



IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" BENCH, MUMBAI
BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER

ITA no.1454/Mum/2018
(Assessment Year :2008-09)

Pioneer Food And Agro Industries
Krishna Kunj, 4A/3B, 1st Floor
Banke Bihari Society
8th Road, Pali Hill
Khar West, Mumbai 400 052
PAN – AAJFP0506D

..... Appellant

v/s

Income Tax Officer
Ward-18(3)(2), Mumbai

..... Respondent

Assessee by : Ms. Mrugakshi K. Joshi
Revenue by : Ms. N. Hemalatha

Date of Hearing – 23.05.2018

Date of Order – 23.05.2018

ORDER

PERSAKTIJIT DEY, J.M.

Aforesaid appeal by the assessee is against order dated 26th December 2017, passed by the learned Commissioner (Appeals)-33, Mumbai, for the assessment year 2008-09.

2. The only issue in dispute in the present appeal relates to disallowance of deduction claimed under section 80IB of the Income Tax Act, 1961 (for short "*the Act*") amounting to ₹ 16,86,621,

representing the profit received from duty drawback, VKUY license and exchange difference.

3. The Assessing Officer relying upon the decision of the Hon'ble Supreme Court in case of Liberty India Ltd. v/s CIT, [2009] 183 Taxman 349 (SC) held that, since, such income / profit do not form part of profit derived from eligible industrial undertaking, claim of deduction under section 80IB of the Act in respect of such income cannot be allowed.

4. The learned Commissioner (Appeals) also sustained such disallowance.

5. The learned Authorised Representative fairly submitted before us that the Hon'ble Supreme Court in case of M/s. Liberty India Ltd. (supra) has decided the issue against the assessee and following the said decision the Tribunal in assessee's own case for assessment year 2009-10 and 2010-11 has decided the issue against the assessee. A copy of the order passed by the Co-ordinate Bench in ITA no.6088 and 6089/Mum./2013, dated 20th June 2016, was placed before the Bench.

6. The learned Departmental Representative agreed with the aforesaid submissions of the assessee.

7. We have heard the parties and perused the materials on record. Keeping in view the aforesaid submissions made before us as well as the ratio laid down in the decision of the Hon'ble Supreme Court in case of Liberty India Ltd. (supra) and the decision of the Co-ordinate Bench in assessee's own case cited supra, we uphold the order of the learned Commissioner (Appeals) by dismissing the ground raised.

8. In the result, assessee's appeal is dismissed.

Order pronounced in the open Court on 23.05.2018

Sd/-
MANOJ KUMAR AGGARWAL
ACCOUNTANT MEMBER

Sd/-
SAKTIJIT DEY
JUDICIAL MEMBER

MUMBAI, DATED: 23.05.2018

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The CIT(A);
- (4) The CIT, Mumbai City concerned;
- (5) The DR, ITAT, Mumbai;
- (6) Guard file.

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

(Sr. Private Secretary)
ITAT, Mumbai