

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD BENCH

**Before: Shri Rajpal Yadav, Judicial Member
And Shri Amarjit Singh, Accountant Member**

**ITA No. 997/Ahd/2015
Assessment Year 2010-11**

The DCIT, Circle-2(1)(1), Ahmedabad (Appellant)	Vs	M/s. Gujarat Mineral Development Corp. Ltd. Khanji Bhavan, 132 Ft. Ring Road, Nr. University Ground, Vastrapur, Ahmedabad-380052 PAN: AAACG7987P (Respondent)
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**Revenue by: Shri R.C. Dandy, CIT-D.R.
Assessee by: Shri S.N. Soparkar, A.R.**

Date of hearing : 25-10-2018
Date of pronouncement : 31-10-2018

आदेश/ORDER

PER : AMARJIT SINGH, ACCOUNTANT MEMBER:-

This revenue appeal for A.Y. 2010-11, arises from order of the CIT(A)-2, Ahmedabad dated 29-01-2015, in proceedings under section 143(3) r.w.s. 147 of the Income Tax Act, 1961; in short the Act.

2. The revenue has raised following grounds of appeal:-

- “1. The Ld. CIT(A) has erred in law and on facts in deleting the disallowance made by the AO u/s 80IA amounting to Rs.43,62,61,420/- .*
- 2. The Ld. CIT(A) has erred in law and on facts in deleting the disallowance made by the AO on account of additional depreciation u/s 32(l)(ii) amounting to Rs.77,59,947/-.*
- 3. On the facts and in the circumstances of the case, the Ld. CIT(A) ought to have upheld the order of the Assessing Officer.*

4. It is, therefore, prayed that the order of the Ld. CIT(A) may be set aside and that of the Assessing Officer may be restored to the above extent."

3. The brief fact of the case is that return of income declaring income of Rs. 297,08,11,060/- was filed on 27th Sep, 2010. Subsequently, the case was selected under scrutiny by issuing of notice u/s. 143(2) of the act on 25th August, 2011. The further fact of the case is discussed under respective ground of appeal filed by the revenue.

Disallowance u/s. 80IA

4. During the course of appellate proceedings, the assessing officer noticed that assessee has claimed deduction of Rs. 43,62,61,420/- u/s. 80IA of the act. The assessing stated that section 80IA(5) provides that notwithstanding any thing contained in the provision of the act, the profit and gain of eligible business to which the provision of sub section (1) applies shall for the purpose of determining the quantum of deduction under that sub-section for the assessment year immediately succeeding the initial assessment year or any subsequent assessment year, be computed as if such eligible business were only the only source of income of the assessee during the previous year relevant to the initial assessment and to every subsequent assessment year up to and including the assessment year for which the determination is to be made. In other words, if there is a loss in the initial year in the subsequent year there is profit, deduction shall be allowed by considering the brought forward loss in the year of profit. The assessing officer was of the view that in the case of the assessee the initial assessment year should be A.Y.2005-06, the year of commencement of eligible business. The assessing officer has worked out loss of Rs,-4944195931 and loss of Rs.-10026615770 as per companies act and as per income tax act (from F.Y. 2004-05 to F.Y. 2008-09) and stated that balance income available for deduction u/s 80-IA is the loss amount of Rs. -4527934511 as per company act and loss of Rs.- 9619546881 as per income tax act. Therefore the assessoing officer has stated that the assessee company is not entitled for any deduction during the

year under consideration as the accumulated losses were more than the profit of this year. The assessing officer has stated that assessee failed to observe provision of section 80IA(5) before claiming the deduction and failed to calculate correct amount of deduction therefore he has disallowed the claim of deduction u/s. 80IA of the act to the amount of Rs. 43,62,61,420/- and added to the total income of the assessee.

5. Aggrieved assessee has filed appeal before the Id. CIT(A). The Id. CIT(A) has allowed the appeal of the assessee. Relevant part of the decision of Id. CIT(A) is reproduced as under:-

“3.3. Decision:

I have carefully perused the order and submission made by the AR of the appellant. The AO has recomputed the deduction under section 80IA of the Act claimed by the appellant. He has considered the unabsorbed depreciation of the eligible unit in earlier years as unadjusted depreciation and accordingly considered the same as brought forward depreciation of the eligible unit and after adjusting unabsorbed depreciation, the claim of deduction under section 80IA of the Act has been allowed. The appellant has commenced the production from A. Y. 2005 - 06, but made that claim for the first time in A Y 2010 - 11. The appellant on the other hand has submitted that the losses from eligible business in the years prior to initial Assessment Year absorbed against the profit of other business need not be nationally brought forward and, therefore, the deduction should not be reduced.

