IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "C", MUMBAI

BEFORE SHRI B.R. BASKARAN (AM) AND SHRI RAM LAL NEGI (JM)

ITA No. 1612/MUM/2017
Assessment Year: 2013-14

The ITO 16(2)(1), Room. No. 510, 5th Floor, Aayakar Bhavan, Churchgate, Mumbai - 400020	**Vs.**	M/s Chawla Brothers Pvt. Ltd., Pooram Asha Building, 1st, 317 Narsi Natha Street, Masjid Bunder Station Mumbai - 400009 PAN: AAACC5084F
(Appellant)		**(Respondent)**

Revenue by : Shri Abi Rama Kartikiyen (DR)
Assessee by : Shri Mahesh O. Rajora (AR)

Date of Hearing: 06/09/2018
Date of Pronouncement: 28/09/2018

O R D E R

PER RAM LAL NEGI, JM

This appeal has been filed by the revenue against the order dated 11.12.2016 passed by the Commissioner of Income Tax (Appeals)-12 (for short 'the CIT(A), Mumbai, for the assessment year 2013-14, whereby the Ld. CIT(A) has partly allowed the appeal filed by the assessee against the assessment order passed by AO u/s 143 (3) of the Income Tax Act, 1961 (for short the 'Act').

2. Brief facts of the case are that the assessee company engaged in the business of generating power through wind mills, filed its return of income for the assessment year under consideration declaring the total income of Rs. 1,15,199/-. The return was processed u/s 143 (1) of the Act. Since, the case was selected for scrutiny, AO issued notice u/s 143 (2) and 142 (1) to the assessee. In response thereof, the authorized representative (AR) of the assessee attended the proceedings and submitted the details called for. It was observed that the assessee had undergone de-merger as per the scheme

approved by the Hon'ble High Court. As per the arrangement, the resultant company M/s Kamani Oil Industries Pvt. Ltd. was entrusted with the business of manufacturing and selling of edible oil and all the assets and liabilities of the demerged company were transferred to the resultant company. Further the scheme the assessee company made available the land and building at Saki Naka, Mumbai to resulting company for an annual rent of Rs. 9,00,000/-.The AO computed the annual letting value of the said building at Rs.14,04,695 on notional basis u/s 23 of the Act. Further, the assessee company had acquired windmill during the financial year 2005-06 and entered into an agreement with Maharashtra State Electricity Distribution Company Limited for sale of 100% wind energy. Accordingly, the assessee became eligible to claim deduction u/s 80IA for 10 consecutive assessment years from the assessment year 2006-07. During the initial three assessment years, the assessee incurred loss from the eligible unit, however, since the assessee was also engaged in manufacturing of edible oil, it claimed set off of the losses incurred on power generating activity against the profit earned out of oil manufacturing activities during the said years. The edible oil manufacturing activities got separated on merger w.e.f. 01.04.2008.

3. The assessee earned profit from power generation business in the assessment year 2009-10 for the first time and claimed deduction u/s 80IA. The AO worked out the cumulative losses of the power generation activities and computed the eligible deduction at Nil. For the assessment year under consideration, the assessee filed its return of income u/s 139(1) of the Act claiming deduction u/s 80IA of the Act at Rs. 65,31,408/- relating to profit derived from power generation through wind mill. The AO asked the assessee to explain as to why the claim u/s 80IA should not be disallow for the reason that by entering into power generation business, the company has incurred cumulative loss of Rs. 5,32,31,540/- and the income of Rs. 65,31,408/- earned during the previous year out of power generation business as net impact of

decreasing the overall accumulated loss on the eligible business. The assessee submitted that as per section 80IA(4)(v) of the Act, it had option to claim deduction for any 10 consecutive years from the initial year out of 15 years beginning from the year in which the undertaking begins to generate power. The assessee further contended that it has claimed deduction u/s 80IA from the A.Y. 2009-10 onwards which the initial assessment year, provisions of section 80IA (4)(v) will become applicable from A.Y. 2009-10. The AO rejected the claim of the assessee holding that the deduction u/s 80IA of the Act is to be computed with respect to the profits and gains of eligible business by considering as if the eligible business were the only source of income of the assessee.

4. Aggrieved by the order of Ld. CIT (Appeals), the revenue has preferred this appeal before the Tribunal on the following effective grounds:-

1. *"Whether on the facts and in the circumstances of the case and in law, the Ld. CIT (A) erred in deleting disallowance of Rs. 14,04,695/- made by the Assessing Officer by computing ALV @ 8% of fair market value of the property on the basis of stamp duty rate without appreciating the fact that as per the provision of section 23(1) the ALV is required to be taken higher of reasonable expected rent or actual receipt by the assessee.*
2. *Whether on the facts and in the circumstances of the case and in law, the Ld. CIT (A) erred in deleting disallowance of Rs. 65,31,408/- made by the Assessing Officer u/s 80IA(4)(iv), without appreciation the fact that after setting of all expenses and depreciation, the assessee did not have any eligible profit to claim deduction from eligible business."*

5. At the outset, the Ld. counsel for the assessee submitted that both the grounds of the appeal of the revenue are covered by the assessee's own case for the assessment years 2009-10, 2010-11 and 2011-12. Since, the Ld. CIT (A)

has decided these grounds of appeal in favour of the assessee by following the decision of the Tribunal, there is no merit in the appeal of the revenue.

