

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL, 'C' BENCH, CHENNAI
श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं ए. मोहन अलंकामणी, लेखा सदस्य के समक्ष
BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI A.MOHAN ALANKAMONY, ACCOUNTANT MEMBER

आयकर अपील सं./I.T.A.No.2129/CHNY/2017

(निर्धारण वर्ष / Assessment Year: 2013-14)

The Income Tax Officer, Non-Corp Ward 8(3), Chennai – 34	Vs	M/s. Karmen Engineering Services LLP, No.12, Ponnamman Nagar Road, Ayyanambakkam, Chennai - 95
		PAN:AANFK5674M
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से /Appellant by	:	Shri R. Clement Ramesh Kumar, Addl.CIT
प्रत्यर्थी की ओर से /Respondent by	:	Shri S. Sridhar, Advocate

सुनवाई की तारीख/Date of hearing	:	08.11.2018
घोषणा की तारीख /Date of Pronouncement	:	14.11.2018

आदेश / ORDER

Per A. Mohan Alankamony, AM:-

This appeal by the Revenue is directed against the order passed by the Ld. Commissioner of Income Tax (Appeals)-9, Chennai dated 31.05.2017 in ITA No.16/CIT(A)/2016-17 for the assessment year 2013-14 passed U/s.250(6) r.w.s. 143(3) of the Act.

2. The Revenue has raised the following grounds in its appeal:-

1. The order of the CIT(A) is contrary to law and facts of the case.

2. The CIT(A) erred in deleting the addition of Rs 2,73,46,304/- made by the AO by recomputing the claim of deduction u/s SOIA and bringing to tax the income of other non-eligible business carried on by the assessee.

2.1 The CIT(A) erred in allowing the claim of the assessee by not accepting the option exercised by the assessee LLP for the AY 2013-14 in Form No. 10CCB dated 29.09.2013 towards the claim of deduction u/s 80IA.

2.2 The CIT(A) erred in not accepting the option exercised by the assessee LLP for the AY 2013-14 in Form No. 10CCB dated 29.09.2013 towards the claim of deduction u/s 80IA by ignoring the fact that the Form No. 10CCB has been duly certified by a Chartered Accountant that the undertaking/enterprise satisfies the conditions stipulated u/s 80IA of the Income tax Act 1961.

2.3 The CIT(A) erred in allowing the claim of the assessee to adjust its carry forwards of unabsorbed depreciation losses against the income of non-80IA business, even after the exercise of option by the assessee in Form No. 10CCB and claim in Form No. 29C.

2.4 The CIT(A) failed to note that CBDT Circular No.1/2016 dated 15.02.2016 states that once the assessee has exercised the option of choosing the initial year, he shall be entitled to deduction u/s 80IA and that the assessee shall not be entitled to allow the carry forward and set off of unabsorbed depreciation loss against profits of non-80IA unit.

2.5 The CIT(A) erred in allowing assessee's claim by accepting the misrepresentation of the case by the assessee firm before two authorities of the same department in two different ways.

3. For these and other grounds that may be adduced at the time of hearing, it is prayed that the order of the learned CIT(A) may be set aside and that of the Assessing Officer is restored.

3. The brief facts of the case are that the assessee is a limited liability partnership firm engaged in the business of engineering consultancy services and wind power generation filed its return of

income for the assessment year 2013-14 on 24.03.2014 admitting total income of Rs.10,56,361/-. Initially the return was processed U/s.143(1) of the Act and subsequently the case was selected for scrutiny and notice U/s.143(2) of the Act was issued on 20.09.2014. Finally assessment order was passed U/s.143(3) of the Act on 24.03.2016 wherein the Ld.AO made addition of Rs.2,73,46,304/- towards the income of non-eligible business U/s.80IA of the Act.

4. On appeal, the Ld.CIT(A) deleted the addition made by the Ld.AO by observing as under:-

“13. In view of the above, it is clear that the AO incorrectly applied the provisions of Section 80-IA(5) to the facts of the appellant’s case where the carry forward loss relates to unabsorbed depreciation loss which is not a notional loss. Notional loss, if any, will be computed only after the initial assessment year. In this case, the initial Assessment year is yet to commence. Even if Assessment Year 2013-14 is presumed to be initial Assessment Year, the appellant is entitled to carry forward and adjust the unabsorbed depreciation loss which is not a notional loss. Therefore, no addition can be sustained.

