

IN THE INCOME TAX APPELLATE TRIBUNAL "B", BENCH KOLKATA

BEFORE SHRI N.V. VASUDEVAN, JM & DR. A.L.SAINI, AM

आयकरअपीलसं./ITA No.146/Kol/2016

(निर्धारणवर्ष / Assessment Year: 2010-11

DCIT, Cir-4(2), Kolkata	Vs.	M/s. Sublime Agro Limited
4 th Floor, Room No.11B, Aayakar Bhawan, P-7, Chowringhee Square, Kolkata – 700 069.		7/1, Lord Sinha Road, Room No.201-203, Kolkata – 700 071.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. : AA ECS 1804 P		
(Assessee)	..	(Respondent)

Assessee by : Shri S. Dasgupta, Addl. CIT(DR)

Respondent by: Shri J. P. Khaitan, Sr. Adv. & Pratyush Jhunjunwala, Adv.

सुनवाईकीतारीख/ **Date of Hearing** : **05/12/2017**

घोषणाकीतारीख/**Date of Pronouncement** : **31/01/2018**

आदेश / O R D E R

Per Dr. Arjun Lal Saini, AM:

The captioned appeal filed by the Revenue, pertaining to assessment year 2010-11, is directed against the order passed by the Id. Commissioner of Income Tax (Appeals)–2, Kolkata, in Appeal No.102/CIT(A)-2/2014-15, dated 12.11.2015, which in turn arises out of an order passed by the Assessing Officer u/s.143(3) of the Income Tax Act 1961, (hereinafter referred to as the 'Act'), dated 19.03.2013.

2. The Revenue has raised the following grounds of appeal:

"1. Whether on the facts and in the circumstances of the case, the Id. CIT(A) erred in allowing the deduction u/s 80IE to the sum of Rs.2,14,72,852/-. When the Assessee Co. had not satisfied the condition laid down in the Act for such allowance.

2. Whether on the facts and in the circumstances of the case, the Id. CIT(A) erred in not verifying the assessee's mere submission and ignoring altogether the AO's conclusion that the assessee's claim was not eligible for such deduction.

3. The Revenue shall crave to add or alter any other ground on or before the date of hearing."

3.The brief facts apropos this issue are that the assessee is engaged in the business of growing and manufacturing tea and claimed deduction of Rs.214,72,852/- under section 80-IE of the Act, in his return of income, for the year in respect of profit from Doomni Tea Garden. During the assessment proceedings, the assessee company was asked to justify its claim for deduction, in terms of the provisions of the section 80-IE of the I.T. Act and to produce bills and evidence of installation of the machineries in satisfaction of the requirement of substantial expansion of the undertaking.Inresponse to that, the assessee company, filed details of additions to plant & machinery alongwith bills and vouchers of the plant and machinery through its letter dated 28/01/2013.

3.1 It was the contention of the assessee that in respect of the Doomni Tea Garden, its book value of plant & machinery as on 01.04.2009 was Rs.458,99,643/-(including revaluation amount of Rs.86,36,136/-). The assessee made an addition of Rs.1,39,29,790/- towards plant and machinery for the said Doomni Tea Garden, which is 37.38% of the book value before taking revaluation of the plant & machinery and 30.35% of the book value after considering the revaluation amount of the plant and machinery.

During the assessment proceedings, the assessee submitted that the book value of the plant & machinery (before taking depreciation in any year), as per Section 80-IE(7)(iii) refers to Actual cost of the plant & machinery on which depreciation is eligible as per the provisions of the Income Tax Act, 1961. Accordingly, the increase in the investment in plant & machinery of the eligible undertaking of Doomni Tea Estate during the financial year 2009-10 was 37.38% of the Actual cost of the plant and machinery of the undertaking as on the first day of the previous year in which the substantial expansion was undertaken.

Even if assessee includes, the revaluation reserve to be the book value(though not admitted), the increase in the investment in plant and machinery of the eligible undertaking, Doomni Tea Estate, during the F.Y 2009-10 was 30.35% of the Gross Value of theplant and machinery of the undertaking, as on the first day of the previous year in which the substantial expansion was undertaken. Based on the above submission the assessee claimed that he was eligible for deduction u/s

80-IE of the Act, for the profits of the eligible unit, Doomni tea Estate, Assam from the Gross Total Income.

