

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "D", MUMBAI

Before Shri G Manjunatha (ACCOUNTANT MEMBER)

AND

Shri Ravish Sood (JUDICIAL MEMBER)

ITA No.6967/Mum/2017 - AY 2012-13

ITA No.6968/Mum/2017 - AY 2013-14

ITA No.6969/Mum/2017 - AY 2014-15

ACIT-21(2), Mumbai	vs	M/s Marudhar Fashions 8, Cama Industrial Estate Sun Mill Compound, Lower Parel (W) Mumbai 400 013 PAN : AA AFM3463F
APPELLANT		RESPONDEDNT

Appellant by	Shri D.G. Pansari
Respondent by	Shri Vimal Punmiya

Date of hearing	26-02-2019
Date of pronouncement	27-03-2019

ORDER

Per G Manjunatha, AM :

These three appeals filed by the revenue are directed against common order of the CIT(A)-33, Mumbai dated 13-09-2017 for the assessment years, 2012-13, 2013-14 & 2014-15. Since facts are identical and issues are common,

for the sake of convenience, these appeals were heard together and are disposed of by this consolidated order.

2. The revenue has raised more or less common grounds of appeal for all assessment years. Therefore, for the sake of brevity, grounds of appeal taken for AY 2012-13 in ITA No.6967/Mum/2017 are reproduced hereunder:-

“1. Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) is justified in holding that the assessee is eligible for deduction u/s.80IA of the Income-tax Act, 1961 to the tune of Rs.1,42,02,495/- as against the computation of the same at Rs.71,31,266/- by the Assessing Officer?”

2. “Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) is justified in holding that the each of the wind mills constitute a separate undertaking for the purposes of deduction u/s.80IA?”

3. “Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) is justified in not reducing the profits of WTG 1,2,3 & 4 with the loss of WTG 5 for purposes of computing deduction u/s.80IA?.”

4. “Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) is justified in splitting up of units and considering them as separate undertakings for the purpose of computation of deduction u/s.80IA of the Income-tax Act, 1961 ignoring the fact that all the five units are into the same activity of generation of wind power and thus constitute one single "Industrial Undertaking" or an enterprises.”

3. The brief facts of the case extracted from ITA No.6967/Mum/2017 are that the assessee is a partnership firm engaged in the business of hand tufted woollen carpets and also involved in the business of generation of power through wind turbine generator. The assessee has filed its return of income for AY 2012-13 on 20-09-2012 declaring total income at Rs.2,06,51,300. The assessee has claimed the benefit of deduction u/s 80IA of the I.T. Act, 1961 in respect of profit derived from power generation business. The assessee, while arriving at the amount of deduction u/s 80IA, claimed deduction towards profit

of eligible units without setting off of loss of other eligible units. The case has been selected for scrutiny and assessment has been completed u/s 143(3) of the Income-tax Act, 1961 on 31-03-2015, where the AO has re-computed profit eligible for deduction u/s 80IA in respect of power generation business by setting off of loss of other eligible units.

4. Aggrieved by the assessment order, assessee preferred appeal before the CIT(A). Before the CIT(A), assessee submitted that as per the provisions of sub section (5) of section 80IA, deduction has to be allowed unit-wise without considering profit / loss of other eligible units, but the AO has re-computed the amount of deduction by setting off of loss incurred by other eligible units. The Ld.CIT(A), after considering submissions of the assessee held that deduction provided u/s 80IA shall be allowed to each unit without considering profit or loss of other eligible units. The Ld.CIT(A) further observed that if both sub sections of section 80IA are read together, it is very clear that once other conditions of section 80IA are fulfilled, the profit is to be computed undertaking-wise and not for business as a whole. Since the AO has not doubted the eligibility of deduction with respect to different windmills, he found that for the purpose of determining the quantum of deduction u/s 80IA for each undertaking, the computation has to be made as if such eligible business were the only source of income to the assessee during the previous

year relevant to the initial assessment year and to every subsequent assessment year upto and including the assessment year for which the determination has to be made. The relevant observations of the Ld.CIT(A) are as under:-

“19. I have carefully considered the above submissions of the appellant and the impugned assessment order on this issue, My observations are as under-
19.1 During the appellate proceedings, the appellate has submitted the details regarding set up, location and the date of commencement of each Wind Mill with respect to deduction under section 80 IA as under-

Windmill No.	Year of set up	Location	Commencement of deduction (initial Assessment year)	Profit
1.	F.Y. 06-07	Dhule	A.Y. 11-12	61,84,940/
2.	F.Y. 06-07	Sangli	A.Y. 11-12	73,54,507/
3.	F.Y. 09-10	Jodhpur	A.Y. 12-13	6,63,047/-
4.	F.Y. 09-10	Bhiyan	A.Y. 15-16	65,667/-
5.	F.Y. 09-10	Akal	A.Y.15-16	(-) 1,36,896/-

