

**आयकर अपीलीय अधिकरण पुणे न्यायपीठ "ए" पुणे में**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**PUNE BENCH "A", PUNE**

सुश्री सुषमा चावला, न्यायिक सदस्य एवं श्री अनिल चतुर्वेदी, लेखा सदस्य के समक्ष  
**BEFORE MS. SUSHMA CHOWLA, JM AND SHRI ANIL CHATURVEDI, AM**

**आयकर अपील सं. / ITA No.135/PUN/2016**  
**निर्धारण वर्ष / Assessment Year : 2011-12**

The Asst. Commissioner of Income Tax,  
Circle-2, Kolhapur

.... अपीलार्थी/Appellant

Vs.

M/s. RDS Construction Co.,  
233/3, Malati Towers, Tarabai Park,  
Kolhapur

.... प्रत्यर्थी / Respondent

PAN: AABFR4457M

अपीलार्थी की ओर से / Appellant by

: Shri Ajay Modi

प्रत्यर्थी की ओर से / Respondent by

: S/Shri Nikhil Pathak and  
N.T. Jadhav

सुनवाई की तारीख / <b>Date of Hearing : 10.01.2018</b>	घोषणा की तारीख / <b>Date of Pronouncement: 09.04.2018</b>
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**आदेश / ORDER**

**PER SUSHMA CHOWLA, JM:**

The appeal filed by the Revenue is against the order of CIT(A), Pune-11, dated 18.11.2015 relating to assessment year 2011-12 against order passed under section 143(3) r.w.s. 147 of the Income Tax Act 1961 (in short the 'Act').

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

1. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in allowing deduction u/s. 80IA(4)(iv) of the I.T. Act, 1961 of Rs.43,56,397/- (Tax effect Rs.13,46,126/-) ignoring the fact that the assessee is not eligible for deduction u/s. 80IA(4)(iv).*
2. *The Ld. CIT(A) failed to appreciate that as per section 80IA(5) r.w.s. 80IA(4)(iv) the quantum of deduction be computed of eligible business as its only source of income and if brought forward unabsorbed depreciation are set off against current year's income, there will be no profit left so as to allow deduction u/s 80IA(4)(iv).*
3. *The appellant prays that the order of the Ld. CIT(A) be vacated and that of the Assessing Officer's order may be restored.*

3. The issue raised in the present appeal filed by the Revenue is against order of CIT(A) in allowing deduction under section 80IA(4)(iv) of the Act.

4. The grievance of the Revenue is that the quantum of deduction is to be computed of the eligible business as its only source of income after adjusting brought forward unabsorbed depreciation against current year's income.

5. Briefly, in the facts of the case, the assessee for the year under consideration had furnished return of income declaring total income of ₹ 9,48,96,605/- after claiming the deduction under section 80IA(4)(iv)(a) of the Act at ₹ 43,56,397/-. The assessee thereafter filed revised return of income declaring total income of ₹ 12,83,90,386/- after claiming deduction under Chapter VI i.e. under section 80IA of the Act at ₹ 60,41,778/-. Search operation in the group case was carried out on 23.09.2009. Search assessments were done for assessment years 2004-05 to 2010-11. The assessment for the year under consideration was reopened under section 148 of the Act after recording reasons for reopening the same. The assessee in response thereto filed return of income i.e. revised return of income. The first issue which was decided by the Assessing Officer was in respect of bogus purchases, for which no ground of appeal has

been raised before us. The second issue which was decided was on account of deduction claimed under section 80IA(4) of the Act. The Assessing Officer was of the view that the eligible business was to be considered as only source of income of assessee for the initial assessment year and for every subsequent years and unabsorbed depreciation on windmill had to be allowed against the profit of such business. However, the assessee had claimed unabsorbed depreciation on windmill for the earlier years against other business of assessee and hence, was showing profit from the windmill for subsequent assessment years. The Assessing Officer notes that similar claim was disallowed in earlier year, which was allowed by the CIT(A) but the Revenue had preferred an appeal before the Tribunal. Hence, to keep the issue alive, disallowance was made in the hands of assessee on account of deduction claimed under section 80IA(4) of the Act.

6. The CIT(A) vide para 6.6 onwards at page 21 of the appellate order considered the said issue. The CIT(A) noted that the assessee had installed windmills in assessment years 2006-07 and 2007-08. The depreciation / loss from windmill was set off against profit of construction activity for the first four years i.e. upto 2009-10. There were no unabsorbed depreciation or losses from assessment year 2010-11. When operation of windmill activity resulted in profit of ₹ 74,26,459/- in assessment year 2010-11, the assessee claimed the deduction under section 80IA(4)(iv)(a) of the Act for the time. The year under appeal was the second year of claim of said deduction. The CIT(A) considered the disallowance made by applying the provisions of section 80IA(5) of the Act and setting off of current year's income from windmill against notionally brought forward losses and depreciation from the said activity. The contention of

assessee before the CIT(A) was that the provisions of section 80IA(5) of the Act were applicable from initial assessment year i.e. the first year of claim of deduction. However, the Assessing Officer was of the view that initial assessment year means the year in which windmill was installed and provisions of section 80IA(5) of the Act were applicable. Accordingly, the Assessing Officer set off the notional depreciation against income from windmill activity and held that unabsorbed depreciation was much more than the income received from windmill activity and hence, the assessee was not entitled to claim the deduction. The CIT(A) however, noted that the issue in the case is that the assessee had claimed the deduction under section 80IA(4)(iv) of the Act for the first time in assessment year 2010-11. Hence the provisions of section 80IA(5) of the Act would be applicable only from assessment year 2010-11 onwards. Relying on series of decisions and also the order of CIT(A) for assessment year 2010-11, the claim of assessee was allowed and the order of Assessing Officer was reversed by the CIT(A).

