

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES : C : NEW DELHI

BEFORE SHRI R.S. SYAL, VICE PRESIDENT
AND
SHRI JOGINDER SINGH, JUDICIAL MEMBER

ITA No.6830/Del/2014
Assessment Year : 2010-11

Uttaranchal Pulp & Paper Mills (P) Ltd., Vs. JCIT,
C/o RRA Taxindia, Range-I,
D-28, South Extension, Part-I, Muzaffarnagar.
New Delhi.

PAN: AAACU8255E

(Appellant)

(Respondent)

Assessee By : Shri Rakesh Gupta,
Shri Somil Agarwal &
ShriLakshy Goyal, Advocates
Department By : Shri Arun Kumar Yadav, Sr. DR

Date of Hearing : 01.08.2018

Date of Pronouncement : 01.08.2018

ORDER

PER R.S. SYAL, VP:

This appeal filed by the assessee arises out of the order passed by the
CIT (A) on 21.10.2014 in relation to the assessment year 2010-11.

2. The assessee is aggrieved, *inter alia*, by non-granting of deduction u/s 80IC of the Income-tax Act, 1961 (hereinafter also called 'the Act') on the enhancement of income due to certain additions/disallowances made in the assessment order.

3. Briefly stated, the facts of the case are that the assessee filed return declaring total income at Nil. It was so determined by taking 'Business income' at Rs.63,87,332/- and, thereafter, claiming deduction u/s 80IC of the Act for an equal amount. The Assessing Officer computed total income by making disallowance of Rs.29,11,964/- u/s 40(a)(ia) of the Act on account of non-deduction of tax at source from the payments made by the assessee u/s 194J of the Act; and Rs.20,97,044/- on account of 20% of purchase of paddy husk at Rs.1.04 crore for want of full supporting evidence. The assessee itself offered voluntary disallowance of Rs.3,93,236/- towards section 43B and Rs.2,10,395/- on account VAT payable. The Assessing Officer, while finalizing the assessment made the above additions, but, allowed deduction u/s 80IC of the Act for a sum of Rs.57,83,701/-. The Id. CIT(A) upheld the assessment order on this issue.

The assessee is aggrieved by the reduction in the amount of deduction u/s 80IC of the Act.

4. We have heard both the sides and perused the relevant material on record. It is evident from the nature of additions made by the Assessing Officer, which led to the reduction in the amount of deduction u/s 80IC, that the same are on account of business transactions. First disallowance of Rs.29.11 lac is u/s 40(a)(ia) of the Act on account of the failure of the assessee to deduct tax at source on business expenses incurred. The second disallowance is at 20% of the purchases made by the assessee for want of availability of complete vouchers and there are other two disallowances u/s 43B of the Act. To sum up, these additions made by the Assessing Officer relate to the business activity of the eligible unit for which the assessee is entitled to deduction u/s 80IC of the Act. The Assessing Officer has also not disputed the otherwise availability of deduction to the assessee.

5. It is relevant to take note of the CBDT Circular No.37/2016 dated 02.11.2016 issued in the context of deductions under Chapter VI-A on enhanced profits, which reads as under :-

CHAPTER VI-A DEDUCTION ON ENHANCED PROFITS- REG.

Chapter VI-A of the Income-tax Act, 1961 ("the Act"), provides for deductions in respect of certain incomes. In computing the profits and gains of a business activity, the Assessing Officer may make certain disallowances, such as disallowances pertaining to sections 32, 40(a)(ia), 40A(3), 43B etc., of the Act. At times disallowance out of specific expenditure claimed may also be made. The effect of such disallowances is an increase in the profits. Doubts have been raised as to whether such higher profits would also result in claim for a higher profit-linked deduction under Chapter VI-A.

2. The issue of the claim of higher deduction on the enhanced profits has been a contentious one. However, the courts have generally held that if the expenditure disallowed is related to the business activity against which the Chapter VI-A deduction has been claimed, the deduction needs to be allowed on the enhanced profits. Some illustrative cases upholding this view are as follows:

(i) If an expenditure incurred by assessee for the purpose of developing a housing project was not allowable on account of non-deduction of TDS under law, such disallowance would ultimately increase assessee's profits from business of developing housing project. The ultimate profits of assessee after adjusting disallowance under section 40 (a)(ia) of the Act would qualify for deduction under section 80-IB of the Act. This view was taken by the courts in the following cases:

- Income-tax Officer - Ward 5(1) vs. Keval Construction, Tax Appeal No. 443 of 2012, December 10, 2012, Gujarat High Court, NJRS-2012-LL-1210-45.
- Commissioner of Income-tax-IV, Nagpur vs. Sunil Vishwambhamath Tiwari, IT Appeal No.2 of 2011, September 11, 2015, Bombay High Court, NJRS-2015-LL-0911-22.

(ii) If deduction under section 40A(3) of the Act is not allowed, the same would have to be added to the profits of the undertaking on which the assessee would be entitled for deduction under section 80-IB of the Act. This view was taken by the court in the following case:

- Principal CIT, Kanpur vs. Surya Merchants Ltd., I.T. Appeal No. 248 of 2015, May 03, 2016, Allahabad High Court, NJRS-2016-LL-0503-77.

The above views have attained finality as these judgments of the High Courts of Bombay, Gujarat and Allahabad have been accepted by the Department.

3. In view of the above, *the Board has accepted the settled position that the disallowances made under sections 32, 40(a)(ia), 40A(3), 43B, etc. of the Act*

and other specific disallowances, related to the business activity against which the Chapter VI-A deduction has been claimed, result in enhancement of the profits of the eligible business, and that deduction under Chapter VI-A is admissible on the profits so enhanced by the disallowance.

4. Accordingly, henceforth, appeals may not be filed on this ground by officers of the Department and *appeals already filed in Courts/ Tribunals may be withdrawn/ not pressed upon.* The above may be brought to the notice of all concerned.'

6. It is apparent from a bare perusal of the Circular that the disallowances made under sections 32, 40(a)(ia), 43B and others related to 'business activity' should be considered while computing deduction under Chapter VIA of the Act. In other words, if there is an enhancement of income because of such disallowances, the deductions under Chapter VIA should be granted on the enhanced income. Further, it has been clearly spelt out in para 4 of the Circular that not only the fresh appeals be not filed on such issue, but the appeals already filed in Courts/Tribunals should be withdrawn or not pressed. To put it simply, the Department has accepted the position that enhancement of income due to the above additions/disallowances should be coupled with the proportionately increased amount of deductions under Chapter VI-A of the Act. Since all the disallowances/additions made in the assessment order resulting in the

enhancement of income fall within the nature of disallowances mentioned in the Circular, we hold that the assessee should be allowed deduction u/s 80IC at the enhanced amount of income resulting from such disallowances etc. Similar view has been taken by the Delhi Bench of the Tribunal in *Sukam Power Systems Ltd. vs. ACIT in ITA No.3564/Del/2010* vide order dated 16.04.2018.

7. Ground No.5 concerning confirmation of disallowance of Rs.23 lac in the hands of Shri Ashok Kumar Tyagi, being, alleged deemed dividend was not pressed by the ld. AR. The same, therefore, stands dismissed.

8. In the result, the appeal is partly allowed.

The order pronounced in the open court on 01.08.2018.

Sd/-

[JOGINDER SINGH]
JUDICIAL MEMBER

Sd/-

[R.S. SYAL]
VICE PRESIDENT

Dated,01st August, 2018.

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Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT (A)
5. DR, ITAT

AR, ITAT, NEW DELHI.