

IN THE INCOME TAX APPELLATE TRIBUNAL  
“E” Bench, Mumbai  
Before Shri B.R. Baskaran (AM)& Shri Pawan Singh (JM)

I.T.A. No. 655/Mum/2016 (Assessment Year 2011-12)

DCIT 8(2)(1) Aayakar Bhavan M.K. Road Room No. 624 Mumbai-400 020.	Vs.	M/s. Siyaram Silk Mills Limited B-5, Trade World Kamala City Senapati Bapat Marg Mumbai-400 013. PAN : AAACS6995D
(Appellant)		(Respondent)

Assessee by	Shri Rajesh P. Shah
Department by	Shri Suman Kumar
Date of Hearing	17.04.2018
Date of Pronouncement	17.04.2018

ORDER

Per B.R. Baskaran (AM) :-

The appeal filed by the Revenue is directed against the order dated 6.11.2015 passed by the learned CIT(A)-14, Mumbai and it relates to A.Y. 2011-12. The only issue urged in this appeal relates to deduction u/s. 80IB of the Act claimed by the assessee.

2. We have heard the parties and perused the record. The assessee is engaged in the business of manufacturing and trading in textiles. During the year under consideration, it claimed deduction u/s. 80IB of the Act to the extent of ₹ 450.71 lakhs. The Assessing Officer noticed that the assessee is having different units, some of which are eligible for deduction u/s 80IB and some are not eligible for such deduction. The Assessing Officer further noticed that the net profit rate declared in 80IB units is much higher than that declared in non-80IB units. The Assessing Officer also noticed that the assessee did not allocate any advertisement and sales promotion expenses as well as brokerage expenses towards 80IB units. Accordingly, the Assessing Officer took the view that the profit from 80IB units should be estimated by

adopting average net profit rate of the company. Accordingly, he worked out deduction allowable u/s. 80IB of the Act, which resulted in reduction of the claim.

3. The learned CIT(A) noticed that the Assessing Officer had made identical adjustment in A.Y. 2007-08 to 2010-11. He further noticed that the said adjustment made by the Assessing Officer has been reversed by the learned CIT(A) in those years and the same has also been upheld by the Tribunal. Accordingly, by following the order passed by him in earlier years, the learned CIT(A) deleted the adjustment made by the Assessing Officer and restored the amount claimed by the assessee. Aggrieved, the Revenue has filed this appeal before us.

4. We have heard the parties and perused the record. Learned DR submitted that the Assessing Officer has pointed that the assessee has not allocated advertisement and sales promotion expenses towards 80IB units and also pointed out that net profit rate declared by the assessee in 80IB units are in far excess than that declared in non-80IB units. Accordingly, he submitted that the adjustment made by the Assessing Officer to 80IB claim made by the assessee was justified.

5. The Learned AR, on the contrary, submitted that the assessee has been manufacturing grey clothes in 80IB units and same is sold in the open market without brand name. Hence grey cloth does not require any publicity or sales promotion and hence no portion of advertisement expenses was allocated to 80-IB units. He submitted that the very same contention of the Ld D.R was considered by the Tribunal in its order dated 14.10.2015 passed in ITA No. 1189 & 2263/Mum/2012 relating to A.Ys. 2007-08 & 2008-09 and the Tribunal, vide paragraph 18.1 of its order, has held that there is no necessity to attribute any advertisement and sales promotion expenses towards 80IB units as the grey clothes were sold in open market without brand name.

6. With regard to the contention of the Revenue that net profit rate was higher in respect of 80IB units, the Learned AR submitted that the gross profit rate declared by the assessee in all the units are comparable and the difference in net profit rate has arisen on account of depreciation claim. Inviting our attention to page No. 8 of the assessment order, he submitted that the Assessing Officer has deducted depreciation amount from gross profit and accordingly calculated the net profit rate. Since there was variation in the quantum of depreciation claimed in each of the units, there was corresponding variation in net profit rate also. He further submitted that the Tribunal has considered the rate of profit declared by various units of the assessee in its order rendered for A.Y. 2007-08 and 2008-09 (referred supra) and has held that the assessee has declared higher profit in the case of non 80IB units. Inviting our attention to page No. 5 of the order of the learned CIT(A), learned AR submitted that the gross profit rate declared by the assessee in respect of eligible unit during the year under consideration was very much comparable to non-80IB units.

7. We heard the rival contentions and perused the record. We noticed that an identical issue has been considered by the Coordinate Bench of the Tribunal in A.Y.2007-08 & 2008-09 and the same has been decided in favour of the assessee. Identical issue was also considered in assessee's own case for A.Y. 2009-10 & 2010-11 in ITA No. 6713/Mum/2012 and 5443/Mum/2013 and it has been decided in favour of the assessee in those years also. Though, the learned DR reiterated some of the discrepancies pointed out by the Assessing Officer, we noticed that the Coordinate Benches of the Tribunal have already addressed those issues in the orders passed for earlier years. We further noticed that there is no much difference between the gross profit rate for 80IB units and non-80IB units. The difference in net profit rate, which was pointed out by the AO, has arisen on account of depreciation amount claimed by the assessee in respect of various units. Since depreciation is non-cash expenditure, we are of the view that the assessee was justified in comparing gross profit rate between different units. Accordingly, by following the orders

passed by the Coordinate Benches in earlier years, we uphold the order passed by the learned CIT(A) on this issue.

8. In the result, appeal filed by the Revenue is dismissed.  
Order has been pronounced in the Court on 17.04.2018.

Sd/-  
(PAWAN SINGH)  
JUDICIAL MEMBER

Sd/-  
(B.R.BASKARAN)  
ACCOUNTANT MEMBER

Mumbai; Dated : 17/04/2018

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

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BY ORDER,

Senior Private Secretary  
ITAT, Mumbai