3.2.The Assessing officer examined the contention of the assessee, based on the relevant provisions of Section 80-IE of the Act and the documentary evidence as adduced by the assessee. The Assessing Officer cited the provisions of section 80-IE of the Act, which reads as under:

“Section 80-IE Special provisions in respect of certain undertaking in North-Eastern States.

(1) Where the gross total income of an assessee includes any profits and gains derived by an undertaking, to which this section applies, from any business referred to in sub-section (2), there shall be allowed, in computing the total income of the assessee, a deduction of an amount equal to hundred percent of the profits and gains derived from such business for ten consecutive assessment years commencing with the initial assessment year.

(2) This section applies to any undertaking which has, during the period beginning on the 1st day of April, 2007 and ending before the 1st day of April, 2017, begun or begins, in any of the North-Eastern States,—

(i) to manufacture or produce any eligible article or thing;

(ii) to undertake substantial expansion to manufacture or produce any eligible article or thing;

(iii) to carry on any eligible business.

(3) This section applies to any undertaking which fulfils all the following conditions, namely:—

(i) it is not formed by splitting up, or the reconstruction, of a business already in existence :

***Provided** that this condition shall not apply in respect of an undertaking which is formed as a result of the re-establishment, reconstruction or revival by the assessee of the business of any such undertaking as referred to in section 33B, in the circumstances and within the period specified in the said section;*

(ii) it is not formed by the transfer to a new business of machinery or plant previously used for any purpose.

(7) For the purposes of this section,—

(i) "initial assessment year" means the assessment year relevant to the previous year in which the undertaking begins to manufacture or produce articles or things, or completes substantial expansion;

(ii) xxx

(iii) "substantial expansion" means increase in the investment in the plant and machinery by at least twenty-five per cent of the book value of plant and machinery (before taking depreciation in any year), as on the first day of the previous year in which the substantial expansion is undertaken;

(iv) xxx

After going through the section 80-IE of the Act, as mentioned above, the Assessing Officer observed that essentially the scheme of the Act is that sub-section (1) of Section 80-IE is subject to fulfilment of requirements of sub-section 2 of Section 80-IE r.w. sub-section 7 of Section 80-IE of the Act. The undertaking must, therefore, be begun or begin to

- a). manufacture or produce any eligible article or thing;
- b). undertake substantial expansion to manufacture or produce any eligible article or thing;
- c). carry on any eligible business within the period mentioned therein and the addition to plant & machinery must be to the extent specified in Section 80-IE(7Xiii).

3.3 On scrutiny of bills and evidence produced by the assessee in connection with the addition to plant & machinery, it was observed by the AO that the following machineries were received by the assessee only towards the fag end of the year, some even on the last date of the financial year i.e. 31.03.2010.

Sl. No.	Date of receipt at the Garden	Nature of machinery	Amount in Rs.	Remarks
1.	Jan'2010 till March'2010	Withering trough -8'x100' nos.6400sft. Withering capacity	43,69,622.75	Construction/expansion was undertaken during Jan',2010 till March'2010 and Axial Flow Fans were received only on 31.03.2010 (item in sl. No. 2) As on 22.03.2010 civil work in respect of the withering trough was going on --- -Invoice of Bideshi Engineering Co.dt. 22.03.2010 contains details of work of factory shed for the withering trough.
2.	GRN no.299 dt.31.03.2010	Axial Flow Fans for withering troughs- 6 blade	3,87,600.00	Supplier Invoice No. TMY2K9-2K10/105 and 098 dt.25.2.2010

3.	GRN 291 dt. 29.03.2010	285KVA Volvo Penta DG Set	17,77,234.0 0	Installed by the supplier on 22.04.2010
4.	GRN 292/293 dt.29.03.201 0	10-5 pass heater with chain grate stroker	14,02,576.1 5	Supplier Invoice No. TMV2K9- 2K101097 and 098 dt.13.2.2010
5.	27.03.2010	Kaizen Nova (8.5")DIA Roller 42" Triplex CTC Machiner	9,93,198.50	
		Total	89,30,231.4 0	

The item listed in sl. No. 1 is used to dry tea leaves and 2 is an essential part of the withering trough as the latter would not be functional without installation of Axial flow fans. There is no evidence to show that fans were received in the garden on 31.03.2010 and were immediately installed and put to use.

Similarly other items listed in 3,4 & 5 were received towards the end of the year and there is no evidence to show that the same were installed or put to use.