19.2 In the assessment order, the AO was of the view that the profits from three wind Mills WTG 1, WTG 2 and WTG 3 should be set off against the losses of Wind Mills WTG 4 and WTG 5 and the net income should be allowed to be claimed u/s 80IA of the Act for the year under consideration. In this regard, I find that provisions of sub sec. (1) and (5) of sec.80IA are relevant here. These sub-sections read as under:

As per subsection (1) of section 80-IA, where *the gross total income of the assessee includes any profit or gains derived by an undertaking or an enterprise from any business referred to in sub-section (4), a deduction of 100% of profit and gains of such business will be allowed to the assessee as a deduction for a period of 10 consecutive assessment years.*

As per subsection (5) of section 80IA:

"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."

19.3 If both sub-sections of section 80IA are read together, it is clear that, once other conditions of section 80IA are fulfilled, the profits are to be computed Undertaking-wise and not for business as a whole. Since the AO has not doubted the eligibility of deduction u/s 80IA with respect to different

Wind Mills, it is found that for the purpose of determining the quantum of deduction u/s 80IA for each undertaking, the computation is to be made 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 and including the assessment year for which the determination is to be made. In the instant case, for WTG 1, WTG 2 and WTG 3, the initial assessment years for the purpose of deduction u/s 80IA are A.Y.s 2011-12, 2011-12 and A.Y. 2012-13 respectively. There are positive profit for all the three Wind Mills in these years. For WTG 4 and WTG 5, the appellant has chosen initial assessment years being A.Y. 2013-14 and A.Y. 2015-16 respectively, since the provisions of IT. Act give an opportunity to the assessee to select any ten consecutive years out of 15 years for availing the benefits of deduction u/s 80IA.

Availing this opportunity, the appellant has selected F.Y.s relevant to A.Y. 2013-14 and A.Y. 2015-16 as initial assessment year for the Wind Mills WTG4 and WTG5 respectively. No doubt, once initial assessment year is selected, the benefits have to be availed for ten consecutive years irrespective of whether there is a profit or loss from such undertaking.

19.4 In view of the above facts, in my considered opinion, once the appellant has not availed benefit of sec. 80IA for WTG 4 and WTG 5 for the year under consideration, as the initial assessment years for these Wind Mills start in subsequent years, there remains no question of clubbing the profits (or loss) of WTG 4 and WTG 5 with the profits of WTG 1, WTG 2 and WTG 3. In this regard, the reliance of the Ld. AR on various judicial pronouncements, as per written submissions are in order. Hence, the AO is directed to exclude the profit/ loss of WTG 4 and WTG 5 for the purpose of computation of deduction u/s 80IA of the Act for the year under consideration. Thus, the ground of appeal no. **1 is allowed.**”

5. Aggrieved by the order of CIT(A), the revenue is in appeals before us.
6. The Ld.DR submitted that the Ld.CIT(A) has erred in holding that the assessee is eligible for deduction u/s 80IA of the Income-tax Act, 1961 to each of the windmill separately as the only business of the assessee without appreciating the fact that the deduction provided u/s 80IA of the act has to be given for business, as a whole. The Ld.DR further submitted that the Ld.CIT(A) was not justified in splitting up of units and considering them as separate undertakings for the purpose of computation of deduction u/s 80IA of the Act

ignoring the fact that all the five units were into the same activity of generation of wind power and this constitute one single industrial undertaking or an enterprise.

7. The Ld.AR for the assessee, on the other hand, strongly supporting the order of the Ld.CIT(A) submitted that the issue is squarely covered in favour of the assessee by the decision of ITAT, Mumbai Bench "C" in the case of Punit Construction Co vs JCIT in ITA Nos 6337 and 6980 (Mum) of 2014 order dated February 21, 2018 where under identical set of facts, the co-ordinate bench of Tribunal held that in terms of provisions of sub section (5) of section 80IA, deduction has to be given unit-wise without considering profit or loss of other eligible units. The Ld.CIT(A), After considering relevant provisions of the Act, has rightly directed the AO to allow the benefit of deduction unit-wise without setting off of loss / profit of other eligible units. Therefore, there is no reason to interfere with the order of the Ld.CIT(A).