6. On the other hand, the Ld. Departmental Representative (DR) relying on the assessment order submitted that the Ld. CIT (A) has wrongly deleted the disallowance of Rs. 14,04,695/- made by the Assessing Officer by computing annual letting value @ 8% of fair market value of property on the basis of stamp duty rate without appreciating that as per the provisions of section 23(1) of the Act, the ALV is required to be taken higher of reasonable expected rent or actual receipt by the assessee on the point of disallowance u/s 80IA(4)(v) of the Act, the Ld. DR submitted that the Ld.CIT (A) has wrongly deleted the disallowance made by the AO without considering the fact that after setting of all expenses and depreciation. The assessee did not have any eligible profit to claim deduction from the eligible business. The Ld. DR however, did not controvert the fact that both the grounds are covered by the decision of ITAT in the assessee's own case for the earlier assessment years.

7. We have heard the rival submission and also perused the material on record. As pointed out by the Ld. counsel for the assessee first ground of appeal is covered by the order of the coordinate Bench of the Tribunal rendered in the assessee's own case for the A.Ys. 2009-10, 2010-11 and 2011-12. The Ld. CIT (A) has decided the identical issue in the present case by following the decision of his predecessor in the assessee's own case for the A.Y. 2009-10, 2010-11, 2011-12 and 2012-13. The relevant para of the order passed by the Ld. CIT (A) reads as under:-

> *"Respectfully following my predecessor CIT (A)'s orders for the A.Yrs. 2009-10, 2010-11, 2011-12 & 2012-13 wherein CIT (A) has directed the A.O to compute the Annual Letting Value of the property @ 8% on cost of land and building to the appellant, it is seen that the same issue is also therein this year. Since for this A.Y the actual rent of Rs. 9,00,000/-*

received by the Appellant from M/s Kamani Oil Industries Pvt. Ltd. is higher than the Annual Letting Value of the property at 8% of cost of land and building, the addition by the A.O. is directed to be deleted. The Department's appeal for the A.Y. 2009-10 has also been dismissed by the Hon'ble ITAT Mumbai vide order dt. 4.6.2014 in ITA No. 5490/Mum/2012 wherein the Hon'ble ITAT has upheld the CIT (A)'s order for the A.Y. 2009-10 and also for A.Y. 2010-11 in ITA No. 6736(MUM) 2013 and ITA No. 6037(MUM)/2013 dt. 4.11.2015. Therefore, respectfully following the Hon'ble Mumbai ITAT orders and my predecessor CIT (A)'s orders, Ground of Appeal No. 2 is allowed."

8. We further notice that the predecessor of Ld. CIT (A) has decided this issue in favour of the aassessee by following the orders of the coordinate Bench rendered in the assessee's own case for the A.Ys. 2009-10 and 2010-11 referred above. We further notice that the coordinate Bench has decided the identical issue in favour of the assessee in the assessee's own case ITA No. 5755/Mum/2014 by following the orders of the coordinate Bench in the assessee's own case pertaining to the earlier years and directed the AO to compute the ALV @ 8% of the cost as recorded in the books of account of the assessee company.

9. Since, the findings of the Ld. CIT (A) are based on the orders of the coordinate Bench rendered in the assessee's own case for the A.Ys. 2009-10, 2010-11 and 2011-12, we do not find any reason to interfere with the findings of the Ld. CIT (A). Hence, we uphold the order passed by the Ld. CIT (A) and dismiss this ground of appeal of the revenue.

10. Ground No. 2 pertains to grievance of the revenue that the Ld. CIT (A) has erred in deleting the disallowance of Rs. 65,31,408/- made by the AO u/s 80IA(4)(v) of the Act. As pointed out by the Ld. counsel for the assessee this ground is covered by the decision of the coordinate Bench rendered in the assessee's own cases for the A.Ys. 2009-10, 2010-11 and 2011-12. The Ld. CIT

(A) has decided this ground of appeal in favour of the assessee by following the decisions of the coordinate Bench in the assessee's own case for the A.Ys. 2009-10, 2010-11 and 2011-12 and the order of his predecessor passed in assessee's own case for the assessment years 2011-12 and 2012-13 and the CBDT circular No1/2016 dated 15.02.2016. The observations of the Ld. CIT(A) as under:

> *"Respectfully following the Hon'ble Mumbai ITAT's orders in favour of the appellant for the A.Y. 2009-10 and 2010-11 and also my predecessor CIT (A)'s orders for the A.Yrs. 2011-12 and 2012-13 on the same issue, the addition made by the A.O. is deleted. The issue has now also been clarified by the CBDT in its circular No. 1/2016 dt. 15.2.2016. The Hon'ble ITAT and CIT (A) have held that the "initial assessment year" is A.Y. 2009-10. Ground of Appeal No. 3 is allowed in the light of the discussion here."*

11. We further notice that the coordinate Bench of the Tribunal has decided the identical issue in favour of the assessee by following the orders of the Tribunal passed in the assessee's case pertaining to the earlier years. Since, the findings of the Ld. CIT(A) are based on the orders of the coordinate Bench, we do not find any reason to interfere with the same. Hence, we uphold the findings of the CIT(A) and dismiss this ground of appeal of the revenue.

In the result, appeal filed by the revenue for assessment year 2013-2014 is dismissed.

Order pronounced in the open court on 28th September 2018.

Sd/-	*Sd/-*
(B.R. BASKARAN)	(RAM LAL NEGI)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated: 28/09/2018

Alindra, PS

<u>आदेश प्रतिलिपि अग्रेषित/Copy of the Order forwarded to</u> :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त (अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई **/ ITAT, Mumbai**