of Income Tax (Appeals) failed to appreciate that the appellant company is eligible for claiming deduction u/s. 80IA on the entire profits of the eligible undertaking*
4. *For that the Commissioner of Income Tax (Appeals) erred in concluding that the appellant company has to set off the brought forward unabsorbed losses relating to eligible business before claiming deduction u/s. 80IA without appreciating the fact that during the impugned year, the appellant company had no brought forward unabsorbed depreciation or business loss of the eligible undertaking.*
5. *For that the Commissioner of Income Tax (Appeals) failed to appreciate that the unabsorbed depreciation and business losses were already absorbed in the earlier years.*

3. On the date of hearing none appeared from the assessee's side. The DR supported the order of the CIT(A).

4. We heard the rival submissions and gone through the orders of the lower authorities. The details of depreciation loss as mentioned in the assessment order is extracted as under:

"Wind Mill 1:

Description	06-07	07-08	08-09	09-10	10-11	11-12
Income/Loss after depreciation	17401392	11960091	2153580	818296	5060402	11285002

Wind Mill 2:

Description	06-07	07-08	08-09	09-10	10-11	11-12
Income/Loss after depreciation			13260730	13973201	1865116	9055260

Wind mills 1 & 2 Details of total depreciation loss set off against other income of the assessee in the respective years:

Description	06-07	07-08	08-09	09-10	10-11	11-12
Total losses	17401392	11960091	15414310	13973201	-	-
B/f losses		11078237	763799	-	-	-
Total loss adjusted with other division's profit	6323155	22274529	16178109	13973201	-	-
Balance loss c/f	11078237	763799	-	-	-	-
Sec. 80IA claimed WEG-I	Nil	Nil	Nil	Nil	50,60,402	11285002
Sec. 80IA claimed WEG -2	Nil	Nil	Nil	Nil	18,65,116	9055260

5. The assessee has opted to claim the deduction u/s. 80IA from this assessment year i.e., assessment year 2011-12 only. From the above table, it is clear that there is no carry forward loss as on assessment year 2009-10 itself i.e., in the second table, 09-10, supra. For assessment year 2011-12, i.e., in the second table, 10-11, supra, the income from the Wind Mill 1 is Rs. 50,60,402 and the income from the Wind Mill 2 is Rs. 18,65,116. From the above table, it is clear that there are no brought forward losses in the assessment year 2010-11 also. For assessment 2011-12, the income from each of the Wind mills are at Rs. 1,12,85,002 and Rs. 90,50,260, respectively, on which the assessee has claimed deduction u/s. 80IA. From this, it is clear that the losses incurred by the assessee were already set off and adjusted against the profits of the earlier years. Hence, the assessee's claim is allowable as per the ratio laid down by the jurisdictional High Court in the case of Velayudhaswamy Spinning Mills (P) Ltd V ACIT 340 ITR 477 (Mad). The relevant portion of the order is extracted as under:

19. In the present case, there is no dispute that losses incurred by the assessee were already set off and adjusted against the profits of the earlier years. During the relevant assessment year, the assessee exercised the option under section 80IA(2). In Tax Case Nos. 209 of 2009 as well as 940 of 2009, the assessment year was 2005-06 and in Tax Case No. 918 of 2008 the assessment year was 2004-05. During the relevant period, there were no unabsorbed depreciation or loss of the eligible undertakings and the same were already absorbed in the earlier years. There is a positive profit during the year. The unreported judgment of this court cited supra considered the scope of sub-section

(6) of section 80-1, which is the corresponding provision of sub-section (5) of section 80-IA. Both are similarly worded and, therefore, we agree entirely with the Division Bench judgment of this court cited supra. In the case of CIT v. Mewar Oil and General Mills Ltd. (No. 1) [2004] 271 ITR 311 (Raj); [2004] 186 OR (Raj) 141, the Rajasthan High Court also considered the scope of section 80-1 and held as follows (page 314 of 271 ITR) :