8. We have heard both the parties, perused the materials available on record and gone through the orders of authorities below. There is no dispute with regard to the fact that the assessee is eligible for deduction u/s 80IA in respect of five windmills. The only dispute is with regard to whether each windmill constitute a separate undertaking and the profit or loss of that undertaking alone will be considered for the purpose of deduction u/s 80IA or

the sum of profit or loss of all five undertakings together is eligible for deduction u/s 80IA. The co-ordinate bench of ITAT, Mumbai Bench "C" in the case of Punit Construction Co vs JCIT (supra) has considered an identical issue in light of number of windmills and after considering relevant provisions of the Act, including sub section (5) of section 80IA, held that deduction has to be given unit-wise without considering profit or loss of other eligible units. The relevant observations of the Tribunal are as under:-

“10. We have heard both the parties, perused the material available on record and gone through the orders of authorities below. We have also carefully considered provisions of section 80IA and case laws relied upon by both parties. The facts with regard to eligibility for claiming deduction under section 80IA has not been disputed by the lower authorities. The lower authorities had admitted that the assessee is eligible for claiming deduction under section 80IA in respect of power generation business though setting off of windmills. The only dispute is with regard to computation of quantum of deduction. Whether the profits and gains of the eligible business as per the words of section 80IA(5) have to be considered unit-wise or as a total eligible business comprising of profits of all units. The provisions of section 80IA(5) provided mechanism for determination of quantum of deduction from eligible business and as per which the eligible business shall be considered as if the only source of income of the assessee during the initial year and every subsequent AYs. Therefore, one has to see what eligible business is whether it is the total business as a whole or each unit or undertaking. No doubt the provision of section 80IA speaks about profit and gains from industrial undertakings I T A No . 63 37 & 6 9 80 / M u m/ 2 01 4 or enterprises engaged in infrastructure development, etc. Sub-section (5) speaks about eligible business. Now the controversy to be resolved is whether the power generation segment of the assessee is an eligible business or each windmill is a separate unit eligible for deduction without considering profit or loss of other windmill. The assessee claims that each windmill shall be considered as an eligible unit for the purpose of determination of deduction. The assessee also cited certain judicial precedents in support of its arguments.

11. To understand the eligibility for deduction under section 80IA of the Act, the questions that need to be addresses are whether the gross total income of the assessee is positive, whether the assessee has an eligible business and

whether different units in such eligible business are to be taken as one eligible business. To ascertain gross total income, the first step would be to compute income under each head of income separately. In this case admittedly, the assessee does not have any other head of income except income from Business or Profession. The assessee have only two segment of business income i.e. construction business and power generation business. Admittedly, construction business is not eligible business for claiming deduction under section 80IA, therefore, there is controversy about consolidation of profit from construction business activity. The assessee is having power generation segment through windmills. The assessee has set up five windmills. All the five units are part of power generation segment. Now the question is whether deduction provided under section 80IA shall be given on profits and gains derived from power segment business as the only eligible business or profits and gains derived from each windmills as an eligible business without considering profit or loss of other windmills. There is no dispute with regard to deduction to be given under chapter VIA against gross total income computed from all source of income. Even various decisions of the Hon'ble Supreme Court, including in the case of [CIT vs. Liberty India I T A No . 63 37 & 6 9 80 / M u m/ 2 01 4](#) (supra) have clearly held that special deduction under chapter VIA has to be computed on the gross total income and such gross total income has to be computed segment wise business after allowing all the deduction allowable under section 32 to 43D. The Hon'ble Bombay High Court in the case of [Plastiblends India Ltd. Vs. ACIT \(2009\) 185 Taxman 187](#) after considering the ratio of Hon'ble Supreme Court in the case of Liberty India (supra) held that there has to be profit in the eligible business and such eligible business can be any of the business as referred to in sub- section 3(ii) to 11(a) of section 80IA of the Act.

12. In this case, admittedly the assessee is having two segment of business i.e. one is power generation through five windmills which is eligible business and another is construction segment. The assessee has generated profit from two windmills and incurred losses from three windmills. The assessee also derived profit from construction business. The gross total income computed from two segment of business is positive. If you consider each segment of business stand alone, then there is a loss from the power generation segment, if profit or losses of all five windmills are consolidated. The assessee has considered each wind Mill as a separate unit eligible for deduction under section 80IA, without considering profit or loss of other windmills and accordingly claimed deduction towards profit generated from two windmills. If one considered power generation business as one eligible business, certainly the assessee is not eligible for deduction under section 80IA, as from power generation business the assessee has incurred losses. If you strictly apply the provisions of section 80IA(5), the words used therein are clearly states that each eligible business shall be considered as the only source of income of the assessee for the purpose of determination of deduction. If, one goes by the words used in sub section (5), of section 80IA, then there is logic in the unit wise deduction claimed by the assessee, for the reason that deductions under chapter VIA is a

