

**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH (D), KOLKATA
[Before Shri P.M. Jagtap, Vice President & Shri A.T. Varkey, JM]**

I.T.A. No. 1981/Kol/2016
Assessment Year: 2007-08

ACIT Circle - 4(1) Kolkata.....Appellant
P-7, Chowringhee Square,
Kolkata - 700 069.

M/s. Goodricke Group Limited.....Respondent
Camellia House, 14, Gurusaday Road,
Kolkata - 700 019.
[PAN: AABCG 1614 Q]

Appearances by:

Shri Tanmoy Dutta, AR appearing on behalf of the Revenue.
Shri Shankar Halder, Sr. DR & Radhe Shyam, CIT, DR appearing on behalf of the Assessee.

Date of concluding the hearing : February 05, 2019

Date of pronouncing the order : February 15, 2019

ORDER

Per P.M. Jagtap, Vice President

This appeal is preferred by the revenue against the order of Ld. CIT(A) - 16, Kolkata dated 09.08.2016 and the solitary issue involved therein relates to the deletion by the Ld. CIT(a) of the addition of Rs. 36,18,579/- made by the AO on account of disallowance of assessee's claim u/s 33AB of the Act to that extent.

2. The assessee in the present case is a company which is engaged in the business of growing, manufacturing and selling of tea. In the assessment originally completed u/s 143(3) vide an order dated 31.12.2009. the total income of the assessee was determined by the AO at Rs. 7,18,82,560/- against the return income of Rs. 6,55,65,839/- . In the said assessment, the composite income of the assessee from the business of growing, manufacturing and selling of tea was computed by the AO at Rs. 1,02,06,136/- after allowing a deduction of

Rs. 1,28,35,055/- u/s 33AB of the Act. The assessment order passed by the AO u/s 143(3) was set aside by the concerned Ld. CIT vide an order passed u/s 263 with the direction to the AO to arrive at the correct deduction u/s 33AB after giving the assessee an opportunity of being heard. Accordingly opportunity was given by the AO and availing the same, it was submitted on behalf of the assessee company before the AO that a similar issue was decided by the Hon'ble Kolkata High Court in assessee's own case for A.Y. 1993-94 and 1994-95 reported in 338 ITR 97 wherein it was held that the assessee having utilised the entire tea garden and having required final product of blending the tea with tea purchased from outside, the entire profit arising from such manufacture would be eligible for deduction u/s 33AB notwithstanding the fact that for the purpose of blending a small quantity of tea leaves was purchased from outside. The submission of the assessee was not found acceptable by the AO. According to him, the decision of Hon'ble Kolkata High Court cited by the assessee was not applicable to the facts involved in the year under consideration since the assessee had not utilised the entire tea grown and manufactured in its own garden and had made sales of tea through auction out of tea grown and manufactured. He accordingly computed the composite income of the assessee from the business of growing and manufacturing of tea before allowing deduction u/s 33AB at Rs. 2,30,41,191/- and restricted the claim of the assessee for deduction u/s 33AB to Rs. 92,16,476/- being 40% of such composite income resulting in a disallowance of Rs. 36,18,579/-.

3. The disallowance made by the AO by restricting the claim of deduction u/s 33AB was challenged by the assessee in the appeal filed before the Ld. CIT(A) and after considering the submissions made by the assessee as well as the material available on record, the Ld. CIT(A) deleted the said disallowance for the following reasons given in his impugned order:

"I have considered the views expressed by the AO and the submissions of the AR. The ground nos. 1 & 2 both are against the recomputation and reduction of the deduction u/s 33AB allowed in the assessment under section 143(3). These two grounds are, therefore, taken up together.

The appellant deposited Rs.1,57,00,000 under section 33AB of the Act in the NABARD, but the admissible deduction computed by the AO in his order under section 143(3) of the Act, based on the method consistently followed and accepted in the assessment of earlier years, was Rs.1,28,35,055. It is an admitted fact that the tea manufactured by the appellant out of tea grown was blended with the purchased tea and tea manufactured out of bought leaves. This was required to be done to achieve flavor, colour and quality of liquor as per customer preference. In computing the deduction under section 33AB of the Act, the appellant excluded the profit derived from the sale of purchased tea and tea manufactured out of bought leaves on a proportionate basis. The computation of section 33AB filed also shows the same. The proportionate profit on purchased tea and tea manufactured out of bought leaves have been excluded from the profit and on the balance profit deduction @ 20% amounting to Rs.1,28,35,048/- was allowed by the AO in his order under section 143(3) of the act. This deduction has been computed based on the method consistently followed and accepted in earlier assessment years. The deduction under section 33AB recomputed and reduced in the order dated 15.02.2013 is inconsistent with the method followed and accepted in the earlier assessments and is not correct.