On a careful consideration of the entire facts of the case, it is noted that the issue whether the deduction under section 80IA of the Act is to be allowed without adjusting the notional brought forward losses and depreciation of earlier years is to be allowed or not, is almost legally settled now. It is noted from the perusal of various judicial pronouncements that the preponderant judicial opinion is in favour of the appellant. The leading judgment on the issue is that of honourable High Court of Madras in the case of Velayudhaswamy Spinning Mills Private Limited(supra). The judgment has subsequently been followed by several other Courts and Tribunals. The basic principle that has been laid down by various courts is that there should be no carry forward loss pertaining to the eligible unit, if the losses of eligible unit had earlier been adjusted with the losses of other units prior to the initial assessment year. The initial assessment year is the year in which the appellant make the claim for the first time and not the year in which -the eligible unit commences production. As per the provisions of the Act a clear option has been given to the appellant for choosing the initial years of assessment. In the case of the appellant the appellant has chosen the subsequent year later to the year in which the production commenced. There is no need to nationally set-off the losses of that unit for allowing the deduction. Losses and depreciation of the years earlier to the initial assessment year which have been already absorbed against the profits of other business cannot be nationally brought forward and set off against the profits of the eligible business for computing the deduction under section 80 IA of the Act. In the case of appellant, as it is clear from the details, the losses have been adjusted in earlier years prior to the initial assessment year. In the present year, there is no unadjusted business loss and depreciation loss and accordingly, the claim has rightly been made by the appellant. Reliance is also placed on recent judgments of ITAT Ahmedabad in the case of Sadbhav

Engineering Ltd, 45 taxmann.com 333 and in the case of Jivraj Tea & Industries Ltd. 42 taxmann.com 462. The head note of the decision in the later case is reproduced hereunder:-

"Section 80-1A of the Income-tax Act, 1961 - Deductions - Profits and gains from infrastructure undertakings (Computation of deduction) -Whether when an exporter exercises option of choosing initial assessment year as culled out in sub-section (2) of Section 80-1A from which it chooses its 10 years of deduction out of 15years, then only losses of years starting from initial assessment year alone are to be brought forward; loss prior to initial assessment year which has already been set-off cannot be brought forward and adjusted into period of ten years from initial assessment year -Held, yes- Whether where assessee had not suffered any loss in relevant years and brought forward loss or depreciation did not relate to initial years, same could not be reduced for determining amount for which deduction is to be allowed under section 80-1A - Held, yes [Para 28]"

The judicial pronouncements relied by the AO such as Goldmine Shares & Finance (P) Ltd (supra) is respectfully distinguished as the judgement has been considered by honourable ITAT Ahmedabad and honourable High Court of Madras in the case of Velayudhaswamy Spinning Mills Private Limited (supra). In view of the above discussion, the reduction- of claim under section 80I-A made by the AO is directed to be deleted.

*The ground of appeal is accordingly, **allowed.**"*

6. During the course of appellate proceedings before us, the Id. departmental representative has supported the order of assessing officer. On the other hand, the Id. counsel has referred the CBDT Circular No. 1/2016 dated 15th Feb, 2016 stating that Id. CIT(A) has correctly allowed the deduction u/s. 80IA of the act.

7. We have heard the rival contention and perused the material on record carefully. We consider that the initial assessment year is the year in which the assessee makes the claim for the first time and not the year in which the eligible unit commences production. In the case of the assessee the initial assessment year will be A.Y. 2010-11 as the assessee has made first time claim of deduction under section 80IA of the act and the assesment year 2005-05 the year in which the production was commenced. Further In this connection, we have gone through the above referred circular of the CBDT which is reproduced as under:-

CIRCULAR NO.1/2016 [F.NO.200/31/2015-ITA-I], DATED 15-2-2016

"Section 80-1A of the Income-tax Act, 1961 ('Act'), as substituted by the Finance Act, 1999 with effect from 1-4-2000, provides for deduction of an amount equal to 100 % of the profits and gains derived by an undertaking or enterprise from an eligible business (as referred to in sub-section (4) of that section) in accordance with the prescribed provisions. Sub-section (2) of section 80-1A further provides that the aforesaid deduction

can be claimed by the assessee, at his option, for any ten consecutive assessment years out of fifteen years (twenty years in certain cases) beginning from the year in which the undertaking commences operation, begins development or starts providing services etc. as stipulated therein. Sub-section (5) of section 80-IA further provides as under—

"Notwithstanding anything contained in any other provision of this Act, the profits and gains of an eligible business to which the provisions of sub-section (1) apply shall, for the purposes of determining the quantum of deduction under that sub-section for the assessment year immediately succeeding the initial assessment year or any subsequent assessment year, be computed as if such eligible business were the only source of income of the assessee during the previous year relevant to the initial assessment year and to every subsequent assessment year up to and including the assessment year for which the determination is to be made".

In the above sub-section, which prescribes the manner of determining the quantum of deduction, a reference has been made to the term 'initial assessment year'. It has been represented that some Assessing Officers are interpreting the term 'initial assessment year' as the year in which the eligible business/ manufacturing activity had commenced and are considering such first year of commencement/operation etc. itself as the first year for granting deduction, ignoring the clear mandate provided under sub-section (2) which allows a choice to the assessee for deciding the year from which it desires to claim deduction out of the applicable slab of fifteen (or twenty) years.

