

आयकर अपीलीय अधिकरण ,इन्दौर न्यायपीठ ,इन्दौर
IN THE INCOME TAX APPELLATE TRIBUNAL,
INDORE BENCH, INDORE

श्री कुल भारत, न्यायिक सदस्य

तथा

श्री मनीष बोरड, लेखा सदस्य के समक्ष

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
AND
SHRI MANISH BORAD, ACCOUNTANT MEMBER

आ.अ.सं./I.T.A. Nos. 243, 244/Ind/2014 and 133 /Ind/2016		
निर्धारणवर्ष/ Assessment Years: 2008-09 to 2010-11		
M/s.Nathuram Shrinarayan Agarwal, Itarsi	vs.	ACIT, 1(1), Bhopal
अपीलार्थी /Appellant		प्रत्यर्थी /Respondent
स्था.ले.सं./PAN: AACFN6525F		

अपीलार्थी की ओर से/Appellant by	:	Shri Anil Kumar Khabya, C. A.
प्रत्यर्थी की ओर से/Respondent by	:	Shri Lal Chand, Sr. DR

सुनवाई की तारीख/Date of hearing	:	25.06.2018.
उद्घोषणा की तारीख/Date of pronouncement	:	27.06.2018

आदेश / O R D E R

PER KUL BHARAT, J.M. :

Appeals filed by the assessee are directed against the order of CIT(A)-I, Bhopal dated 20.02.2014, for assessment years 2008-09 and 2009-10 and CIT(A)-31, New Delhi, Camp Bhopal, dated 26.11.2015 for assessment year 2010-11.

2. There was delay of seven days in filing the appeal in I.T.A.No. 133/Ind/2016 relating to assessment year 2010-11.The Ld. Counsel for the assessee submitted an application for condonation of delay along with affidavit sworn by partner Shri Anil Kumar Agrawal.

3. We have perused the application of the Ld. Counsel for the assessee as well as affidavit. We observe that the delay is due to reasonable cause. We condone the delay of seven days and take up the appeal for decision.

4. The only issue in all these appeals related to deduction u/s 80IB(10)/80IB(11A).

5. Briefly stated, the facts of the case for the assessment year 2008-09 are that the assessee had two units i.e. M/s. Ashok Dall & Oil Mills, Itarsi, which was engaged in the business of trading and another unit under the name and style of M/s. Shrinathji Ware Housing Corporation engaged in the business of warehousing. The assessee had claimed deduction of Rs. 11,01,597/- u/s 80IB(11A) of the Act. The AO disallowed the claim observing that the assessee was not engaged in the integrated business of handling, storage and transportation of food grains and rather doing warehousing job only. The AO observed that no expenses were required for storage such as pesticides and on petrol, diesel etc. for transportation etc. The AO disallowed the claim of deduction u/s 80IB(11A) of the Act on the ground that the assessee was not doing integrated business of

handling, storage and transportation of foodgrains. Similar were the facts for the assessment year 2009-10 and 2010-11. At the outset, the Ld. Counsel for the assessee submitted that the issue of claim of deduction u/s 80IB(11A) of the Income-tax Act, 1961, has been restored to the AO by this Tribunal in assessee's own case in I.T.A.No. 129/Ind/2007 for the assessment year 2003-04. The I.T.A.T. Indore Bench on page 19 in para 6 held as under :-

"6. The next ground raised pertains to deleting the disallowance of Rs. 22,94,837/- and Rs. 43,48,437/- respectively made on account of deduction u/s 80IB of the Act. The crux of arguments on behalf of the Revenue is that full facts have not been recorded by the AO as it has been claimed that initially there was Dall Mill, and the storage house was constructed next year. However, the Ld. Counsel for the assessee defended the impugned order. Keeping in view the

totality of facts, we are in agreement with the stand of the revenue that desired inquiry was not made by the AO, consequently, the AO is directed to verify the claim of the assessee on three aspects like handling, storage and transportation of food grains and also whether it was integrated business, therefore, this ground of the Revenue is allowed for statistical purposes and remanded back to the file of the AO for examination in the light of above observations. Needless to mention here that due opportunity be provided to the assessee to substantiate its claim. The assessee is also at liberty to furnish evidence, if any, before the AO. This ground of the revenue is, therefore, allowed for statistical purposes only. The revenue has also raised the ground for inter-unit transaction (I.T.A.No. 486/Ind/07), since the claim of deduction u/s 80IB has been remanded back to the file of the Id. AO, this ground is also remanded back to him for deciding the same afresh in accordance with law after providing adequate opportunity of being heard to the assessee."

12. The Ld. Departmental Representative did not controvert this submission of the assessee.

13. We have considered the facts, rival submissions and perused the material available on record. We have also perused the order of the I.T.A.T., Indore Bench passed in I.T.A.No. 129/Ind/2007 etc. dated 29th April,2011. We are, therefore, taking a consistent view as was taken by the I.T.A.T., Indore Bench, in I.T.A.No. 129/Ind/2007 for assessment year 2003-04. We, therefore, remand the matter back to the file of AO for all the assessment years. Accordingly, the AO shall decide afresh the issue of allowance of deduction u/s 80IB(11A) of the Income-tax Act, 1961, in accordance with law.

14. The Ld. Departmental Representative has no objection if the matter is restored.

M/s.Nathuram Shrinarayan Agarwal, Itarsi.

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15. In the result, all the appeals of the assessee are allowed for statistical purposes.

The order pronounced in the open court on
27.06.2018.

Sd/-

(मनीष बोरड)

लेखा सदस्य

(MANISH BORAD)

ACCOUNTANT MEMBER

Sd/-

(कुल भारत)

न्यायिक सदस्य

(KUL BHARAT)

JUDICIAL MEMBER

Indore; दिनांक Dated : 27/06/2018

CPU*/SPS

Copy to: Assessee/AO/Pr. CIT/ CIT (A)/ITAT (DR)/Guard file.

By order

Private Secretary/DDO, Indore