

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'डी' अहमदाबाद।
IN THE INCOME TAX APPELLATE TRIBUNAL
"D" BENCH, AHMEDABAD

BEFORE SHRI A. D. JAIN, VICE-PRESIDENT
AND SHRI WASEEM AHMED, ACCOUNTANT MEMBER

आयकर अपील सं./ ITA No. 1063/Ahd/2017

निर्धारण वर्ष/Assessment Year: 2013-14

M/s. Anand Food & Dairy Products, Chikhodra-Sarsa Road, Chikhodra-388320 PAN : AAEEFA 0212 E	Vs.	Dy. Commissioner of Income-tax, Anand Circle, Anand
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
Assessee by :	Shri Aseem Thakkar, AR	
Revenue by :	Smt Smiti Samant, Sr DR	

सुनवाई की तारीख/Date of Hearing : 08.04.2019

घोषणा की तारीख /Date of Pronouncement : 08.04.2019

आदेश/O R D E R

PER A.D. JAIN, VICE-PRESIDENT:

This is assessee's appeal for Assessment Year 2013-14, raising following grounds:-

"1. The learned CIT(A)-4, Vadodara, erred in law and / or on facts in holding that, during the year under consideration, the appellant was not eligible for Deduction u/s 80IB(11A) of the Act.

2. The learned CIT (A) - 4, Vadodara, erred in law and / or on facts in confirming the action of AO to deny deduction u/s 80IB(11A) of Rs. 1197817/- to the appellant @ 25% of Profit and Gains from Business and Profession.

3. The learned CIT(A) - 4, Vadodara, erred in law and / or on facts in holding that the "initial assessment year" in case of appellant was A.Y. 2002-03, as per Section 80IB(14)(c)(iv) i.e. the year in which the appellant commenced business, and not A.Y. 2005-06 i.e. the year in which Deduction was first introduced, and thereby denying the Deduction u/s 80IB(11 A) to the appellant during the year under consideration. [The appellant had, since AY 2005-06, been claiming Deduction u/s 80IB (11 A) @ 100% of Profits for first 5 years and @ 25% of the Profits for the remaining period of 5 years and this being the 9th Year (from AY 2005-06), the appellant had claimed Deduction @ 25%. The AO was of the opinion that the current year under consideration being the 12th year (i.e. beginning from AY 2002-03, being year of commencement of business and

initial assessment year as per Section 80IB (14)(c)(iv), as per AO), the appellant was not entitled to the said deduction.]”

2. The Assessing Officer *inter alia* made addition of Rs.11,97,817/- on account of claim made by the assessee under section 80IB(11A) of the Income-tax Act, 1961 (hereinafter referred to as "the Act") @ 25% of the profits and gains of business. The learned CIT(A) has confirmed the assessment order by following the order of the Tribunal in assessee's own case for Assessment Years 2007-08 to 2009-10. The learned Counsel for the assessee has contended before us that the learned CIT(A)-4, Vadodara, erred in law and / or on facts in holding that the "initial assessment year" in case of assessee was A.Y. 2002-03, as per Section 80IB(14)(c)(iv) i.e. the year in which the assessee commenced business, and not A.Y. 2005-06 i.e. the year in which Deduction was first introduced, and thereby denying the Deduction u/s 80IB(11 A) to the assessee during the year under consideration; that the assessee had, since AY 2005-06, been claiming Deduction u/s 80IB (11A) @ 100% of Profits for first 5 years and @ 25% of the Profits for the remaining period of 5 years and this being the 9th Year (from AY 2005-06), the assessee had claimed Deduction @ 25%; and that the Assessing Officer was of the opinion that the current year under consideration being the 12th year (i.e., beginning from AY 2002-03, being year of commencement of business and initial assessment year as per Section 80IB (14)(c)(iv), as per AO), the assessee was not entitled to the said deduction.

3. Learned Departmental Representative, on the other hand, has placed reliance on the assessment order.

4. Heard. For Assessment Years 2007-08 to 2009-10, in assessee's own case, in ITA Nos. 1828 & 1829/Ahd/2014 and 1422/Ahd/2013, as reproduced in paragraph no. 3.3 of the impugned order, has held as follows:-

“as per the definition, the initial assessment year for an undertaking engaged in the business of processing, preservation and packaging of fruits or vegetables

means the assessment year relevant to previous year in which the undertaking begins such business. Admittedly, the assessee has begun the business of processing, preservation and packaging of fruits or vegetables with effect from 02.06.2001. Therefore, the assessment year relevant to previous year 01.04.2001-31.03.2002 would be the initial assessment year. In view of above, we agree with the finding of the lower authorities that the initial assessment year was Assessment Year 2002-03 and the assessee would be entitled to 100% deduction only for first five years, including initial assessment year. This will last up to Assessment Year 2006-07 and thereafter, the assessee would be entitled to 25% deduction for the next five years. The ld. Counsel for the assessee has contended that the provision of the Act should be interpreted in a manner which makes the assessee entitled for the deduction for full ten years as intended by Section 80IB(11A). However, in our opinion, when, the Act itself has defined the initial assessment year, then we cannot put any artificial definition to the initial assessment year by holding that the initial assessment year would be 2005-06, even though the assessee had commenced the business with effect from 02.06.2001. It is a settled law that when the language of the statute is clear and unambiguous, then there should be literal interpretation i.e., as per the plain language of the statute. In the case under appeal before us, we are of the opinion that the provision of Statute is clear and unambiguous, the initial assessment year has been defined in the Act and therefore, the deduction u/s 80IB(11A) is to be allowed as per the plain language of the Section as well as plain language of the definition of 'initial assessment year'. From the plain language of definition of initial assessment year, it is evident that initial assessment year would be 2002-03 and not 2005-06 as claimed by ld. Counsel. In view of above, we do not find any justification to interfere with the order of the CIT(A), accordingly the same is sustained.. In the result, the assessee's appeals are dismissed."

5. The Tribunal order (supra) in assessee's own case for Assessment Years 2007-08 to 2009-10 has not been shown to have been upset on appeal. The facts for the year under consideration remained exactly the same as those present for those years. Therefore, the ld. CIT(A) has correctly followed the said Tribunal order to decide the matter against the assessee. Thus, we uphold the impugned order in this regard.

6. Learned CIT(A) has further held that the Chartered Accountant has wrongly issued certificate as a part of the Audit Report and Form No. 10CCB has to be ignored and that when the assessee was eligible to claim deduction under section 80IB(11A) of the Act @ 100% upto Assessment Year 2006-07 and

@ 25% upto Assessment Year 2011-12, no deduction under section 80IB(11A) of the Act can be allowed in the year under consideration. This finding of the learned CIT(A) has also not been rebutted before us on behalf of the assessee.

7. In view of the above, findings in the order of the learned CIT(A) are found to be well versed and the same is hereby confirmed. The grievance sought to be raised by the assessee is found to be unjustifiable and the same is rejected.

8. In the result, the appeal is dismissed.

Order pronounced in the Court on 8th April, 2019 at Ahmedabad.

Sd/-

**(WASEEM AHMED)
ACCOUNTANT MEMBER**

Ahmedabad; Dated 08/04/2019

**%*

Sd/-

**(A.D. JAIN)
VICE-PRESIDENT**

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)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण ,राजकोट/DR,ITAT, Ahmedabad,
6. गार्ड फाईल /Guard file.

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आदेशानुसार/ BY ORDER,

सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण
ITAT, Ahmedabad