

आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम

**IN THE INCOME TAX APPELLATE TRIBUNAL,
VISA KHAPATNAM BENCH, VISA KHAPATNAM**

श्री वी. दुर्गा राव, न्यायिक सदस्य एवं
श्री डि.एस. सुन्दर सिंह, लेखा सदस्य के समक्ष

**BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER &
SHRI D.S. SUNDER SINGH, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A.No.293-296 /Viz/2018

(निर्धारण वर्ष/ A.Ys: 2012-2013 to 2015-16 respectively)

ACIT
Central Circle-1
Rajahmundry

Vs. Sree Murali Mohana Boiled &
Raw Rice Mill Private Ltd.,
1-54, Komaripalem
Biccavolu Mandal
East Godavari Dist.
[PAN :AAHCS7807F]

(अपीलार्थी/ Appellant)

(प्रत्यर्थी/ Respondent)

**Cross Objection Nos.80-84/Viz/2018
(Arising out of I.T.A Nos.293-296/Viz/2018 respectively)
(निर्धारण वर्ष/ A.Ys: 2012-2013 to 2015-16 respectively)**

Sree Murali Mohana Boiled &
Raw Rice Mill Private Ltd.,
1-54, Komaripalem
Biccavolu Mandal
East Godavari Dist.
[PAN :AAHCS7807F]

ACIT
Central Circle-1
Rajahmundry

(अपीलार्थी/ Appellant)

(प्रत्यर्थी/ Respondent)

राजस्व की ओर से/ Revenue by
निर्धारिती की ओर से/ Assessee by

: Sri Deba Kumar Sonowal, DR
: Sri G.V.N.Hari, AR

सुनवाई की तारीख / Date of Hearing

: 25.09.2018

घोषणा की तारीख/Date of Pronouncement

: 26.10.2018


आदेश / O R D E R

Per Bench :

These appeals are filed by the revenue against the order of the Commissioner of Income Tax(Appeals) [CIT(A)]-12,Hyderabad vide Appeal No.10163/2017-18, 10165/2017-18, 10162/2017-18, 10164/2017-18 dated 14.03.2018 and Cross Objections are filed by the assessee supporting the order of the Ld.CIT(A) for the assessment year 2012-13 to 2015-16. Since the grounds raised in the appeals are common, these appeals are clubbed, heard together and a common order is being passed for the sake of convenience as under.


2. All the appeals are related to the allocation of cost of husk consumption between the rice mill unit and power generation plant. During the assessment proceedings, the Assessing Officer (AO) found that the assessee had claimed the deduction u/s 80IA for the assessment year 2012-13 to 2015-16 and the same is restricted as under :

A.Y.	Deduction (Rs.)	Allowed (Rs.)
2012-13	2,37,57,317	1,08,66,587
2013-14	4,56,55,781	2,07,32,521
2014-15	4,37,80,720	1,89,41,726
2015-16	4,49,15,470	1,73,00,954

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3. The assessee is running a rice mill and is having a cogeneration power plant, generating steam and power. The company had installed a captive power plant in the premises of rice mill and put into operation during the assessment year 2004-05 and since then the company has produced the power and steam and the same is being utilized internally to run the rice mill. The assessee has allocated 10% of the cost of total husk consumed for power plant and the remaining 90% of the husk costs being allocated to the generation of steam by rice mill in its boiling mill unit. Accordingly, the assessee has computed the net profits and claimed the deduction u/s 80IA. The AO not being satisfied with the allocation made by the assessee after going through the assessee's record comparable cases, estimated the cost of consumption @ 55% of the total husk to the power generation plant and accordingly recomputed the deduction u/s 80IA for the assessment year 2012-13 to 2015-16 as under :

A.Y.	Deduction (Rs.)	Allowed (Rs.)
2012-13	2,37,57,317	1,08,66,587
2013-14	4,56,55,781	2,07,32,521
2014-15	4,37,80,720	1,89,41,726
2015-16	4,49,15,470	1,73,00,954


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4. Aggrieved by the order of the AO, the assessee went on appeal before the CIT(A) and the Ld.CIT(A) allowed the appeal of the assessee following the order of this Tribunal for the assessment year 2008-09 to 2009-10 which reads as under :

"8.4 Thus, based on the ratio of the judicial decisions cited, and respectfully following the decision of Hon'ble ITAT in the appellant's own case for the A.Ys.2008-09 and 2009-10, it is held that the AO is not justified in restricting the deduction u/s. 80IA(iv), disregarding the decision of ITAT, Visakhapatnam, which was not stayed in its operation and as such is binding. It is not correct on the part of the AO to not implement the said order, merely on the ground that such decision was not accepted by department. Thus, on similarity of facts, the AO is directed to calculate the profits and expenditure for allowing deduction u/s. 80IA(iv) of the Act, by adopting allocation of husk at 10%, as held by Hon'ble ITAT, Vishakhapatnam. Accordingly, this ground of appeal is treated as Allowed."

