

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCH "B", HYDERABAD**

**BEFORE SMT. P. MADHAVI DEVI, JUDICIAL MEMBER
AND
SHRI S. RIFAUH RAHMAN, ACCOUNTANT MEMBER**

**ITA Nos.1129 to 1131/Hyd/2016 (A.Ys:2009-10 to 2011-12)
ITA No.324/Hyd/2017 (A.Y:2012-13)**

Smt. Gavva Laxmi Devi (Since deceased Rep. by Legal Heir Gavva Amarender Reddy), 8-2-682, Laxmi, Road No.12, Banjara Hills, Hyderabad – 034. PAN: AAPPG 6532 Q (Appellant)	Vs. DCIT, Circle-2(3), Hyderabad. (Respondent)
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Assessee by: Sri V.Raghavendra Rao
Revenue by: Shri Sunku Srinivasu, DR

Date of hearing: 11.10.2018
Date of pronouncement: 31.10.2018

ORDER

PER Smt. P. Madhavi Devi, J.M.:

All the captioned appeals are filed by assessee for the Assessment Years 2009-10 to 2012-13 respectively against the order of the CIT(A)-9, Hyderabad dated 29.03.2016 for the AYs 2009-10 to 2011-12 and order of the CIT(A)-5, Hyderabad dated 30.01.2017 for the A.Y. 2012-13 respectively. Since the issue involved in all these appeals is the same, all the appeals were heard together and are disposed of by this common and consolidated order.

2. For the sake of brevity and ready reference, the grounds of appeal raised in ITA No.1129/H/16 are reproduced here-under:-

- “1. *The order of the CIT(A)-9, Hyderabad dated 29.03.2016 is erroneous, contrary to law and facts of the case.*
2.
 - a) *The CIT(A) is not justified in sustaining the disallowance of deduction by the Assessing Officer claimed by the appellant u/s 80IA(4)(iii) stating that the appellant had constructed / created industrial park prior to 15.09.1999 and was deriving rental income from it and did not comply with the terms and conditions laid down in the notification issued for setting up an industrial park but just leased the premises by providing some services in an building already existing before the application was made to the DIPP for setting it up.*
 - b) *The CIT(A) ought to have seen that section 80IA(4)(iii) does not prohibit issue of notification as an industrial park u/s 80IA(4)(iii) for an existing property. The CIT(A) also ought to have seen once notification was issued by DIPP and CBDT deduction u/s 80IA(4)(iii) cannot be disallowed by the Assessing Officer. Hence the CIT(A) is not justified in sustaining of deduction claimed u/s 80IA(4)(iii) by the appellant.*
3. *For all the above and such other grounds as may be urged at the time of hearing it is most respectfully prayed that the Hon’ble Tribunal be pleased to direct the Assessing Officer to delete the disallowance of deduction u/s 80IA(4)(iii) in the interest of justice.”*

3. Further, vide letter dated 13.02.2017 assessee has raised the following additional grounds of appeal:-

- “1. *The reopening of the assessment originally completed u/s 143(3) of the Act is not valid in law.*
2. *The reopening of the assessment is on account of change of opinion and therefore invalid in law. The A.O. considered the claim of deduction while issuing intimation u/s 143(1) of the Act and while restricting the exemption claimed in the assessment order after calling for the basis for arriving at the claimed deduction. The Statutory form 10CCB has also been filed in the course of assessment proceedings. The reopening of the assessment is on account of change of opinion and therefore invalid in law.*
3. *Reopening is invalid in law also because the Statutory approval of the Joint / Addl Commissioner of Income Tax*

has not been obtained as required u/s 151(1) of the Act as seen from the notice u/s 148.

4. *Withdrawal of Gazette of India Notification (No. S.O. 1021 dated 30th March, 2007 published in Gazette of India dated 14.04.2017, Pt.II Sec.3(ii), P.2235(292 ITR (St. 94)) in F.No.178/30/2007-ITA-IJ issued by the Ministry of Finance granting approval of the Industrial Park in the case of the assessee, by the A.O. is illegal and hence invalid. A subordinate authority cannot assume power to withdraw the Notification of Superior Authority.*
5. *Denial of exemption u/s 80IA(4)(iii) on the basis of such illegal withdrawal is totally unjustified and arbitrary.*
6. *Ld. CIT(A) also failed to notice the anomaly and invalidity of withdrawal of notification issued by the Ministry of Finance by the A.O. suo motto and thereby erred in sustaining the disallowance of exemption claimed.”*

4. At the time of hearing, Learned Counsel for the Assessee submitted that the issue is covered in favour of the assessee by the decision of the Coordinate Bench of this Tribunal in the case of the co-owner, i.e., assessee's son, Sri Gavva Amarender Reddy in ITA Nos. 896 to 900/H/2015 for the A.Ys 2007-08 to 2011-12 wherein the Tribunal has held that the provisions of section 80IA(4)(iii) are not applicable to the assessee. He submitted that since the assessee and her son are the co-owners of the same property, the decision of the Tribunal is applicable to the assessee as well. A copy of the said order is filed before us. The Learned Counsel for the Assessee also drew our attention to the CBDT Circular No. 16/2011, dated 25.04.2011 wherein the Board has directed the Revenue Officers to treat the rent received by the assessee from letting out buildings along with other amenities in a software technology park under the head 'business income'. He submitted that the assessee had offered the income as business income and had claimed exemption u/s 80IA(4)(iii) of the Act but the Assessing Officer has disallowed claim on the ground that the assessee has not fulfilled the terms

and conditions laid down in the Notification No.72/2007, dated 22.03.2007 issued by the Ministry of Finance to treat the assessee's facility as an 'industrial park'. Learned Counsel for the Assessee further submitted that in the case of Sri Gavva Amarender Reddy also, the A.O. disallowed the claim of deduction u/s 80IA of the Act on similar ground, but on appeal, the CIT(A) had directed the A.O. to treat the income as 'income from house property' and the assessee therein had not challenged the said finding before the ITAT and due to this reason, the Tribunal had held that the assessee therein was not eligible for deduction u/s 80IA of the Act even though he fulfilled the conditions for grant of deduction u/s 80IA of the Act. He submitted that in the assessee's case before us, there is no such finding by the CIT(A) and therefore, prayed that the Tribunal may direct the A.O. to allow the deduction u/s 80IA of the Act.

5. On the other hand, Learned Departmental Representative supported the order of the CIT(A) and submitted that the Hon'ble ITAT in the case of Sri Gavva Amarender Reddy had held that the income has to be treated as 'income from house property' and therefore, in the assessee's case before us also, similar direction should be given and since the deduction u/s 80IA is not allowable on income from house property the said deduction cannot be allowed.

6. Having regard to the rival contentions and the material on record, we find that the assessee before us as well her son are both the co-owners of the property which is developed by them as an industrial park by obtaining the necessary permissions from the relevant Ministry. While considering the case of

allowability of deduction u/s 80IA in the case of Sri Gavva Amarender Reddy, the Coordinate Bench has held as under:-

“7. We have perused the rival contentions and the documents placed on record in the form of Paper Book. Assessee has placed the copies of DIPP application, approval, application to CBDT and approval order. As seen from the facts of the case, Assessee did indeed develop a building as a co-owner on the plot at # 8-2-681/3 & 3A at Road No. 12, Banjara Hills, Hyderabad. Assessee’s address is 8-2-682 in Laxmi Cyber Centre. As seen from the records, these two properties seems to be adjacent and we are not sure whether there is only one building or two buildings in the above said two addresses. Before adverting to the issues raised by Assessee and Revenue, we are of the opinion that the facts of the case are to be placed on record. According to Assessee, he has proposed to set up/construct the Industrial Park on the land at # 8-2-681/3 & 3A, Road No. 12, Banjara Hills, Hyderabad on a total area of 75, 918 sq. ft., and out of this 63,018 sq. ft., was proposed to be earmarked for industrial use. A minimum of three industrial units were proposed to be set up and a total investment of 10.48 Crores including Rs. 6 Crores for built up space was proposed for set up for this Industrial Park. The expected date of commencement was stated as April, 2005. And in fact, Assessee applied for the necessary permission vide his application dt. 04-10- 2005 i.e., after the commencement of ‘Industrial Park’ proposed. Assessee has given address of # 8-2-682 in Column No. 3.1 of the application as name and address of the undertaking and in Column No. 4.1, the proposed location of the Industrial Park was stated as # 8-2-681/3 & 3A. Out of the 75,918 sq. ft., for establishing three units, the application to CBDT dt. 24-01-2007 indicates that there are four units occupying the space of 48,326 sq. ft., only. What happened to the balance of the space- whether anybody is occupying the same or not- is not forthcoming from the record. Out of these four units, AO noted that the agreement with SIS Infotech occupying 17,804 sq. ft., to be an unit established much earlier, on a ten year lease. It is also on record that Assessee did not invest any amount for infrastructure stating that the same would be taken up by the occupants of the place, as they wanted bare structure lease. Even though Assessee obtained the approvals for development and maintaining and operate an Industrial Park, the record do support the apprehensions of Revenue that Assessee has simply converted the existing building, which was given on lease, to an Industrial Park without any further investment.