Based on the above chart, the nature of machineries are such that it could not have been installed immediately on receipt nor put to use immediately, i.e. they could not have been engaged in the manufacture or production of any eligible article or thing and thus substantial expansion was not completed and the conditions laid down under section 80-IE(2) and section 80-IE(7) were not satisfied. Therefore, the assessee's inclusion of the mentioned items as part of its installed machineries for the year and claim of depreciation thereon is itself erroneous.

Consequently, the assessing officer observed that the actual installed machineries and addition to plant & machinery for the purpose of section 80-IE (1) was Rs. 49,99,599/- only [i.e. Rs. 1,39,29,790/- (-) Rs. 89,30,231/-] and not Rs. 1,39,29,790/-, as claimed by the assessee.

3.4 The assessing officer noted that as per Clause iii of Sub-section 7 of Section 80-IE "substantial expansion" means increase in the investment in the plant and machinery by at least twenty-five per cent of the book value of plant and machinery (before taking depreciation in any year), as on the first day of the previous year in which the substantial expansion is undertaken;

3.5 Thereafter, the assessing officer calculated the percentage additions to plant & machinery, which is given below:

Book Value of plant & machinery of Doomni Tea Estate - as on 01.04.2009 (considering revalued book value figure of Plant & machinery)	Rs.458,99,643
Net Addition to Plant & machinery of Doomni Tea Estate as on 31.03.2010	Rs.49,42,931
% age addition [as per Sec. 80-IE(7)(iii)]	10.76%

Therefore, Assessing officer concluded that since, the addition to plant & machinery was less than the statutory requirement of 25% of the book value of plant & machinery (before taking depreciation in any year), as on 01.04.2009, therefore additions cannot be said to be substantial expansion in terms of Section 80-IE(7)(iii) and hence the assessee fails to satisfy the requirement of section 80-IE(2)(ii) of the Act.

The Assessing Officer also explained that the contention of the assessee that book value after revaluation should not be taken for determination of satisfaction of conditions of section 80-IE(7)(ii) cannot be accepted, as the provisions does not differentiate between revalued book value or non-revalued book value. It simply refers to "book value" and in common parlance, "book value" refers to value as per book. The book value of an asset is its value on a company's balance sheet. In its books of account and the balance sheet, the assessee has shown Rs.4,58,99,643/- as the value of plant & machinery of Doomni Tea Estate and hence this value can only be considered for determination of substantial expansion.

The Assessing Officer held that the conditions mentioned in Section 80-IE(2) is not satisfied, therefore no deduction for Section 80-IE(1) can be granted to the assessee hence the claim of Rs.2,14,72,852/- was rejected by the AO.

4. Aggrieved by the order of the Assessing Officer, the assessee filed an appeal before the Id. CTI(A) who has allowed the claim of the assessee for deduction under section 80-IE of the I.T. Act. Before the Id CIT(A), the assessee filed confirmation/evidences [in form of Annexure 6 to 11] in support of claim that the new Plant & Machineries were indeed 'put to use'

in the relevant financial year. The Assessee stated that he could not get opportunity to submit those evidences before the AO during the assessment proceedings. Therefore, a copy of the submission along with Annexure 6 to 11 was sent to the present AO for examinations of assessee's claim and to submit a factual report. The AO submitted his remand report on 10/10/2014, which is reproduced below:

"The issues involved in this case are as follows:

1.(A). Disallowance of deduction u/s 80IE& (B). Disallowance of consequential depreciation on the corresponding assets. In this issue, the submission made at the remand stage vis-à-vis the observation of the AO in the assessment order is as follows:

Sl. No.	Date of receipt at the Garden	Nature of machinery	Amount in Rs.	Remarks
1.	Jan'2010 till March'2010	Withering trough - 8'x100' 8 nos.6400 sft. Withering capacity	43,69,622.75	Construction/expansion was undertaken during Jan',2010 till March'2010 and Axial Flow Fans were received only on 31.03.2010 (item in sl. No. 2) As on 22.03.2010 civil work in respect of the withering trough was going on. Invoice of Bideshi Engineering Co. dt. 22.03.2010 contains details of work of factory shed for the withering trough.
2.	GRN no.299 dt.31.03.2010	Axial Flow Fans for withering troughs-6 blade	3,87,600.00	Supplier Invoice No. TMY2K9-2K10/105 and 098 dt.25.2.2010
3.	GRN 291 dt. 29.03.2010	285KVA Volvo Penta DG Set	17,77,234.00	Installed by the supplier on 22.04.2010
4.	GRN 292/293 dt.29.03.2010	10-5 pass heater with chain grate stoker	14,02,576.15	Supplier Invoice No. TMI2K9-2K101097 and 098 dt.13.2.2010
5.	27.03.2010	Kaizen Nova (8.5")DIA Roller 42" Triplex CTC Machiner	9,93,198.50	
		Total	89,30,231.40	