The CIT in his order u/s 263 has also considered the computation of the deductible amount under section 33AB and he did not make any adverse comment as far as it is related to the exclusion of the proportionate profit in order to arrive at the profit on which deduction under section 33AB would be available. Thus it can be fairly inferred that the CIT has concurred the computation of deduction under section 33AB by excluding

the proportionate profit arising from the sale of tea manufactured out of bought leaves as well as from purchased tea.

I have also seen the order of the Hon'ble ITAT in ITA No. 894/Kol/2003, dated 31.03.2004 for assessment year 1998-99 in the appellant's own case. The Hon'ble ITAT in restoring the issue to the file of the AO directed him to adopt the method in case of the appellant in earlier years.

The appellant has cited the decision of the Hon'ble Calcutta High Court in its own case reported in 338 ITR 97. In that case the Hon'ble High Court held that the appellant is entitled to the benefit of the entire profit arising out of the business of growing and manufacturing tea and the amount of tea purchased from outside for blending should not be deducted as the said amount is insignificant in comparison to the amount of tea grown and manufactured by the appellant. In that case the profit on tea manufactured out of bought tea was Rs. 32,467/- whereas the profit on sale of processed tea was Rs. 2,68,04,887/-.

In the present appeal, the appellant has apportioned the profit arising out of purchased tea and tea manufactured out of bought leaves, and excluded the same from the profits determined from the growing and manufacture of tea for computing deduction under section 33AB. Thus, the deduction of Rs. 1,28,35,055/- allowed by the AO in his order under section 143(3) was only on the profits of growing and manufacturing tea in accordance with the provisions of section 33AB of the Act.

In view of my above observations I direct the AO to allow the deduction of Rs. 1,28,35,055/- u/s 33AB of the Act as was done in the assessment made u/s 143(3) of the Act instead of Rs. 92,16,476/- recomputed in his order dated 15.02.2013. The appellant gets relief of Rs. 36,18,579/-."

4. At the time of hearing before the Tribunal, the learned DR has relied on the order of the AO passed u/s 143(3)/263 in support of the Revenue's case on the issue while the learned counsel for the assessee has strongly supported the impugned order of the Ld. CIT(A) giving relief to the assessee on the issue by submitting that the same is well reasoned and well discussed.

5. We have considered the rival submissions and also perused the relevant material available on record. It is observed that the claim of the assessee for deduction u/s 33AB was reduced by the AO vide an order passed u/s 143(3)/263 of the Act on the ground that the profit arising out of the purchased tea and tea manufacturing out of bought leaves was wrongly included in the composite income of the business of the assessee of growing, manufacturing and selling of tea and deduction u/s 33AB @ 40% was accordingly allowed in excess in the assessment originally completed u/s 143(3). As found by the Ld. CIT(A) from the verification of the working furnished by the assessee, the profit arising out of purchased tea and tea manufactured out of bought leaves was apportioned by the assessee and the same was excluded from the composite profit determined from the growing and manufacturing of tea for computing deduction u/s 33AB. As further found by the Ld. CIT(A), this method of computing composite profit for the purpose of deduction u/s 33AB was consistently followed by the assessee in the earlier years and the same was accepted by the AO in the earlier years and even in the year under consideration in the assessment originally completed u/s 143(3). As noted by the Ld. CIT(A) in his impugned order, the Tribunal in assessee's own case for A.Y. 1998-99 had directed the AO to adopt the same method as was followed in the case of the assessee in the earlier years. At the time of hearing before us, the learned DR has not been able to rebut or controvert these findings of fact recorded by the Ld. CIT(A) while giving relief to the assessee on the issue under consideration. We, therefore, find no justifiable reason to interfere with the impugned

order of the Ld. CIT(A) on this issue and upholding the same, we dismiss the appeal of the Revenue.

6. In the result, the appeal of the Revenue is dismissed.

Order Pronounced in the Open Court on 15th February, 2019.

Sd/-
(A.T. Varkey)
JUDICIAL MEMBER

Sd/-
(P.M. Jagtap)
VICE PRESIDENT

Dated: 15/02/2019

Biswajit, Sr. PS

Copy of order forwarded to:

1. M/s. Goodricke Group Limited, Camellia House, 14, Gurusaday Road, Kolkata – 700 019.
2. ACIT, Circle – 4(1), P-7, Chowringhee Square, Kolkata – 700 069.
3. The CIT(A)
4. The CIT
5. DR

True Copy,

By order,

Assistant Registrar / H.O.O.
ITAT, Kolkata