8. In the course of arguments, Ld. Counsel as part of the Paper Book, placed on record the approvals taken by mother of Assessee, Smt. Gavva Laxmi Devi, in whose case also it seems the dispute was pending before Ld. CIT(A). As seen from that application, the address in Column No. 3.1 of the application and the proposed location of the Industrial Park are same as that of # 8-2-682. The facts indicate that both the property at # 8-2-682 and # 8-2-681/3 & 3A seems to be one and the same, with two different but common ownership. The same four companies have occupied the space in that building also partly owned by the mother of Assessee to an extent of 37,174 sq. ft., as can be seen from the Column 13 in the application to CBDT vide letter dt. 24- 01-2007.

9. Be that as it may, the issue before us is whether AO is correct in denying the benefit when the same was approved by the CBDT. If there is any misrepresentation or misinformation as alleged by the AO, the proper course would be to make full enquiry and report to the authorities concerned for taking necessary steps to withdraw the permissions so granted. Without doing so, AO or for that matter even the CIT(A), who are subordinate authorities to the CBDT, cannot come to a conclusion and say that the approval granted by the CBDT is invalid. As informed, no steps have been taken so far by either the AO or by any other authority to withdraw the approval so granted by the CBDT on the so called allegations of misrepresentation/misinformation. In view of this, we cannot appreciate the action of the AO and CIT(A) in denying the benefit to the Industrial Park. To that extent, the orders of AO and CIT(A) cannot be approved and has to be set aside.”

7. Therefore, even in the case of the assessee before us, we have to hold that the assessee is eligible for deduction u/s 80IA of the Act. The only distinction between the assessee's case and her son is that in the case of Sri Gavva Amarender Reddy, the CIT(A) had held that the income is to be treated as 'income from house property'. Since the assessee therein had not challenged the said finding of the CIT(A), the Tribunal had held that the provisions of section 80IA do not apply to income from house property and therefore, allowing of deduction u/s 80IA does not arise. There is no such finding of the CIT(A) in the case before us. Further, CBDT vide Circular 16/2017 had clarified that the lease rent from letting out of buildings along with other amenities in an industrial park is to be treated as business income of the assessee, since the A.O. and the CIT(A) have treated the income from industrial park as business income of the assessee, we hold that the assessee is eligible for deduction u/s 80IA(4)(iii) of the Act. Thus, the original grounds of appeal raised by the assessee are allowed.

8. Since the case of the assessee is covered in her favour and the assessee got relief on merits, we do not see any reason to

admit and adjudicate the additional grounds filed by the assessee.

9. In the result, appeal filed by the assessee are allowed.

Pronounced in the open Court on 31st October, 2018.

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Sd/-
(P. MADHAVI DEVI)
JUDICIAL MEMBER

Hyderabad, Dated: 31st October, 2018

OKK

Copy to:-

- 1) Smt. Gavva Laxmi Devi (Since deceased Rep. by Legal Heir Gavva Amarender Reddy), 8-2-682, Laxmi, Road No.12, Banjara Hills, Hyderabad – 034.
- 2) DCIT, Circle-2(3), Hyderabad.
- 3) The CIT(A)-9, Hyderabad
- 4) The Pr. CIT-9 , Hyderabad
- 5) The DR, ITAT, Hyderabad
- 6) Guard File