From the above, it would appear that the machineries were obtained towards the end of March 2010 and there is no evidence to show that they were actually put to use. In course of hearing at the remand stage, it was

maintained that an asset 'put to use' is inclusive of an asset "ready to use". The fact remains that in this case, there was hardly any chance of putting the asset to use as they were commissioned at the fag end of the year.

4.1 The CIT(A), after going through the remand report, observed that the assessee company filed all required details and evidences for purchases and installation of new machineries in its Doomni Tea Estate, Assam. The AO has not disputed the purchases of new machineries, not even disputed installation of the said machineries in the tea garden. However, the AO doubted that those machineries might not have been put to use in the relevant financial year and he formed his doubt only for the reason that the machineries in question were purchased at the fag end of the financial year. Apart from doubts, the AO has not brought any material evidence on record that those machineries were not used in the relevant financial year. It is well settled law that additions cannot be made on doubts, surmises and conjectures; same has to be established bringing material facts on record with supporting evidences.

The CIT(A) noted that the assessee company has filed necessary evidences in support of its claim that the machineries in question were purchased in the months of February and March, 2010 and the construction work of Withering Trough and installation of DG set were done through third parties before 31st March, 2010. Thus, those machineries were ready in all respect for operation in that F.Y itself. In fact, the AO has not disputed the same in his remand report. Therefore, if the AO doubts that those machineries were not actually put to use within the F.Y, onus was on him to bring in material evidences on record to establish his doubts. The AO failed to do so even after getting opportunity in the remand proceedings. In view of such, additions made by the AO as per these two grounds were not maintainable. Therefore, CIT(A) directed the AO, to allow deduction u/s 80-IE of the Act as well as depreciation and additional depreciation claimed by the assessee company in the return of income.

5. Not being satisfied with the order of CIT(A), the Revenue is in appeal before us. The Id Counsel for the assessee has defended the order passed by the CIT(A) and submissions made before the CIT(A). On the other hand, the Ld. DR for the Revenue has primarily reiterated the stand taken by the Assessing Officer, which we have already noted in our earlier para and is not being repeated for the sake of brevity.

6. We have given a careful consideration to the rival submissions and perused the material available on record, we note that remand report of the assessing officer clearly states that machineries were obtained in the end of March,2010. The assessing officer also stated that there was hardly any chance of putting the assets to use, as they were commenced at the flag end of the Year. Therefore, the assessing officer has, himself in his remand report agreed that assets were commenced at the flag end of the year. Hence, it is abundantly clear from the remand report and order of the Id CIT(A) that commencement has happened in the March 2010, and that is sufficient evidence to claim deduction under section 80-IE of the Income Tax Act,1961. We are of the view that commissioning has not been disputed by the assessing officer. That being so, we decline to interfere with the order of Id CIT(A), his order on this issue is therefore upheld and the grounds of appeal of the Revenue are dismissed.

7. In the result, the appeal filed by the Revenue, is dismissed.

Order is pronounced in the open court on **31/01/2018**.

Sd/-

(N.V. VASUDEVAN)

न्यायिक सदस्य / JUDICIAL MEMBER

कोलकाता /Kolkata; दिनांक Dated 31/01/2018

[RS SPS]

Sd/-

(DR. A.L.SAINI)

लेखा सदस्य / ACCOUNTANT MEMBER

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Assessee –DCIT, Cir-4(2), Kolkata
2. प्रत्यर्थी/ The Respondent-M/s. Sublime Agro Limited
3. आयकरआयुक्त(अपील) / The CIT(A),
4. आयकरआयुक्त/ CIT
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, **कोलकाता**/ DR, ITAT, Kolkata
6. गार्डफाईल / Guard file.
सत्यापितप्रति

True Copy

By Order

Senior Private Secretary,
Head of Office/D.D.O,
I.T.A.T, Kolkata Benches,
Kolkata.