The matter has been examined by the Board. It is abundantly clear from sub-section (2) that an assessee who is eligible to claim deduction u/s 80-IA has the option to choose the initial/ first year from which it may desire the claim of deduction for ten consecutive years, out of a slab of fifteen (or twenty) years, as prescribed under that sub-section. It is hereby clarified that once such initial assessment year has been opted for by the assessee, he shall be entitled to claim deduction u/s 80-IA for ten consecutive years beginning from the year in respect of which he has exercised such option subject to the fulfilment of conditions prescribed in the section. Hence, the term 'initial assessment year' would mean the first year opted for by the assessee for claiming deduction u/s 80-IA. However, the total number of years for claiming deduction should not transgress the prescribed slab of fifteen or twenty years, as the case may be and the period of claim should be availed in continuity.

The Assessing Officers are, therefore, directed to allow deduction u/s 80-IA in accordance with this clarification and after being satisfied that all the prescribed conditions applicable in a particular case are duly satisfied. Pending litigation on allowability of deduction u/s 80 IA shall also not be pursued to the extent it relates to interpreting 'initial assessment year' as mentioned in sub-section (5) of that section for which the Standing Counsels/D.R.s be suitably instructed. The above be brought to the notice of all Assessing Officers concerned."

In is clear from the above cited circular of the CBDT that assessee who is eligible to claim deduction u/s 80-IA has the option to choose the initial/ first year from which it may desire the claim of deduction for ten consecutive years, out of a slab of fifteen (or twenty) years, as prescribed under that sub-section .In the light of the above facts and circular of the Board we do not find any error in the findings of the Ld.. CIT(A), therefore, the appeal of the revenue on this issue is dismissed.

Additional depreciation u/s. 32(1)(2)

8. During the course of assessment proceedings, the assessing officer has noticed that assessee has claimed additional deduction to the amount of Rs. 77,59,947/-. After verification of the details, the assessing officer was of the view that additional depreciation was not allowable on parts or important/essential parts of plant and machinery, transport vehicle and on the office appliance, therefore, he has disallowed the claim of the assessee.

9. Aggrieved assessee has filed appeal before the Id. CIT(A). The Id. CIT(A) has allowed the appeal of the assessee. Relevant part of the decision of the Id. CIT(A) is reproduced as under:-

“4.3. Decision:

I have carefully perused the order and submission made by the AR of the appellant. The AO has disallowed the additional depreciation claimed by the appellant on plant and machinery. The AO has held that since the depreciation was not allowable on parts of important/essential parts of plant and machinery, transport vehicle and on office appliances, the claim was not admissible. The appellant on the other hand has submitted that additional depreciation has not been claimed by it on generation of plant and machinery but the same has been claimed on the plant and machinery which are used in the mining activity. The same has been claimed only on mining machinery and vehicles used in mining activity. The appellant has also submitted a list of mining machinery on which the additional depreciation has been claimed.

On a careful consideration of entire facts of the case, it is noted that the claim of the appellant appears to be allowable. The additional depreciation which has been claimed by it is on the mining machinery and vehicles used in mining activity. The mining activity is considered as a manufacturing activity and, therefore, as per the provisions of the Act, the additional depreciation would be allowable. The appellant has claimed depreciation on vehicles like hydraulic excavator, bulldozer which are used for the purpose of digging mines and not for the road transportation. The appellant has given a list and reconciliation of the additional depreciation claimed. The disallowance is, therefore, directed to be deleted.”

10. We have heard the rival contention and perused the material on record carefully it is noticed that Co-ordinate Bench of the ITAT in the case of the assessee itself vide order dated 13-12-2017 has allowed the identical issue in favour of the assessee in ITA No. 3010/Ahd/2014. Relevant part of the decision of Co-ordinate Bench of ITAT is reproduced as under:-

"8. We have given a thoughtful consideration to the orders of the authorities below. There is no dispute that the assessee has purchased certain spare parts in respect of the machinery which is used for the purpose of power generation units. We further find that the purchase of spare parts for the machinery was treated as capital expenditure and, therefore, makes the assessee eligible for claim of depreciation and also the claim of additional depreciation on the same. We, therefore, do not find any error or infirmity in the findings of the CIT(A)."

Respectfully following Co-ordinate Bench of ITAT on identical issue on similar facts decided in the case of the assessee itself as supra, we do not find any error in the decision of Id. CIT(A). This ground of the revenue is also dismissed.

11. In the result, the appeal of the revenue is dismissed.

Order pronounced in the open court on 31-10-2018

Sd/-
(RAJPAL YADAV)
JUDICIAL MEMBER
Ahmedabad : Dated 31/10/2018

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

आदेश क० तालम अ० षत / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलालय आधिकरण,
अहमदाबाद