5. Aggrieved by the order of the Ld.CIT(A), the revenue is in appeal before this Tribunal. During the appeal hearing, the Ld.DR supported the orders of the AO and the Ld.AR relied on the orders of this Tribunal in the assessee's own case for the assessment year 2008-09 and 2009-10 in I.T.A.Nos.48, 63, 325 & 342/Vizag/2012 dated 28.04.2014 and the Ld.CIT(A). The Hon'ble ITAT in the assessee's own case supra after considering the issue in detail allowed the appeal of the assessee holding that allocation of husk at 10% is reasonable. For ready reference, we extract para No.10 of the order of the Tribunal which reads as under :

"16. On a careful examination, we are inclined to accept the submissions of the Ld. Counsel for the assessee for the reason that the cost of steam is what is to be


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allocated between the power plant and the rice mill. There is no logic in segregating the cost into two parts and allocating the normal loss in the generation of steam at 50-50 and therefore allocating the husk expenses at 15.75% to the power generation plant and 84.25% to the rice mill. Once we come to our conclusion that 10% of the steam is utilized by the power generation plant, then all the cost i.e. attributable and relatable to the generation of steam has to be allocated only on that basis. The cost of steam cannot be segregated into that which is incurred up to a particular point and cost incurred after a particular point. This to our mind is not logical. Thus the allocation made by the assessee to our mind is justified. Hence, we allow this ground of the assessee."

5.1. The ITAT allowed the appeal of the assessee for the assessment year 2011-12 also in I.T.A.No.509/Viz/2016 dated 21.02.2018 following the order of this Tribunal cited supra.

6. Since the facts are identical, respectfully following the view taken by this Tribunal in the assessee's own case, we do not find any reason to interfere with the order of the Ld.CIT(A) and the same is upheld.

6.1. However, the AO has not given the details of the initial assessment year in which the deduction u/s 80IA was claimed and the expiry of time limit for claiming the deduction in the assessment orders. As per the information available on record, the assessee had installed the power plant in the assessment year 2003-04 and started claiming the deduction u/s 80IA from the assessment year 2004-05. As per section 80IA, the assessee is entitled for deduction u/s 80IA for 10 consecutive years which expires in

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2014-15, whereas the assessee claimed the deduction in 2015-16 also. Therefore, the AO is directed to verify and allow deduction u/s 80IA correctly for the period for which the assessee is entitled. With the above observation we dismiss the appeals of the revenue.


7. The assessee filed cross objections in support of the order of the Ld.CIT(A). Since the appeal of the revenue is dismissed, the cross objections filed by the assessee are allowed.

8. In the result, appeal of the revenue is dismissed and cross objections filed by the assessee are allowed.

The above order was pronounced in the open court on 26th October, 2018.

Sd/-
(डि.एस. सुन्दर सिंह)
(D.S. SUNDER SINGH)
लेखा सदस्य/ACCOUNTANT MEMBER
विशाखापटणम /Visakhapatnam
दिनांक /Dated : 26.10.2018
L.Rama, SPS

Sd/-
(वी.दुर्गा राव)
(V. DURGA RAO)
न्यायिक सदस्य/JUDICIAL MEMBER

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आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee- Sree Murali Mohana Boiled & Raw Rice Mill Private Ltd., 1-54, Komaripalem, Biccavolu Mandal, East Godavari Dist.
2. राजस्व/ The Revenue – ACIT, Central Circle-1, Rajahmundry
3. The Pr.Commissioner of Income Tax (Central) Visakhapatnam
4. The Commissioner of Income-Tax (Appeals)-12, Hyderabad
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम /DR, ITAT, Visakhapatnam
- 6.गार्डफ़ाईल / Guard file

आदेशानुसार / BY ORDER

// True Copy //

Sr. Private Secretary
ITAT, VISAKHAPATNAM