14. It also appears that the AO has incorrectly taken Rs.5,58,85,631/- as income from business in his computation. The income from business before adjustment of carry forward depreciation loss is Rs.2,85,39,327/- and the net income after adjustment of carry forward depreciation loss of Rs.2,74,82,996/- is Rs.10,56,361/-. Gross total income in the return of income is only Rs.10,56,361/-. No deduction is claimed under Chapter – VIA and the total income arrived at is Rs.10,56,361/-. In view of the above, the computation returning total income of Rs.10,56,361/- is accepted. Addition of Rs.2,73,46,304/- is deleted.”

5. At the outset, the Ld.DR submitted before us that the Ld.CIT(A) has erred in granting deduction to the assessee U/s.80IA of

the Act, thereby deleting the addition made by the Ld.AO for Rs.2,73,46,304/- and thereafter argued in support of the grounds raised by the Ld.AO which is extracted herein above. Further the Ld.DR argued by stating that the assessee had claimed deduction U/s.80IA of the Act for the relevant assessment year in the Form 10CCB dated 29.09.2013 and therefore the initial assessment year for claiming deduction U/s. 80IA of the Act has to be taken as the relevant assessment year 2013-14. On the other hand the Ld.AR argued in support of the order of the Ld.CIT(A) and further stated that the Ld.AO had incorrectly adopted Rs.5,58,85,631/- as the assessee's income from business in his computation. He further submitted that if the incorrect computation made by the Ld.AO is rectified then addition made by the Ld.AO cannot be sustained. He therefore pleaded that the entire matter may be remitted back to the file of Ld.AO for verification. The Ld.AR further submitted that the assessee had not adopted the relevant assessment year as the initial assessment year for claiming deduction U/s.80IA of the Act, though it was mentioned in the audit report in Form No.10CCB dated 29.09.2013 by the Chartered Accountant.

6. We have heard the rival submissions and carefully perused the materials on record. From the facts of the case, it appears that the Ld.CIT(A) have observed certain incorrect computation made by the Ld.AO. Further the Ld.CIT(A) has relied on the decision of the Hon'ble Jurisdictional Madras High Court in the case Velayudhasamy Spinning Mills Pvt. Ltd., reported in 340 ITR 477 while deciding the issue in favour of the assessee, which was lost sight by the Ld.AO. However in the interest of justice, we are of the considered view that the Ld.AO is required to re-examine the entire matter in the light of the observations made by the Ld.CIT(A) and prayer of the Ld,AR to rectify the mistake made by the Ld.AO for adopting Rs.5,58,85,631/- as the assessee's income from business. Further the assessee has stated that it has not claimed deduction U/s.80IA of the Act in the return of income for the relevant assessment year by treating the relevant assessment year as the initial assessment year though the claim was made in the Form No.10CCB dated 29.09.2013 which is signed only by Chartered Accountant. If that is so, we are of the view that the prayer of the assessee should be accepted without giving any weightage to the certificate of the Chartered Accountant in Form No.10CCB. With these observations, we hereby remit the matter back to the file of Ld.AO for de-nova consideration.

7. In the result, the appeal of the Revenue is allowed for statistical purposes as indicated herein above.

Order pronounced on the 14th November, 2018 at Chennai.

Sd/-

(एन.आर.एस. गणेशन)

(N.R.S. Ganesan)

न्यायिक सदस्य/Judicial Member

Sd/-

(ए. मोहन अलंकामणी)

(A. Mohan Alankamony)

लेखा सदस्य/Accountant Member

चेन्नई/Chennai,

दिनांक/Dated 14th November, 2018

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant

2. प्रत्यर्थी/Respondent

3. आयकर आयुक्त (अपील)/CIT(A)

4. आयकर आयुक्त/CIT

5. विभागीय प्रतिनिधि/DR

6. गार्ड फाईल/GF