

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'ए' अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
“ A ” BENCH, AHMEDABAD

सर्वश्री वसीम अहमद, लेखा सदस्य एवं मधुमिता रॉय, न्यायिक सदस्य के समक्ष ।
BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER
And SMT MADHUMITA ROY, JUDICIAL MEMBER

आयकर अपील सं./I.T.A. No. 679/Ahd/2017
(निर्धारण वर्ष / Assessment Year : 2012-13)

Manpasand Beverage Pvt. Ltd., E-62, Manjusar GIDC, Manjusar Savli Road, Vadodara – 391 775.	बनाम/ Vs.	DCIT, Circle – 2(1)(2), Baroda.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAHCM 1210 E		
(अपीलार्थी/Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से/ Appellant by :	Shri Mukund Bakshi, A.R.
प्रत्यर्थी की ओर से/Respondent by:	Shri T. C. Meena, Sr. D.R.

सुनवाई की तारीख/ Date of Hearing	24/01/2019
घोषणा की तारीख/Date of Pronouncement	06/02/2019

आदेश / O R D E R

PER WASEEM AHMED, ACCOUNTANT MEMBER:

The captioned appeal has been filed at the instance of the Assessee against the order of the Commissioner of Income Tax (Appeals)–2, Vadodara [CIT(A) in short] vide appeal no.CAB/(A)-2/189/15-16 dated 06.12.2016 arising in the matter of assessment order passed under s.143(3) of the Income Tax Act, 1961(here-in-after referred to as "the Act") dated 28.10.2015 relevant to Assessment Year (AY) 2012-13.

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2. The grounds of appeal raised by the assessee are as under:-

“1. The Ld CIT(A)-2, Vadodara has erred in law and on facts in confirming the disallowance of an amount of Rs.1,50,000/- u/s 14a of the I.T. Act. The disallowance being unwarranted in facts and in law is prayed to be allowed.

1. The Ld CIT(A)-2, Baroda has erred in law and in facts in confirming the addition of an amount of Rs.20,90,804/- representing the following items of expense:

<i>i)</i>	<i>Interest on TDS</i>	<i>7,191</i>
<i>ii)</i>	<i>Interest on Excise Duty</i>	<i>7,634</i>
<i>iii)</i>	<i>Excise duty on other expenses</i>	<i>15,07,036</i>
<i>iv)</i>	<i>Late payment of Emp Contribution to PF u/s 36(1)(va)</i>	<i>5,68,943</i>
	<i>Total</i>	<i>20,90,804</i>

The ld CIT(A) erred in rejecting the contention of the appellant that such disallowance of expenditure has resulted in the enhancement of the gross total income which otherwise is allowed as deduction u/s 80IB(11A).

2. Your appellant carves liberty to add, alter, amend or delete any or all the grounds of appeal stated above.”

3. At the outset, the Learned AR before us submitted that he had been instructed not to press ground no. 1, therefore we dismiss the same as not pressed.

4. The second issue raised by the assessee is that Learned CIT(A) erred in confirming the addition of Rs. 20,90,804/- on account of certain expenses.

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5. Briefly stated facts are that the assessee is a private limited company and engaged in the business of processing of fruit juices. The AO during the assessment proceedings has disallowed the following expenses.

i)	Interest on TDS	7,191
ii)	Interest on Excise Duty	7,634
iii)	Excise duty on other expenses	15,07,036
iv)	Late payment of Emp Contribution to PF u/s 36(1)(va)	5,68,943
	Total	20,90,804

5.1 The above disallowance of the expenses were added to the total income of the assessee.

6. Aggrieved, assessee preferred an appeal to Learned CIT(A) who has confirmed the order of the AO.

Being aggrieved by the order of Learned CIT(A) assessee is in appeal before us.

7. The Learned AR before us submitted that the assessee is eligible for deduction u/s 80IB (11A) of the Act on the income enhanced by such disallowance of the expenses.

8. On the other hand, learned DR vehemently supported the order of authorities below.

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9. We have heard the rival contentions and perused the materials available on record. There is no ambiguity that the assessee is eligible for deduction u/s 80IB (11A) of the Act. Therefore, the disallowance made u/s 40A(3), 43B of the Act relating to the business activity would be eligible for deduction under Chapter-VIA as per the CBDT Circular No. 37/2016 dated 02.11.2016.

9.1 We also find that in the identical facts & circumstances, the Tribunal in the own case of the assessee decided the issue in favour of the assessee in ITA No. 2662/Ahd/2015 vide order dated 7-6-2018. The relevant extract of the order is reproduced as under:

“4. Ground no.4 concerns corresponding deduction u/s. 80IB(11A) on the portion of the eligible business profit enhanced on account of disallowances under s. 40A(3) of Rs.30,000/-. Similarly, ground no.5 concerns enhanced deduction under s.80IB(11A) owing to increase in eligible profits in view of the disallowances made under s.43B amounting to Rs.42,07,953/-. It is the case on behalf of the assessee that the assessee is eligible for corresponding deduction under s.80IB(11A) on account of disallowances made in the assessment 40A(3) and 43B of the Act since the eligible profit stood enhanced due to such disallowance.

5. As submitted on behalf of the assessee, we find that CBDT has addressed the aforesaid issue in favour of the assessee as per its Circular no.37/2016 dated 2nd November, 2016. As per the aforesaid circular, the Board has accepted the proposition that disallowances so made under s.40A(3), 43B etc. of the Act related to business activity would be eligible for chapter VI-A deduction in view of the enhancement of the profits of the eligible business. In view of the CBDT Circular, the controversy stands settled in view of the assessee. Thus, ground nos. 4 & 5 of the assessee are allowed.”

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9.2 The Learned DR before us has not brought anything on record contrary to the argument advanced by the Learned AR.

9.3 Therefore we hold that the assessee is eligible for deduction on the enhanced income on account of the addition of certain items as discussed above. Therefore we reverse the order of authorities below and direct the AO to delete the addition made by him. Hence, the ground of appeal of the assessee is allowed.

10. In the result, the assessee's appeal is **partly allowed**.

This Order pronounced in Open Court on	06/02/2019
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sd/-
(मधुमिता रॉय)
न्यायिक सदस्य
(MADHUMITA ROY)
JUDICIAL MEMBER

Ahmedabad; Dated 06/02/2019

Priti Yadav, Sr.PS

Sd/-
(वसीम अहमद)
लेखा सदस्य
(WASEEM AHMED)
ACCOUNTANT MEMBER

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

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

आदेशानुसार/BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad