

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

श्री डी. करुणाकरा राव, लेखा सदस्य, एवं श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष
BEFORE SHRI D. KARUNAKARA RAO, AM AND SHRI VIKAS AWASTHY, JM

आयकर अपील सं. / ITA Nos. 266 & 267/PUN/2015
निर्धारण वर्ष / Assessment Years : 2010-11 & 2011-12

Hindumal Balmukund
Investment Co. Pvt. Ltd.,
893/6, Lohia Jain House,
Bhandarkar Road,
Pune - 411 004
PAN : AAACH4226Q

.....अपीलार्थी / Appellant

बनाम / V/s.

DCIT, Circle-11,
Pune

.....प्रत्यर्थी / Respondent

Assessee by : Shri V.L. Jain
Revenue by : Shri Sanjeev Ghei

सुनवाई की तारीख / Date of Hearing : 21.08.2018
घोषणा की तारीख / Date of Pronouncement : 24.08.2018

आदेश / ORDER

PER D. KARUNAKARA RAO, AM :

There are two appeals filed by the assessee involving assessment years 2010-11 and 2011-12. They are filed against the separate orders of CIT(A)-1, Pune commonly dated 27-02-2015.

2. Grounds raised by the Assessee read as under :

"1. The Ld.CIT(A) erred in law and facts in not granting a proper opportunity of being heard.

2. The Ld.CIT(A) erred in law and on facts in holding that the ground raised by the appellant regarding lack of opportunity of hearing before the AO is academic.

3. *The Ld.CIT(A) erred on facts and in law in confirming the addition of Rs.1,51,06,508/- on account of disallowance of claim u/s.80IA(4) of the Income Tax Act, 1961 for the reason that the conditions of the notification have not been complied with.*

4. *The appellant craves leave to add or amend, modify or delete any of the grounds of appeal, if deemed necessary.”*

From the above, it is evident that the core issue for adjudication relates to the allowability of claim of deduction u/s.80IA(4) of the Act in respect of the eligible profits earned by the assessee from IT park and related activities.

3. Briefly stated relevant facts of the case are that the assessee is company engaged in the business of Builders and Developers, operating a business centre and IT park and trading in shares. Assessee filed the return of income on 15-10-2010 declaring total income of Rs.1,51,06,479/- after claiming deduction of Rs.1,51,06,508/- u/s.80IA(4)(iii) of the Act. AO noticed that as per completion certificate issued by the PMC on 29-03-2006, only 7 units have been completed. The remaining units were been completed by 07-11-2007. There is no fresh approval obtained by the assessee for delay of more than one year. Assessee has given 7 units on rent to Iflex Solutions Ltd. and 7 units to IIFL Reality Ltd. AO opined that each unit has to be allocated to each distinct party as per the condition mentioned in Industrial Park Scheme 2002 unit which means separate and distinct entity for the purpose of one or more state or central tax laws. However, the assessee has given its park for two entities only. Assessee submitted its elaborate submissions and relied on various decisions apart from its own case for the A.Y. 2009-10 where deduction u/s.80IA(4) was allowed for the first time. Rejecting the explanation as well as the decisions relied on by the assessee, the AO denied claim made by the assessee u/s.80IA(4) of the Act.

The above facts indicate that assessee made a claim for the first time in the A.Y. 2009-10. After due verification of the claim in the A.Y. 2009-10, the same was allowed. However, in the A.Yrs. 2010-11 and 2011-12, the allowability of the claim was again scrutinized by the AO and the same was disallowed. The date of completion of the eligible undertaking and approval from the competent authority were the reasons for the denial. Contents of Para No. 8 of the assessment order are relevant. It is the claim of the AO that only 7 units out of the 14 units were completed, as per the completion certificate issued by the PMC dated 29-03-2006. The CIT(A) confirmed the said decision of the AO. Aggrieved with the same, the assessee is in appeal for both the years with identical issues arising from the grounds extracted above.