"Having considered the rival contentions which follow on the line noticed above, we are of the opinion that on finding the fact that there was no carry forward losses of 1983-84, which could be set off against the income of the current assessment year 1984-85, the recomputation of income from the new industrial undertaking by setting off the carry forward of unabsorbed depreciation or depreciation allowance from previous year did not simply arise and on the finding of fact noticed by the Commissioner of Income-tax (Appeals), which has not been disturbed by the Tribunal and challenged before us, there was no error much less any error apparent on the face of the record which could be rectified. That question would have been germane only if there would have been carry forward of unabsorbed depreciation and unabsorbed development rebate or any other unabsorbed losses of the previous year arising out of the priority industry and whether it was required to be set off against the income of the current year. It is not at all required that losses or other deductions which have already been set off against the income of the previous year should be reopened again for computation of current income under section 80-1 for the purpose of computing admissible deductions thereunder.

In view thereof, we are of the opinion that the Tribunal has not erred in holding that there was no rectification possible under section 80-1 in the present case, albeit, for

reasons somewhat different from those which prevailed with the Tribunal. There being no carry forward of allowable deductions under the head depreciation or development rebate which needed to be absorbed against the income of the current year and, therefore, recomputation of income for the purpose of computing permissible deduction under section 80-1 for the new industrial undertaking was not required in the present case.

Accordingly, this appeal fails and is hereby dismissed with no order as to costs."

20. *From a reading of the above, the Rajasthan High Court held that it is not at all required that losses or other deductions which have already been set off against the income of the previous year should be reopened again for computation of current income under section 80-I for the purpose of computing admissible deduction thereunder. We also agree with the same. We see no reason to take a different view.*

21. *The standing counsel appearing for the revenue is unable to bring to our notice any relevant material or any compelling reason or any contra judgement of other courts to take a different view. He only relied heavily on the Memorandum explaining the provisions in the Finance (No. 2) Bill, 1980, [1980] 123 ITR (St.) 154 to support this case and the same reads as follows:*

"Clause 30(iii). In computing the quantum of 'tax holiday' profits in all cases, taxable income derived from the new industrial units, etc., will be determined as if such units were an independent unit owned by a tax payer who does not have any other source of income. In the result, the losses, depreciation and investment allowance of earlier years in respect of the new industrial undertaking, ship or approved hotel will be taken into account in determining the quantum of deduction admissible under the new section 80-I even though

they may have been set off against the profits of the taxpayer from other sources."

22. *We are not agreeing with the counsel for the revenue. We are, therefore, of the view that loss in the year earlier to the initial assessment year already absorbed against the profit of other business cannot be notionally brought forward and set off against the profits of the eligible business as no such mandate is provided in section 80IA(5).*

23. *Under these circumstances, we set aside the order of the Tribunal and answer all the questions in favour of the appellant/assessee and against the revenue in Tax Case Nos. 909 of 2009 respectively. Accordingly, tax cases are allowed."*

In view of the above, the assessee's appeal is allowed.

6. In the result, the assessee's appeal is allowed.

Order pronounced on Tuesday, the 29th day of August, 2017 at Chennai.

Sd/-

(एन.आर.एस. गणेशन)

(N.R.S. GANESAN)

न्यायिकसदस्य/Judicial Member

Sd/-

(एसजयरामन)

(S. JAYARAMAN)

लेखासदस्य/Accountant Member

चेन्नई/Chennai,

दिनांक/Dated: 29th August, 2017

JPV

आदेशकीप्रतिलिपिअग्रेषित/Copy to:

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|------------------------|--------------------------|-----------------------------|
| 1. अपीलार्थी/Appellant | 2. प्रत्यर्थी/Respondent | 3. आयकरआयुक्त) अपील(/CIT(A) |
| 4. आयकरआयुक्त/CIT | 5. विभागीयप्रतिनिधि/DR | 6. गार्डफाईल/GF |