incentive based deduction I T A No . 63 37 & 6 9 80 / M u m/ 2 01 4 and period specific. The provisions provides for deduction of profits and gains of eligible business for a certain period starting from the period of initial claim. To understand the issue in a better manner, let us take an example. The assessee is in to the business of manufacturing products from different units located at different places. Meantime, the Govt. has announced incentives for setting up units in some places and within such period. The assessee has set up one eligible unit and starts claiming deduction under that provision. Next year, the assessee has set up one more eligible unit at different place and starts claiming deduction from that year and so on. Now both units are eligible units. The period of deduction specified under the act is 10 years for eligible units. Unit one is claiming deduction from initial assessment year and it may end up in some period. Unit two is claiming deduction from next year and it may end up in different year. If one takes initial assessment year from which unit one claims deduction for ten years, the assessee may loose benefit of deduction for one year for unit two, because it has commenced deduction from next year. If you take initial year of claim from the date on which unit two starts claiming deduction, then the assessee may get the benefit for more than 10 years for unit one, if you consider both units as one eligible business and profit or loss of both units is consolidated. This may not be the true intention of the legislature and for that reason the legislature consciously used the word undertaking or unit so as to give a deduction towards eligible units, in a situation where, the assessee is having more than one units in different locations, out of which one unit may be an eligible unit and another unit may not be eligible unit and also one unit may get deduction for different period and another unit may get deduction for different period. This is why the courts and tribunals has consistently held that deduction provided u/s 80IA has to be given unit wise without considering profit or loss of other units. This legal proposition is strengthened by the decision of ITAT, Ahmadabad, special bench in the case of [CIT vs. Goldmine Shares and Finance Pvt. Ltd.](#)”

9. A similar issue has been considered by Hon’ble Delhi High Court in the case of CIT vs Dewan Kraft System Pvt Ltd (2007) 160 Taxman 343 (Del), where the Hon’ble Delhi High Court, after considering relevant provisions of the Act, held that for the purpose of deduction u/s 80IA, each unit shall be treated as independent unit and same has to be treated as only source of income of the assessee for the purpose of computing deduction u/s 80IA of the Act. The relevant findings of the Hon’ble Court are as under:-

“Section 80-IA(7) shows that it is a distinct and separate deeming provision which lays down the special method of computing [the profits and gains entitled to deduction under section 80-IA. Moreover, this provision is of overriding nature providing specifically that during each of the assessment years in the tax holiday, period in which the assessee is entitled to deduction under section 80-IA, this provision will be applied as if the industrial unit is an independent unit and is the one and only source of income possessed by the assessee. [Para 13 J

If it is dear that while computing deduction under section 80-IA, the profits and gains of Kalamb unit for the purpose of determining the quantum of deduction under section 80-IA(5) were to be computed as if such eligible business of the said unit was the only source of income of the assessee. The Assessing Officer mixed (the profits of the Kalamb unit with the profits of units at Delhi and NOIDA and, thus, he erroneously restricted the deduction to the extent of business income and that was done by him in total disregard of the provisions of sub-section (7) of section 80-IA. [Para 14J

Thus, the Kalamb unit, being the only unit of the assessee eligible for deduction under section 80-IA, was to be treated as an independent unit and the same was to be treated as the only source of income for the assessee for the purpose of computing deduction under section 80-IA. The deduction claimed by the assessee under section 80-IA, thus, was in accordance with said provisions and as such there was no

10. In this view of the matter and being consistent with the view taken by the co-ordinate bench, which is further supported by the decision of Hon'ble Delhi High Court in the case of CIT vs Dewan Kraft Systems Pvt Ltd (supra), we are of the considered view that the Ld.CIT(A) was right in allowing the benefit of deduction u/s 80IA in respect of each unit without setting off of loss incurred by other eligible units. Hence, we are inclined to uphold the findings of Ld.CIT(A) and dismiss appeal filed by the revenue.

ITAs No.6968 & 6969/Mum/2017

11. The facts and issue involved in these two appeals are identical to the facts and issue we have already considered in ITA No.6967/Mum/2017 for AY 2012-13. The reasons given therein by us in the preceding paragraphs shall mutatis mutandis apply to this appeal also. Therefore, for the detailed reasons recorded in the preceding paragraph, we are of the considered view that there is no error in the findings recorded by the CIT(A) in directing AO to allow deduction u/s 80IA, unit-wise without setting off of loss of other units. Hence, we are inclined to uphold the order of Ld.CIT(A) and dismiss appeals filed by the revenue.

12. In the result, all the appeals filed by the revenue are dismissed.

Order pronounced in the open court on 27-03-2019.

Sd/-

sd/-

(Ravish Sood)	(G Manjunatha)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Mumbai, Dt : 27th March, 2019

Pk/-

Copy to :

1. Appellant
2. Respondent
3. CIT(A)
4. CIT
5. DR

/True copy/

By order

Asstt. Registrar, ITAT, Mumbai