

आयकर अपीलीय अधिकरण] पुणे न्यायपीठ "बी" पुणे में
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "B", PUNE

BEFORE MS. SUSHMA CHOWLA, JM AND
SHRI ANIL CHATURVEDI, AM

आयकर अपील सं / ITA No.1374/PUN/2017
निर्धारण वर्ष / Assessment year : 2013-14

The Asst. Commissioner of Income Tax,
Circle – 3, Pune.

..... अपीलार्थी /
Appellant.

बनाम v/s

M/s. Damodar Jaganath Malpani,
Sr.No.50, Malpani Estate,
Akole Road, Sangamner – 422 605.

..... प्रत्यर्थी /
Respondent

PAN : AACFD1713B.

Assessee by : Shri Nikhil Pathak.

Revenue by : Mrs. Nanditha Kanchan.

सुनवाई की तारीख / Date of Hearing : 19.07.2019	घोषणा की तारीख / Date of Pronouncement: 01.08.2019
---	---

आदेश / ORDER

PER ANIL CHATURVEDI, AM :

1. This appeal filed by the Revenue is emanating out of the order of Commissioner of Income Tax (A) – 3, Pune dated 28.02.2017 for the assessment year 2013-14.

2. The relevant facts as culled out from the material on record are as under :-

Assessee is a partnership firm stated to be engaged in the business of Tobacco and Power generation from Windmill. Assessee electronically filed its return of income for A.Y. 2013-14 on 29.09.2013 declaring total income at Rs.Nil. The case was selected for scrutiny

and thereafter assessment was framed u/s 143(3) of the Act vide order dt.26.03.2016 and the total income was determined at Rs.17,85,95,192/-. Aggrieved by the order of AO, assessee carried the matter before Ld.CIT(A), who vide order dt.28.02.2017 (in appeal No.PN/CIT(A)-3/Cir-3,Pn/89/2016-17) granted substantial relief to the assessee. Aggrieved by the order of Ld.CIT(A), Revenue is now in appeal before us and has raised the following grounds :

“1. On the facts and circumstances of the case, the Ld. CIT(A) has erred in allowing the claim of the assessee for a deduction of Rs. 17,69,56,668/- u/s 80IA(4) of the Income Tax Act, 1961.

2. On the facts and circumstances of the case, the Ld. CIT(A) has erred in treating the windmills set up at different place in different year as separate undertaking and that such windmill do not constitute as single business undertaking for the purpose of deduction u/s 80IA of the I.T. Act.

3. On the facts and circumstances of the case, the Ld. CIT(A) has erred in allowing the deduction u/s 80IA (4) of the I.T. Act by not appreciating that each phase of wind mills was to be treated as a separate undertaking eligible for deduction u/s 80IA and the deduction u/s 80IA(4) should have been considered independently for each phases and not on consolidated basis.”

3. All the grounds being inter-connected are considered together.

4. During the course of assessment proceedings, AO noticed that assessee had claimed deduction of Rs.21,89,75,217/- u/s 80IA(4)(iv)(a) of the Act on account of profits earned from power generation from windmill but the claim was restricted to Rs.17,69,56,668/- in view of the provisions of Sec.80IA(2) of the Act. The assessee was asked to justify the claim of deduction. To the said query, assessee made detailed submissions which were not found acceptable to the AO. AO noted that the claim of the assessee for treating the each windmill project as “separate undertaking” and to allow deduction u/s 80IA(4)(iv) of the Act was not as per the mandate of Sec.80IA of the Act. He also noticed that assessee had a cumulative loss of

Rs.142,13,14,341/- on a consolidated basis (the tabulated details are listed at page 19 of the order). AO therefore held that the assessee is not eligible to claim deduction u/s 80IA(4) of the Act and accordingly denied the claim of deduction. Aggrieved by the order of AO, assessee carried the matter before Ld.CIT(A), who following the order of her Predecessor and the decision of Tribunal in assessee's own case in ITA Nos.1382 and 1383/PUN/2015 order dated 16.10.2017) for A.Ys. 2011-12 and 2012-13 decided the issue in favour of the assessee by observing as under :

*"6.3. **DECISION** :- I have perused the assessment order and the submission made by the appellant as above carefully. The facts and circumstances of the case & submission made in respect of this ground has been considered. Identical issue was for adjudication in appellant's case before the Pune ITAT for A.Ys. 2004-05 to 2010-11, which was answered in appellant's favour. Further, for A.Ys. 2011-12 and 2012-13, the Ld CIT (Appeals)-11 vide common appellate order No. Pn/CIT(A)-11/DCIT Cen. Cir 1(1)/PN/116/2014-15 & Pn/CIT(A)-11/DCIT Cen. Cir.1(1)/PN/211/2014-15 dated 17.8.2015 has held as under:*

"9-4 I have considered the appellant's arguments. I have also gone through the AO's order and the decision of my predecessor CIT(A) regarding allowing 80IA deduction on a consolidated basis assuming that all the windmills set up at different places in different years are part of the same business. No factual discovery is required on this issue. The only question to be answered is whether all the windmills of the appellant should be considered as a single unit and deduction u/s 80IA should be allowed to each undertaking on its income or loss separately or 'deduction should be allowed to the appellant on its consolidated income/loss from the business of windmills.

9.5 I find that this issue was considered by the Pune bench of the ITAT in the case of M/s. J-Sons Foundry Pvt. Ltd Sangli in its decision dated 30/01.2013. The relevant part of the tribunal's order is reproduced below:

"15. Against the decision of the Ld. CIT(A), the Revenue is in appeal before us. We have heard the rival submissions of the parties and perused the record. Admittedly, the assessee is power general through the wind mills at 3 different locations i.e. in Tamilnadu, Panchgani and Satara. The wind mills are commissioned and erected in different assessment years as noted by the authorities below. Assessee is maintaining separate books of accounts in respect of 3 wind mills and working out the profit or losses. Though the first wind mill was erected and commissioned in the AY. 2002-03, there were consistent losses up to the AY. 2007-oB and assessee did not opt for claiming the deduction u/s 80IA(2) of the Act.

So far as AY. 200B-09 is concerned, assessee opted for claiming the deduction u/s 80IA(2) treating the said assessment year (A.Y.) as an initial assessment year as there was the profit in Satara wind mill but losses in the Tamil Nadu wind mill and Panchgani wind mill. If we look at the scheme of the section 80IA(2), it speaks about the "undertaking" or "enterprise" and not the business of the assessee. Admittedly, three wind mills at the 3 locations are independently operated and the financial results are separately worked out. As per sub-sec.(5) of section 80IA, for computing the deduction u/s 80IA(2), the eligible business is to be treated as the only source of income. Sub-sec.(s) of section 80IA has been explained by the Hon'ble High Court and Kerala in the case of CIT Vs. Accel Transmatic Systems Ltd. 230 CTR 206 (Ker) which has been followed by the Ld. ,CIT(A). The term "business" used in sub-sec(s) section 80IA in our humble opinion is confined to the independent undertaking and cannot get merged with the other businesses. In Sec. 80IA(2), for claiming deduction "undertaking" or "Enterprise" as such is to be considered. Sec.80IA(2) is charging sections for determining basic eligibility and there is no mention of word "business". Sub-sec(5) of Sec.80IA speaks of business but same is to be construed as business of "undertaking" or "Enterprise" as referred to in Subsec.(2) of Sec.80IA. It is well settled principle of interpretation of statutory provision that they are to be interpreted harmoniously to make workable to give intended results. Hence, as rightly held by Ld. CIT(A) term "business" used in sec. 80IA(5) is to be construed and understood to mean "business" or "undertaking or enterprise". In our opinion, the Ld. CIT(A) in his well reasoned order has rightly held that every unit constitute a separate undertaking engaged in the eligible business and losses from one unit cannot be set off against the profits. Another unit engaged in the same business for the purpose of computing the deduction u/s 80IA. We find no reason to interfere with the findings of the Ld. CIT(A) on this issue. Accordingly, the same are confirmed and grounds taken by the revenue are dismissed."

9.6 The above order of the jurisdictional ITAT was not before my predecessor. However now that the decision is available for guidance, I have to follow the same and differ with my predecessor.

I find that my predecessor CIT(A) V had also decided the issue in the assessee's favor in the case of **Aduik Hi-Tech Pvt. Ltd** (asst Year 2008-09 and 2010-11) by holding as under:

"18. In Ground No.4(b), the appellant's grievance is that it has two undertakings at Sangli and Dhule but the Assessing Officer has treated the same as one on the basis that eligible business is the same. This action of the Assessing Officer cannot be approved in view of the fact that deduction is allowed to the undertaking carrying out eligible business. Therefore, deduction has to be calculated for the each undertaking.

19. From the facts of the case, it is very clear that windmills are situated at two different locations at Sangli and Dhule. Therefore, unabsorbed loss/business of Dhule unit cannot be set off against profit of Sangli unit. Therefore, The Assessing Officer is directed to calculate deduction u/s.80IA(4)(iv)(a) of Sangli unit on standalone basis as per provisions of sec.80IA (5) of the I. T. Act.

Accordingly, Ground No. 4(a) & 4(b) are allowed."

9.7 Respectfully following the decision of the jurisdictional ITAT, the grounds of appeal 2-5 are allowed in favor of the appellant. The deduction u/s 80IA should be allowed undertaking wise and not on a consolidated basis."

*6.3.1 Respectfully following the decisions of the jurisdictional ITAT and also CIT (A)-11, Pune, I hold that the appellant is entitled to deduction u/s 80IA of the Act undertaking-wise and not on consolidated basis. The AO is directed to allow the said deduction. Accordingly, grounds no. 2 to 5 raised by- the appellant are **allowed.***

Aggrieved by the order of Ld.CIT(A), Revenue is now before us.

5. Before us, Ld. D.R. supported the order of AO. Ld.A.R. on the other hand, reiterated the submissions made before AO and Ld.CIT(A) and further submitted that identical issue arose in assessee's own case in A.Ys. 2011-12 and 2012-13 and the issue has been decided in favour of assessee. He has placed on record the copy of the aforesaid order and pointed to the relevant findings of the Tribunal and submitted that since the year under appeal are identical to A.Ys. 2011-12 and 2012-13, the issue be decided accordingly.

6. We have heard the rival submissions and perused the material on record. The issue in the present ground is with respect to denial of claim of deduction u/s 80IA(4) of the Act. The claim of deduction was denied by AO but when the matter was carried before Ld.CIT(A), she following the order of her predecessor in assessee's own case for A.Ys. 2011-12 and 2012-13 allowed the claim of assessee. We find that identical issue arose in the case of assessee in A.Ys. 2011-12 and 2012-13 before ITAT in ITA Nos.1382 & 1383/PUN/2015 vide order dt.16.10.2017 (supra) and the issue was decided by the Co-ordinate Bench of the Tribunal in assessee's favour by observing as under :

“6. We perused the facts of the case as well as legal proposition emanating from the order of Tribunal in assessee’s own case (supra.) and are found relevant and we proceed to extract the same as under :-

“54. Ground of appeal No. 7 relates to methodology of computation of deduction u/s.80IA (4) as adopted by the AO by considering difference phases of windmills as separate undertaking. The Ld. CIT(A) following his order for A.Y.2005-06 held that in a fresh claim made by the assessee unless it is supported by some incriminating material found during the course of search the claim cannot be entertained during proceedings u/s.153A. He accordingly dismissed the above ground raised by the assessee.

55. The Ld. Counsel for the assessee referring to the decision of the Pune Bench of the Tribunal in the case of J. Sons Foundry Pvt. Ltd. Vs. DCIT and vice versa vide consolidated order dated 30.01.2013 for A.Y.2007-08 and 2008-09 he submitted that the Tribunal in the said decision held that each windmill is to be considerate as a separate undertaking.

