

**THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCH "B", HYDERABAD**

**BEFORE SMT. P. MADHAVI DEVI, JUDICIAL MEMBER
AND SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER**

**ITA No. 43, 44 & 45/Hyd/2016
Assessment Years: 2003-04, 2005-06 & 2006-07**

Sainath Estates (P) Ltd.,
Hyderabad.

vs. Dy. Commissioner of Income-
tax, Circle – 3(1), Hyd.

PAN – AAFCS 0211D

(Appellant)

(Respondent)

Assessee by : Shri A.V. Raghuram
Revenue by : Shri R. Mohan Kumar

Date of hearing : 21-01-2019
Date of pronouncement : 15-02-2019

ORDER

PER S. RIFAUR RAHMAN, A.M.:

These appeals filed by assessee are directed against the orders of CIT(A) – 3, Hyderabad, all dated, 20/03/2015, for AYs 2003-04, 2005-06 & 2006-07. As identical issues are involved in these appeals, they were clubbed and heard together, therefore, a common order is passed for the sake of convenience.

2. On perusal of record, we find that there was a delay of 221 days in filing these appeals by the assessee before us. To this effect, the assessee has filed an affidavit for condonation of delay in filing these appeals, wherein it was affirmed that the company has run into financial difficulties in the last two years and presently all the assets of the company have been attached under the SARFAESI Act by the Bankers and the matters are in various legal forums. Therefore, due to inability to pay salaries, the employees of the company have left and the company is barely able to manage its day to day affairs. In view of the absence of concerned employees, the assessee failed to file these appeals within the stipulated time. As the assessee was

prevented by sufficient reason for filing the appeals belatedly and also assessee has genuine reasons and in order to render justice, we condone the same and admit the appeals for adjudication.

3. Brief facts as taken from AY 2003-04 (ITA No. 43/Hyd/2016) are that the assessee company is engaged in the business of construction of residential flats. A search and seizure operation u/s.132 of the I.T Act was conducted at the business premises of the assessee company on 17-03-2009. Consequent to search, notice u/s.153A was issued, in response to which, assessee filed its return of income for the asst. year 2003-04 on 01-02-2010 admitting a total income of Rs.6,30,000/- after claiming deduction of Rs. 1,17,90,783/- u/s.80IB(10) of the I.T. Act In this case, assessment u/s.143(3) r.w.s 153A was originally completed on 31-12-2010 determining the total income at Rs.1,26,52,308/-, inter alia, making disallowance of deduction claimed u/s.80IB of Rs. 1,17,90,783/-.

3.1 On appeal, the CIT(A) allowed the assessee's appeal on the above issue. On a subsequent appeal by Revenue, the Hon'ble ITAT vide order in ITA No. 379/Hyd/2012, dated 08-02-2013 remitted the matter back to the file of the Assessing Officer on the issue of certificate in Form NO.10CCB.

3.2 In the meanwhile, the Commissioner of Income Tax (Central), Hyderabad had set aside the assessment with a direction to verify and redo the assessment with reference to the expenditure debited to P&L A/c under the heads (a) construction expenses and (b) Administrative & General Expenses vide revisionary order No. CIT(C)/263/7011-12, dated 25-02-2013 passed u/s. 263.

3.3 vide notice u/s.143(2) dt.17-09-2013, the case was posted for hearing. AR of the assessee company appeared and filed the written submissions in support of the claim u/s.80IB(10) of the I.T. Act and also filed certificate in Form No.10CCB.

3.4 From P & L a/c., the AO noticed that assessee debited amounts of Rs. 4,77,36,378/- and Rs. 11,00,706/- under the heads 'Construction Expenses' and 'Administrative & General expenses' respectively. Since, the assessee could not produce evidence in support of the above expenses, the AO disallowed 10% of the above said expenses i.e. construction expenses - Rs. 47,73,637/- and Administrative & General expenses - Rs. 1,10,070/- and added back to the total income.

4. When the assessee preferred an appeal before the CIT(A), the CIT(A) after considering the submissions of the assessee, observed that there is nothing in the assessment order to suggest, as the AR has alleged, that the AO made the disallowance under the influence of the CIT or through a misinterpretation of the CIT's directions, as the disallowance was made because the assessee failed to submit any evidence for the expenses before him and it is not denied by the AR that no evidence was filed before the AO during the impugned proceedings. Therefore, in the absence of any evidence, the AO was left with no option but to make the disallowance. In view of the above observations, the CIT(A) confirmed the order of AO.

5. Aggrieved by the order of CIT(A), the assessee is in appeal before us raising the following grounds of appeal, which are common in all the appeals under consideration:

1. The appellant submits that the order of the First Appellate Authority is erroneous both on law and on facts.

2. The appellant submits that the first appellate authority should have accepted that the expenditure having been verified by the assessing officer in the earlier assessment proceedings, the same are actually verified and no further verification is required.

3. The appellant submits that the appellant has led the evidence before the assessing officer by drawing the attention of the assessing officer to the earlier assessment record where the fact that the expenditure has been verified in the assessment proceedings is on record. The learned first appellate authority erred in law in ignoring this fact and the appellant submits that

the learned first appellate authority should have held that the expenditure is actually verified.

4. The appellant submits that the learned first appellate authority should have held that no disallowance is called for.

5. The appellant submits that the learned first appellate authority erred in law in observing that "whether or not the expenditure is verified in the earlier assessment proceedings the assessing officer is obliged to verify these expenses as a result of the directions of the CIT".

6. The appellant submits that once an expenditure ;is verified in an assessment proceedings u/s.143(3) or 147, as the case may be, it is incorrect in law to cause verification of the same in yet another proceeding and the appellant submits that the learned first appellate authority should have recognized this principle of law and deleted the addition.

7. On the basis of the above grounds and any further grounds that may be permitted to be raised in the course of the appellate proceedings, the appellant prays that the additions sustained by the first appellate authority be directed to be deleted.

8. On the basis of the above grounds and any further grounds that may be permitted to be raised in the course of the appellate proceedings the appellant prays that it be held that the expenditure having been verified in an assessment proceedings U/s.143(3) earlier, no further verification of the same is called for and the assessing' officer is bound by the decision of the previous assessment proceedings."

5.1 The assessee also has raised the following ground, in all the three appeals relying on the judgment of the Hon'ble Supreme Court in the case of CIT Vs. NTPC, 229 ITR 383 (SC) to submit that there is necessity of fresh investigating into facts of adjudicating the additional ground:

"On the facts and in the circumstances of the case, the authorities below ought to have appreciated that the ad-hoc disallowance of construction and administrative expenditure goes to increase the eligible profits from business of the Appellant for deduction under section 80IB of the Income Tax Act, 1961, and accordingly ought to have allowed deduction u/s.80IB of the Act on the increased profits arrived at consequent to disallowance of construction and administrative expenditure."

As the said additional ground is legal ground, wherein, the facts are on record and facts do not require fresh investigation, following the decision of Hon'ble Supreme Court in the case of National Thermal Power Co., Limited Vs. CIT 229 ITR 383 (SC), we admit the said additional ground of assessee.

6. Ld. AR submitted that the assessment u/s 143(3) r.w.s. 153A was completed on 31/12/2010. Assessee preferred appeal before the appellate authorities against the above order and the Hon'ble ITAT set aside the above order to the file of AO to verify the claim of the assessee u/s 80IB(10) of the Act. In the meanwhile, the Id. CIT initiated proceedings u/s 263 and directed the AO to verify the constructions expenses and administrative expenses. He objected to the parallel proceedings and submitted that the original assessment was complete at the time of initiating search proceedings, it reached finality. Moreover, the AO was directed to verify the deduction u/s 80IB(1) by the ITAT. Therefore, he submitted that the action of AO in disallowing expenses on the direction of Id. CIT is not proper.

6.1 In the alternative, he submitted in reference to the additional ground raised by assessee that even the expenditure disallowed by AO, it can only increase the profit of the assessee and assessee is only involved in the real estate development and all the profits generated were relating to the venture which is exempt u/s 80IB(10). Therefore, any increase in profit will increase the deduction u/s 80IB(10). Hence, the additional income determined by the AO is ultimately exempt u/s 80IB(10).

7. Ld. DR relied on the orders of revenue authorities.

8. Considered the rival submissions and perused the material on record. We notice that assessee is aggrieved with the assessment order since the original assessment was complete at the time of search operation and the only issue which was agitated before the ITAT was the deduction u/s 80IB(10), which was remanded to AO to verify the deduction u/s 80IB(10) with respect to certificate in Form No. 10CCB. Assessee has submitted the relevant certificates before the AO and AO also allowed the deduction u/s 80IB(10) in this AY. However, Id. CIT has initiated the proceedings u/s 263 and directed AO to verify the expenditure claimed by the assessee. Since the AO disallowed the expenditure on the direction of Id. CIT in the parallel proceedings initiated by him, which was the subject matter of appeal before the ITAT. According to assessee, it has reached finality.

8.1 Further, assessee also claimed before us that assessee is eligible for the income generated in the business u/s 80IB(10). Any disallowance by the AO will ultimately increase the business income which is eligible to claim u/s 80IB(10).

8.2 We have verified the issue in detail and noticed that assessee could not submit the details of expenditure at the time of original assessment u/s 143(3) also. The same was not substantiated by assessee during the present assessment proceedings u/s 143(3) r.w.s. 254 and 263 of the Act.

8.3 However, we agree with the alternate plea of the assessee, which was raised in additional ground. The disallowance made by AO will ultimately increase the profit of the business and the whole profit generated by this business is eligible for deduction u/s 80IB(10). In the result, the deduction u/s 80IB(10) will be increased to the extent of increase in the business profit because of the action of AO. Since, there is no other activities of the assessee reported in this AY, considering the alternate plea, in our view, the assessee is eligible to claim higher deduction u/s 80IB(10) to the extent of expenditure disallowed by AO.

8.4 Accordingly, the additional ground raised by the Assessee is allowed and all other grounds raised by the assessee are dismissed.

9. The additional ground raised in other AYs 2005-06 and 2006-07 is similar to the AY 2003-04 as well as facts are also similar, following the decision in AY 2003-04, we allow the additional ground in both the years and dismiss the other grounds raised.

10. In the result, all the appeals under consideration are partly allowed.

Pronounced in the open court on 15th February, 2019.

**Sd/-
(P. MADHAVI DEVI)
JUDICIAL MEMBER**

**Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER**

Hyderabad, Dated: 15th February, 2019.

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Copy to:-

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- 2) *DCIT, Circle – 3(1), Hyd..*
- 3) *CIT(A) – 3, Hyderabad.*
- 4) *CIT - 3, Hyd.*
- 5) *The Departmental Representative, I.T.A.T., Hyderabad.*
- 6) *Guard File*