7. The Revenue is in appeal against the order of CIT(A).

8. The learned Departmental Representative for the Revenue pointed out that the issue stands covered against the assessee by the decision of the Hon'ble Bombay High Court in CIT Vs. Hercules Hoists Ltd. in Income Tax Appeal No.707 of 2014, judgment dated 14.06.2017. Distinguishing feature which was stressed by the learned Departmental Representative for the Revenue was that it was not clear whether losses of earlier years have been absorbed and no losses were carried forward and the same needs verification at the end of

Assessing Officer. He placed reliance on the ratio laid down by Mumbai Bench of Tribunal in *Pidilite Industries Ltd. Vs. DCIT (2011) 12 taxmann.com 96 (Mum)*.

9. The learned Authorized Representative for the assessee pointed out that the issue raised in the present appeal stands covered by the order of Tribunal in assessee's own case in assessment year 2010-11, where similar issue was considered and allowed in favour of assessee in the appeal filed by the Revenue relating to assessment year 2010-11 in ITA No.383/PN/2013 with lead order in ITA No.377/PN/2013 relating to assessment year 2004-05, order dated 06.11.2015. The learned Authorized Representative for the assessee also relied on clarification of the term 'initial assessment year' given by the CBDT vide its Circular No.1/2016, dated 15.02.2016.

10. We have heard the rival contentions and perused the record. The issue which arises in the present appeal is the allowability of deduction under section 80IA(4)(iv)(a) r.w.s. 80IA(5) of the Act. The assessee had set up first windmill in assessment year 2006-07 and the second windmill in assessment year 2007-08. In the initial years, there were losses from windmill activity. The assessee was simultaneously carrying on business of civil construction, from which the assessee was making profits. The said losses were adjusted against the income arising from other business activity of the assessee. For the first time, the windmill activity had shown profit in assessment year 2010-11 and the assessee claimed deduction under section 80IA(4) of the Act. The said year i.e. assessment year 2010-11 was the initial assessment year for claim of deduction under section 80IA(4) of the Act. The CIT(A) at page 22 has given a finding that there were no brought forward losses in the hands of assessee and the same

were adjusted upto assessment year 2009-10. The Assessing Officer for assessment year 2010-11 had not allowed the claim of deduction on account of windmill activity. However, the CIT(A) and the Tribunal thereafter, allowed the claim of deduction.

11. The issue which is raised in the present appeal is the aforesaid claim of deduction under section 80IA(4)(iv)(a) of the Act in respect of windmill business. The Tribunal in assessee's own case (supra) in assessment year 2010-11 had already allowed the claim of assessee. The case of Revenue is that the losses of earlier years if have not been absorbed, then the same have to be adjusted against the undertaking before allowing deduction under section 80IA(4)(iv)(a) of the Act. The CIT(A) in the present case has given a finding that there were no brought forward losses in the hands of assessee, which in any case were adjusted upto assessment year 2009-10. The said findings of CIT(A) have not been controverted by learned Departmental Representative for the Revenue except to stress that the same needs verification. We find no merit in the plea of learned Departmental Representative for the Revenue in this regard, especially where in assessment year 2010-11 which was the preceding year to the instant assessment year, the claim of deduction has been allowed in the hands of assessee. It may also be pointed out herein itself that the assessee was running civil construction activity from which it was showing profits from year to year and the losses arising from windmill in the earlier years have already been set off against the said income and the balance income had been assessed in the hands of assessee. It is not case of Revenue that after adjustment of losses in the respective years the assessee had shown any losses. There is no merit in the order of Assessing Officer in holding that deemed losses have to be adjusted

against profits of undertaking. In view thereof, we hold that the assessee was entitled to the claim of deduction under section 80IA(4)(iv)(a) of the Act. The grounds of appeal raised by the Revenue are thus, dismissed.

12. In the result, appeal of Revenue is dismissed.

Order pronounced on this 9<sup>th</sup> day of April, 2018.

Sd/-  
(ANIL CHATURVEDI)

लेखा सदस्य / ACCOUNTANT MEMBER

पुणे / Pune; दिनांक Dated : 9<sup>th</sup> April, 2018.

GCVSR

Sd/-  
(SUSHMA CHOWLA)

न्यायिक सदस्य / JUDICIAL MEMBER

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order is forwarded to :**

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. आयकर आयुक्त(अपील) / The CIT(A), Pune-11;
4. The CIT(Central), Pune;
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "ए" / DR 'A', ITAT, Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

वरिष्ठ निजी सचिव / Sr. Private Secretary  
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune