

आयकर अपीलीय अधिकरण "ए" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, PUNE

BEFORE SHRI ANIL CHATURVEDI, AM AND
SHRI PARTHA SARATHI CHAUDHURY, JM

आयकर अपील सं. / ITA No.177/PUN/2017

निर्धारण वर्ष / Assessment Year : 2012-13

The Deputy Commissioner of Income Tax,
Circle-7, Pune.

.....अपीलार्थी / Appellant

बनाम / V/s.

Shri Gautam B. Ladkat,
36, Somwar Peth,
Pune-411 011.
PAN :AAFPL4838C

.....प्रत्यर्थी / Respondent

आयकर अपील सं. / ITA No.178/PUN/2017

निर्धारण वर्ष / Assessment Year : 2012-13

The Deputy Commissioner of Income Tax,
Circle-7, Pune.

.....अपीलार्थी / Appellant

बनाम / V/s.

Shri Sameer B. Ladkat,
36, Somwar Peth,
Pune-411 011.
PAN : AAGPL4129H

.....प्रत्यर्थी / Respondent

Assessee by : Shri Sharad Shah

Revenue by : Shri Vishwas Mundhe

सुनवाई की तारीख / Date of Hearing : 24.06.2019

घोषणा की तारीख / Date of Pronouncement : 26.06.2019

आदेश / ORDER**PER PARTHA SARATHI CHAUDHURY, JM :**

These two appeals preferred by the Revenue emanates from the order of the Ld. Commissioner of Income Tax (Appeals)-4, Pune dated 13.10.2016 for the assessment year 2012-13 as per the grounds of appeal on record.

2. These cases were heard together. Since the facts are similar, issues common, they are being disposed of vide this consolidated order. For the sake of convenience, we would take the facts as appearing in ITA No.177/PUN/2017.

ITA No.177/PUN/2017
A.Y.2012-13

3. The brief facts of the case are that the assessee is an individual having income from other sources. The assessee filed return of income for A.Y.2012-13 on 30.09.2012 declaring total income of Rs.52,39,050/-. The said return was processed u/s.143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act'). The case was selected for scrutiny through CASS. The assessee, thereafter, file a revise return on 20.10.2012 claiming refund of Rs.51,880/-. Notice u/s.143(2) of the Act was issued on 12.08.2013 and thereafter, on 22.12.2014. Scrutiny assessment was completed u/s.143(3) of the Act on 27.03.2015 at a total income of Rs.1,77,07,500/-. The Assessing Officer had denied the assessee's claim of deduction u/s.80IA(4)(iv)(a) of the Act of Rs.1,24,68,454/- and added back the same to the assessee's total income.

4. Before the Ld. Commissioner of Income Tax (Appeals), detailed written submissions were filed by the assessee wherein it was stated that the case of the assessee is squarely covered by CBDT Circular dated 15.02.2016, Circular No.1/2016 wherein, it has been accepted the ratio laid down in various decisions. Relevant part of the submissions is as follows:

“During the course of appellate proceedings, the appellant filed a written submission on 29/09/2016, wherein after stating the facts of the case and also brief note on the submission made before the AO, inter alia further in connection with this ground submitted as under:

“The addition made by the Ld. AO is now squarely covered by CBDT Circular dated 15.02.2016, Circular No.1/2016, accepting the ratio laid down in various decisions cited herein below. Copy of the said circular enclosed as Annexure 1. The relevant portion of CBDT circular is reproduced here below:

“The matter has been examined by the Board. It is abundantly clear from sub section (2) that an assessee who is eligible to claim deduction u/s.80IA has the option to choose the initial/first year from which it may desire the claim of deduction for ten consecutive years, out of a slab of fifteen (or twenty) years, as prescribed under that sub section. It is hereby clarified that once such initial assessment year has been opted for by the assessee, he shall be entitled to claim deduction u/s.80IA for ten consecutive years beginning from the year in respect of which he has exercised such option subject to the fulfillment of conditions prescribed in the section. Hence, the term ‘initial assessment year’ would mean the first year opted for by the assessee for claiming deduction u/s.80IA. However, the total number of years for claiming deduction should not transgress the prescribed slab of fifteen or twenty years, as the case may be and the period of claim should be availed in continuity.

The Assessing Officers are, therefore, directed to allow deduction u/s.80IA in accordance with this clarification and after being satisfied that all the prescribed conditions applicable in a particular case are duly satisfied. Pending litigation on allowability of deduction u/s.80IA shall also not be pursued to the extent it relates to interpreting ‘Initial assessment year’ as mentioned in sub section (5) of that section for which the Standing Counsels /DRs be suitably instructed.

The above be brought to the notice of all Assessing Officers concerned.

a) Judicial Decisions, ratio of the said decisions is accepted in the above referred circular.

- 1) Velayudhaswamy Spinning Mills (P) Ltd. Vs. Assistant Commissioner of Income Tax * High Court of Madras-38 DTR 57.- Copy of the decision enclosed as Annexure 2.*
- 2) Serum International Ltd. ITA No.290-292/Pn/2010-Pune ITAT- Copy of the decision enclosed as Annexure 3*
- 3) Mohan Bresweries & Distilleries Ld. Vs. ACIT ITAT, Chennai B Bench, 114 TTJ (Chennai) 532.*

4) *Poonawalla Estate Stud & Agro Farm Pvt. Ltd. Satara Vs. ACIT, ITA No.92/PN/2008 (Asstt. Year 2004-05), Pune ITAT.*”

5. The Ld. Commissioner of Income Tax (Appeals) after considering the facts of the case, assessment order held and observed as follows:

“5.3.1 The claim of Windmills was made treating all the windmills together as one unit. The assessee submitted year wise working of profits in respect of each unit separately. The Assessing Officer concluded that after considering losses of earlier year which were already adjusted profits of other business, there was no profit in any of units and accordingly, he disallowed the appellant's claim of deduction u/s.80IA(4) by invoking provisions of Section 80IA(5) of the Act.

5.3.2 I find that this issue now is squarely covered by CBDT Circular dated 15.02.2016, Circular No.1/2016 & other decisions relied upon by the assessee as above. Since the relevant portion of the CBDT's circular has already been quoted above while discussing the submission of the AR in para 5.2 above, the content of the said circular is not repeated here. In view of above, I find that the AO was not justified in denying the appellant's claim of deduction u/s.80IA(4) of the Act of Rs.1,24,68,454/-, merely on the fact that the decision of the Hon'ble Pune ITAT has been appealed before the Hon'ble Mumbai High Court, when the ratio of a number of decisions relating to the issue of deduction. under the aforesaid sections were decided by the jurisdictional Hon'ble Pune ITAT in favour of the respective assesseees and also the Hon'ble Madras High Court and Chennai ITAT in two other decisions as stated above. Accordingly the addition so made on account of disallowance of deduction u/s. 80IA(4) of the Act of Rs.1,24,68,454/- is hereby deleted. Ground no. 1 raised by the appellant is accordingly allowed.”

6. The Ld. AR of the assessee at the time of hearing vehemently argued that the issue is squarely covered by the CBDT Circular No.1/2016 dated 15.02.2016 and specially by the ratio laid down by the Hon'ble Madras High Court in the case of Velayudhaswamy Spinning Mills (P) Ltd. Vs. Assistant Commissioner of Income Tax, reported as 38 DTR 57. Further, the Ld. AR has placed reliance on the decision of Co-ordinate Bench of the Tribunal, Pune in ITA No.1450/PUN/2009 for assessment year 2006-07 decided on 20.12.2018 wherein on the same issue, relief was provided to the assessee. The Ld. AR reiterated the submissions as placed before the Sub-ordinate Authorities.

7. Per contra, the Ld. DR has placed strong reliance on the order of the Assessing Officer.

8. We have perused the case records and heard the rival contentions. Now by far and large, it is a settled legal position with regard to deduction u/s.80IA(4)(iv)(a) of the Act wherein the issue has been decided in favour of the assessee in number of cases. That, in the decision of the Co-ordinate Bench of the Tribunal, Pune in ITA No.1450/PUN/2009 (supra.) wherein on the same issue, it was observed and held as follows:

"14. We have perused the case record and heard the rival contentions. In ITA No.937/PUN/2008 for assessment year 2005-06, on the similar issue of claim of deduction u/s.80IA of the Act, it was held and observed by the Pune Bench of the Tribunal as under:

38. We find that the issue raised in the present appeal is squarely covered by the order of Tribunal in ACIT Vs. M/s. RDS Construction Co. in ITA No.135/PUN/2016, relating to assessment year 2011-12, order dated 09.04.2008, wherein it was held as under:

"10. We have heard the rival contentions and perused the record. The issue which arises in the present appeal is the allowability of deduction under section 80IA(4)(iv)(a) r.w.s. 80IA(5) of the Act. The assessee had set up first windmill in assessment year 2006-07 and the second windmill in assessment year 2007-08. In the initial years, there were losses from windmill activity. The assessee was simultaneously carrying on business of civil construction, from which the assessee was making profits. The said losses were adjusted against the income arising from other business: activity of the assessee. For the first time, the windmill activity had shown profit in assessment year 2010-11 and the assessee claimed deduction under section 80IA(4) of the Act. The said year i.e. assessment year 2010-11 was the initial assessment year for claim of deduction under section 80IA(4) of the Act. The CIT(A) at page 22 has given a finding that there were no brought forward losses in the hands of assessee and the same were adjusted upto assessment year 2009-10. The Assessing Officer for assessment year 2010-11 had not allowed the claim of deduction on account of windmill activity. However, the CIT(A) and the Tribunal thereafter, allowed the claim of deduction.