4. At the outset, Ld. Counsel for the assessee brought our attention to the assessment proceedings for the A.Y. 2009-10 and submitted that the claim of the assessee for this A.Y. 2009-10 stands allowed both in the regular assessment proceedings as well as in the re-assessment proceedings. Referring to the Writ Petition No.1899/2016, dated 17-02-2016 before the Hon'ble Bombay High Court, Ld. Counsel for the assessee submitted that the re-assessment proceedings, being change of opinion, stands quashed in the interim proceedings of the writ. In this regard, he read the contents of Para No.5 and the same reads as under :

"5. We find that the issue which arises here is the question of jurisdiction of the Assessing Officer to issue a notice. The petitioner has satisfied us that prima-facie this is a clear case of change of opinion. In such circumstances, the petitioner is not to be relegated to seeking the statutory alternative remedy."

From the above, it is evident that the Hon'ble High Court has observed that *"the petitioner has satisfied the court that prima-facie it is a clear case of change of opinion"*. This observation was given in the context of notice dated

20-03-2014 issued u/s.148 of the Act. As per the Ld. Counsel, the re-assessment proceedings initiated by the AO stands dismissed and in effect, the claim of deduction u/s.80IA(4) of the Act stand allowed in the initial of the undertaking. In effect, this is a case where deduction in the first year of the undertaking stands undisturbed or not withdrawn within the meaning of the ratio of the judgment in the case of CIT Vs. Paul Brothers (supra). Under such circumstances, the claim of the assessee need not be disturbed considering the fact that there are no changes on the facts in the subsequent assessment years, i.e. A.Yrs. 2010-11 and 2011-12. For this proposition, Ld. Counsel brought our attention to various decisions including the judgment of Hon'ble Bombay High Court in the case of CIT Vs. Paul Brothers reported in 216 ITR 548.

5. On the other hand, Ld. DR for the Revenue relied heavily on the Supreme Court judgment in the case of DCIT Vs. M/s. Ace Multi Axes Systems Ltd. in Civil Appeal No.20854/2017 and others, dated 05-12-2017 (reported in 88 taxmann.com. 69 (SC). Ld. DR submitted that this judgment is given in the context of denial deduction u/s.80IB of the Act in respect of a small scale industry maturing into large unit.

6. We heard both the parties on this legal issue of applicability of the ratio of the binding judgment of Hon'ble Jurisdiction High Court in the case of CIT Vs. Paul Brothers (supra). The said judgment is relevant for the following proposition :

*“6. Either in section 80HH or in section 80J, **there is no provision for withdrawal of special deduction for the subsequent years for breach of certain conditions. Hence unless the relief granted for the assessment year 1980-81 was withdrawn, the Income-tax Officer could not have withheld the relief for the subsequent years.**”*

From the above, it is evident that unless the relief claimed in the first year of undertaking is withdrawn, the AO cannot withhold the relief for the subsequent years. In the present case, though an attempt is made to withdraw the claim of deduction through the invoking of the provisions of section 148 of the Act, the same did not fructify for one reason or the other and the judgment of the Hon'ble High Court in the writ proceedings evidences the same. In effect, the claim of the assessee u/s.80IA(4) of the Act stands allowed in the first year of undertaking.

Considering the fact that the same is allowed in the first year of undertaking, the AO cannot withdraw the deduction when the facts are identical. Therefore, we are of the opinion that the judgment of Hon'ble Jurisdictional High Court in the case of CIT Vs. Paul Brothers (supra) stands applicable to the facts of the present case legally.

7. Further, for commenting our view on the issue, we also perused the judgment in the case of CIT Vs. Western Outdoor Interactive Pvt. Ltd. reported in 349 ITR 309 (Bom.) wherein the Hon'ble High Court held as under:

*"6) We have considered the submissions. We find that the submissions made by Mr. Pardiwalla on the basis of the decision of this Court in the matter of Paul Brothers (supra) and Director of Information Pvt. Ltd. (supra) merits acceptance. Therefore, in this case, it is not necessary for us to decide whether SEEPZ unit was set up/formed by splitting up of the first unit. In both the above decisions, this Court has held that where a benefit of deduction is available for a particular number of years on satisfaction of certain conditions under the provisions of the Income Tax Act, then unless relief granted for the first assessment year in which the claim was made and accepted is withdrawn or set aside, the Income Tax officer cannot withdraw the relief for subsequent years. More particularly so, when the revenue has not even suggested that there was any change in the facts warranting a different view for subsequent years. **In this case for the assessment years 2000-01 and 2001-02 the relief granted under Section 10A of the Act to SEEPZ unit has not been withdrawn. There is no change in the facts which were in existence during the assessment year 2000-01 vis a vis the claim to exemption under section 10A of the Act. Therefore, it is not open to the department to deny the benefit of Section 10A for subsequent assessment years i.e. assessment years 2002-03 and 2003-04 and 2004-05.** Besides that, on consideration of the facts involved both the Commissioner of Income Tax*

(Appeals) and the Tribunal have recorded a finding of fact that the SEEPZ unit is not formed by splitting up of the first unit.”

8. Further, in the case of M/s. Ygyan Consulting Pvt. Ltd. Vs. DCIT in ITA No.65/PUN/2015 dated 13-10-2017, the Pune Bench of the Tribunal observed as under :

“6. We have heard the submissions made by the representatives of rival sides and have perused the orders of the authorities below. The first ground raised in appeal by assessee is with respect to assessee's eligibility for claiming deduction u/s. 10A of the Act. It is an undisputed fact that the assessee company was incorporated in the year 1991. The documents on record show that the assessee was granted STPI approval on 30-03-2000. Before grant of approval the assessee could not have claimed deduction u/s. 10A of the Act. The ld. AR has stated at the Bar that first year for claiming deduction u/s. 10A was assessment year 2001-02. Though the ld. AR could not place on record assessee's return of income in assessment year 2001-02 and the assessment order for the said assessment year, however, the assessee has furnished a copy of assessment order for assessment year 2004-05. A perusal of the said assessment order at pages 30 to 40 of the paper book clearly indicate that the assessee has claimed deduction u/s. 10A in respect of profits from STPI unit and the same has been allowed by the Assessing Officer in scrutiny assessment. Once having accepted the claim of assessee, the Revenue cannot question assessee's eligibility for claiming such deduction in subsequent assessment years. The Hon'ble Jurisdictional High Court in the case of Commissioner of Income Tax Vs. Paul Brothers (supra) has observed that there is no provision for withdrawal of special deduction for the subsequent years for breach of certain conditions. Unless the relief ITA No. 65/PUN/2015, A.Y. 2005-06 granted for the initial assessment year is withdrawn, the ITO could not have withheld the relief for the subsequent years.

Thus, in view of the fact that the assessee's claim of deduction u/s. 10A was never questioned by the Revenue in initial assessment year, the Assessing Officer cannot raise question over assessee's eligibility for claiming deduction in any of the subsequent assessment years. The ld. DR has also accepted the fact that in assessment year 2004-05, assessee's claim of deduction u/s. 10A was allowed by Assessing Officer in scrutiny assessment proceedings. Thus, in view of the facts of the case and the law laid down by the Hon'ble Jurisdictional High Court, ground No. 1 raised in appeal by the assessee is allowed.”

Considering the above, we are of the considered opinion, in view of the binding ratio in the case of CIT Vs. Paul Brothers (supra) that the assessee is entitled to relief for both the years on this legal issue alone. Considering the relief granted to the assessee on technicalities, we are opinion that adjudication of the grounds on merits becomes an academic exercise. Accordingly, the relevant grounds are dismissed.

9. In the result, both the appeals of the assessee are partly allowed.

Order pronounced on 24th day of August, 2018.

Sd/-
(विकास अवस्थी / VIKAS AWASTHY)
न्यायिक सदस्य/JUDICIAL MEMBER

Sd/-
(डी. करुणाकरा राव/D. KARUNAKARA RAO)
लेखा सदस्य/ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 24th August, 2018.
Satish

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT (Appeals)-1, Pune.
4. The CIT-1, Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" बेंच,
पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

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