

आयकरअपीलीयअधिकरण, अहमदाबादन्यायपीठ 'D'- अहमदाबाद/

**IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD – BENCH 'D'**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER
&SMT. MADHUMITA ROY, JUDICIAL MEMBER**

आयकरअपीलसं.ITA No. 1734/Ahd/2016

निर्धारणवर्ष/Asstt. Year: 2012-13

DCIT Cir-4(1)(2), Ahmedabad	Vs.	Vishal Fabrics Pvt. Ltd. B/h, Kashiram Mil Compound, Ranipur, Narol Ahmedabad- 380245 PAN:AAA CV6 304 R
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)

Assessee by :	Shri VinodTanwani, Sr. DR
Revenue by :	Shri GauravNahta, AR

सुनवाईकीतारीख/Date of Hearing : 31/01/2019

घोषणाकीतारीख/Date of Pronouncement: 29/04/2019

आदेश/ORDER

PER MADHUMITA ROY- JM:

The instant appeal is directed against the order dated 26.04.2016 passed by the Commissioner of Income Tax (Appeals)-7, Ahmedabad u/s. 143(3) of the Income Tax Act, 1961(hereinafter referred to as 'the Act') arising out of the order dated 09.03.2015 passed by the DCIT, Cir-4(1)(2), Ahmedabad for Assessment Year 2012-13.

2. The assessee company engaged in the business of processing manufacturing and trading of clothes filed its return of income on 25.09.2012 declaring total income of Rs. NIL, followed by a revised return filed on 28.09.2013 declaring total income of NIL which was processed u/s. 143(1) of the Act. Under scrutiny notice u/s. 143(2) dated 02.09.2013 followed by a further notice u/s. 143(2) r.w.s 129 along with 142(1) dated 18.11.2014 was issued.

During the course of assessment proceeding it was found that the assessee was having captive power plant on which the assessee was claiming deduction u/s. 80IA of the Act. It also appears that out of the total sales of Rs. 20,44,51,202/- made by the captive power plant to Process Division of the assessee Rs. 7,83,66,133/- was in respect of sale of power and at Rs. 12,60,85,069/- was in respect of sale of steam. Ultimately such claim of the assessee was not accepted by the Ld. AO and the profit of Rs. 2,51,27,5478/- was in respect of sale of steam to process was disallowed which was in turn confirmed by the Ld. CIT(A). Hence, the instant appeal before us.

3. At the time of hearing of the instant appeal Ld. Counsel appearing for the assessee submitted before us that the issue is squarely covered in assessee's own matter for Assessment Year 2011-12 by the judgment dated 24.01.2018 passed by the Co-ordinate Bench of the Ld. Tribunal copy whereof has also been handed over to us in ITA No. 125/Ahd/2015.

The Ld. DR, however, failed to controvert the same.

4. We have heard the Ld. Counsel appearing for the respective parties, we have also perused the relevant materials available on record and also carefully considered the judgment passed by the Co-ordinate Bench in assessee's own case in appeal preferred by Revenue in ITA No. 125/Ahd/2015 for A.Y. 2011-12. The identical issue has been considered by the Co-ordinate Bench in the said judgment, the relevant whereof is as follows:-

“6. In earlier years, on the basis of such valuation, deduction u/s. 80IA (4)(iv) of the Act were allowed from A.Y. 2006-07. In our considered opinion, assessee is therefore on the principle of consistency, eligible for such deduction. Further as required assessee filed a certificate inform 10CCB from a chartered accountant for claim and therefore the reasonableness and valuation of steam is certified through that certificate is eligible deduction. In support of its contention, assessee also filed a rate chart at Page No. 13 of Paper Book and same is reproduced as under:

**VISHAL FABRICS PRIVATE LIMITED
STATEMENT OF COMPUTATION OF COST OF STEAM AND POWER**

SN	PARTICULARS		2010-11		2009-10		2008-09		2007-08		2006-07		2005-06		
A	QUANTITATIVE DETAILS														
1	TOTAL STEAM GENERATION	KGS	157762938		KGS	159223900		KGS	154169059		154614653		155172583		146106760
2	STREAM TO	KGS	117695051		KGS	11433615		KGS	109171082		107678291		110573541		106190960

PROCESS																
3	STEAM POWER PLANT	KGS	49967887		KGS	44890285		KGS	44997977		46936360		44599042		39915800	
4	FUEL COSUMED (LIGNITE)	KGS	46007204		KGS	43078021		KGS	43371340		38118207		37910326		35607106	
5	STEM/FUEL RATIO A1/A3		3.43			3.70			3.55		4.06		4.09		4.10	
											0					
	TOTAL POWER GENERATED	UNITS	14023208		UNITS	15220300		UNITS	14708800		14889700		14890900		14060310	
	POWER PLANT CONSUMPTION	UNITS	3011739		UNITS	3035967		UNITS	2960203		3032648		3047536		2952422	
	POWER TO PROCESS	UNITS	11011469		UNITS	12184333		UNITS	11748597		11857052		11843364		11107888	
B	EXPRESSES INCURRED										TOTAL	RS/ KC	TOTAL	RS/ KC	TOTAL	*S/ KG
1	LIGNITE & COAL	RS.	117202086		RS.	111244176		RS.	125388619		88141936		73476124		58649912	
2	MAINTENANCE EXPENSES	RS.	13569303		RS.	7530700		RS.	11263070		8103337		7048532		625896	
3	SALARIES & WAGES	RS.	3371517		RS.	3459680		RS.	3096961		3730681		2906145		1977572	
4	INTEREST	RS.	361661		RS.	859515		RS.	1495029		2321120		2382390		2845500	
5	DEPRECIATION	RS.	11149377		RS.	11149458		RS.	11149556		11149446		11107858		11107858	
											0					
	TOTAL EXPENSES	RS.	145653944	0.92	RS.	134243523	0.34	RS.	152393235	0.99	113446520	0.73	96921049	0.62	75206738	0.51
C	COST PER KG OF STEAM	RS.			RS.			RS.				0.73		0.62		0.51
D	STEAM USED IN PROCESS	KGS	117695051		KGS	114333615		KGS	109171082		107678291		110573541		106190960	
E	STEAM COST CHARGED TO PROCESS	RS.	135349309	1.15	RS.	131483657	1.15	RS.	128546744	1.15	86142633	0.80	71872809	0.65	47785932	0.45
	GENERATING POWER	RS.	10304635		RS.	2759866		RS.	26846491		27303887		25048240		27420806	

7. We have also gone through the assessment order in details in that there is a finding of the AO in Page No. 9 Para ii, wherein she has stated that 80IA(4) is an allowable deduction on steam and there is no dispute on it, steam has already been held to be power within the meaning of Section 80IA(4) of the Act. When on one hand AO herself is accepting the steam is eligible for deduction and on the other hand she is disallowing the deduction, it itself is contradictory, when once the AO is of the opinion that deduction is available on steam then no disallowance should have been made only on assumptions basis. The assessee has submitted several decisions in support of its contention and same are stated therein, the steam was transferred at a higher price. Further assessee has submitted engineering certificate at Page No. 10 of Paper Book in which also the cost of generation of steam can be considered in the range of Rs. 1.16/- to 1.25 per kg of steam. Further the saving in cost due to Captive production also cannot be ruled out which has been elaborated discussed by the Ld. CIT(A).

8. We therefore, relying on various decision in support of the claim made by the assessee and acceptance by the AO that steam is a form of power and eligible for deduction and for the basis of deduction relying on the engineers certificate as well different case laws held. CIT(A) has rightly deleted the addition and profit and margin kept by the assessee in Captive consumption is fair and reasonable. In our considered opinion on the basis of consistency and Ld. CIT(A) has passed a detailed and reasoned order. We upheld the order of Ld. CIT(A).

5. Respectfully, following the same we find no infirmity in the order passed by the Ld. CIT(A) in deleting such addition made by the Ld. AO following the decision taken by his predecessor in the earlier year in allowing the deduction u/s. 80IA of the Act taking in consideration of the judgment passed by the Co-ordinate

Bench a discussed above, hence the same is confirmed. Revenue's appeal is found to be devoid of any merit and hence dismissed.

6. In the result, Revenue's appeal is dismissed.

[Order pronounced in the Court on 29-04-2019.]

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER

Sd/-
(MADHUMITA ROY)
JUDICIAL MEMBER

Ahmedabad; Dated 29/04/2019

TANMAY

TRUE COPY

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent.
3. संबंधितआयकरआयुक्त/ Concerned CIT
4. आयकरआयुक्त(अपील) / The CIT(A)
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण/ DR, ITAT,
6. गार्डफाईल / Guard file.

आदेशानुसार/ BY ORDER

उप/सहायकपंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, अहमदाबाद / ITAT, Ahmedabad