11. The issue which is raised in the present appeal is the aforesaid claim of deduction u/s.80IA(4)(iv)(a) of the Act in respect of windmill business. The Tribunal in assessee's own case (supra) in assessment year 2010-11 had already allowed the claim of assessee. The case of Revenue is that

the losses of earlier years if have not been absorbed, then the same have to be adjusted against the undertaking before allowing deduction under section 80IA(4)(iv)(a) of the Act. The CIT(A) in the present case has given a finding that there were no brought toward losses in the hands of assessee, which in any case were adjusted upto assessment year 2009-10. The said findings of CIT(A) have not been controverted by learned Departmental Representative for the Revenue except to stress that the same needs verification. We find no merit in the plea of learned Departmental Representative for the Revenue in this regard, especially where in assessment year 2010-11 which was the preceding year to the instant assessment year. The claim of deduction has been allowed in the hands of assessee. It may also be pointed out herein itself that the assessee was running civil construction activity from which it was showing profits from year to year and the losses arising from windmill in the earlier years have already been set off against the said income and the balance income had been assessed in the hands of assessee. It is not case of Revenue that after adjustment of losses in the respective years the assessee had shown any losses. There is no merit in the order of Assessing Officer in holding that deemed losses have to be adjusted against profits of undertaking. In view thereof, we hold that the assessee was entitled to the claim of deduction under section 80IA(4)(iv)(a) of the Act. The grounds of appeal raised by the Revenue are thus, dismissed."

39. The issue raised in the present appeal is identical to the issue before the Tribunal. Further, the Hon'ble Supreme Court dismissed the Special Leave Petition filed in the case of CIT Vs. Best Corporation Ltd.(supra.), wherein the High Court held that since it had consistently followed decision in the case of Velayudhaswamy Spinning Mills (P.) ltd. Vs. ACIT (2012) 340 ITR 477 (Mad) and on the basis of said decision CBDT had issued Circular No.1 of 2016, dated 15.02.2016 clarifying term 'initial assessment year' in section 80IA(5) of the Act, order of Tribunal holding that assessee was entitled to deduction under section 80IA of the Act without setting off losses/unabsorbed depreciation pertaining to windmill, which were set off in earlier year against other business income was deserved to be upheld.

40. The CBDT vide Circular No.1/2016, dated 15.02.2016 has also clarified situation of claim of deduction under section 80IA(4) of the Act by any concern by adopting initial assessment year as the first year of claim, irrespective of the fact that the windmill was installed and started functioning in any of the earlier years. Following the same parity of reasoning, we hold that the assessee is entitled to claim deduction u/s.80IA(4) of the Act. The ground of appeal No.4 raised by the assessee is thus, allowed."

9. Respectfully following our earlier decision, in view of CBDT Circular as hereinabove referred to and also decision of the Hon'ble Madras High Court, relief provided to the assessee by the Ld. Commissioner of Income Tax (Appeals) is hereby sustained.

10. In the result, appeal of the Revenue in ITA No.177/PUN/2017 is dismissed.

ITA No.178/PUN/2017
A.Y.2012-13

11. As facts and issues raised in ITA No.178/PUN/2017 are identical to ITA No.177/PUN/2017, our decision rendered in ITA No.177/PUN/2017 would **apply mutatis-mutandis** to ITA No.178/PUN/2017. Hence, in this case also, relief provided by the Ld. Commissioner of Income Tax (Appeals) to the assessee is hereby sustained.

12. In combined result, both the appeals of the Revenue are dismissed.

Order pronounced on 26th day of June, 2019.

Sd/-
ANIL CHATURVEDI
ACCOUNTANT MEMBER

Sd/-
PARTHA SARATHI CHAUDHURY
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 26th June, 2019.

SB

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT (Appeals)-4, Pune.
4. The Pr. CIT-3, Pune.
5. विभागीय प्रतिनिधि ,आयकर अपीलीय अधिकरण, "ए" बेंच,
पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

// True Copy //

आदेशानुसार / BY ORDER,

निजी सचिव / Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.

		Date	
1	Draft dictated on	24.06.2019	Sr.PS/PS
2	Draft placed before author	24.06.2019	Sr.PS/PS
3	Draft proposed and placed before the second Member		JM/AM
4	Draft discussed/approved by second Member		AM/JM
5	Approved draft comes to the Sr. PS/PS		Sr.PS/PS
6	Kept for pronouncement on		Sr.PS/PS
7	Date of uploading of order		Sr.PS/PS
8	File sent to Bench Clerk		Sr.PS/PS
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R		
11	Date of dispatch of order		