56. The Ld. Departmental Representative on the other hand heavily relied on the order of the CIT(A).

57. After hearing both the sides, we find the Coordinate Bench of the Tribunal in the case of J. Sons Foundry Pvt. Ltd. (supra) while dismissing the grounds raised by the Revenue on this issue has observed as under :

“15. Against the decision of the Ld. CIT(A), the Revenue is in appeal before us. We have heard the rival submissions of the parties and perused the record. Admittedly, the assessee is power general through the wind mills at 3 different locations i.e. in Tamilnadu, Panchgani and Satara. The wind mills are commissioned and erected in different assessment years as noted by the authorities below. Assessee is maintaining separate books of accounts in respect of 3 wind mills and working out the profit or losses. Though the first wind mill was erected and commissioned in the A.Y. 2002-03, there were consistent losses up to the A.Y. 2007-08 and assessee did not opt for claiming the deduction u/s 80IA(2) of the Act. So far as A.Y. 2008-09 is concerned, assessee opted for claiming the deduction u/s 80IA(2) treating the said assessment year (A.Y.) as an initial assessment year as there was the profit in Satara wind mill but losses in the Tamil Nadu wind mill and Panchgani wind mill. If we look at the scheme of the section 80IA(2), it speaks about the "undertaking" or "enterprise" and not the business of the assessee. Admittedly, three wind mills at the 3 locations are independently operated and the financial results are separately worked out. As per sub-sec.(5) of section 80IA, for computing the deduction u/s 80IA(2), the eligible business is to be treated as the only source of income. Sub-sec.(5) of section 80IA has been explained by the Hon'ble High Court and Kerala in the case of CIT Vs. Accel Transmatic Systems Ltd. 230 CTR 206 (Ker) which has been followed by the Ld. CIT(A). The term "business" used in sub-sec.(5) section 80IA in our humble opinion is confined to the independent undertaking and cannot get merged with the other businesses. In Sec. 80IA(2), for

claiming deduction "undertaking" or "Enterprise" as such is to be considered. Sec.80IA(2) is charging sections for determining basic eligibility and there is no mention of word "business". Sub-sec.(5) of Sec.80IA speaks of business but same is to be construed as business of "undertaking" or "Enterprise" as referred to in Sub- sec.(2) of Sec.80IA. It is well settled principle of interpretation of statutory provision that they are to be interpreted harmoniously to make workable to give intended results. Hence, as rightly held by Ld. CIT(A) term "business" used in sec.80IA(5) is to be construed and understood to mean "business" or ITANos.815, 891, 1494 &1600/PN/2011 M/s. J. Sons Foundry Pvt. Ltd., Sangli "undertaking or enterprise". In our opinion, the Ld. CIT(A) in his well reasoned order has rightly held that every unit constitute a separate undertaking engaged in the eligible business and losses from one unit cannot be set off against the profit of another unit engaged in the same business for the purpose of computing the deduction u/s 80IA. We find no reason to interfere with the findings of the Ld. CIT(A) on this issue. Accordingly, the same are confirmed and grounds taken by the revenue are dismissed.

58. Respectfully following the decision of the Coordinate Bench of the Tribunal cited (supra.) and in absence of any contrary material brought to our notice we hold that each phase of windmill has to be considered as separate undertaking eligible for deduction u/s.80IA and therefore deduction u/s.80IA(4) should have been computed independently for each phase and not on consolidated basis. The ground raised by the assessee on this issue is accordingly allowed.”

7. Considering the above facts, it is evident that the Tribunal relied on the decision of Coordinate Bench of the Tribunal in the case of J-Sons Foundry Pvt. Ltd Vs. DCIT (supra.) for A.Yrs. 2007-08 and 2008-09 order dated 30.01.2013 while granting relief to the assessee in appeal for the A.Yrs. 2007-08 to 2010-11. It is now a settled legal proposition that “every unit constitute a separate undertaking engaged in the eligible business and losses from one unit cannot be set off against the profit of another unit engaged in the same business for the purpose of computing the deduction u/s 80IA.” Therefore, we are of the opinion that order of the CIT(A) on this issue is fair and reasonable and it does not call for any interference. Accordingly, ground No. 2 raised by the Revenue is dismissed.

8. The other issue raised in the Ground No. 3 by the Revenue relates to ‘initial assessment year’. Regarding this issue, Ld. Counsel submitted that the same issue also stands covered by the order of the Tribunal in the assessee’s own case (supra) for A.Yrs.2007-08 to 2010-11 (supra.) Brining our attention to para 59 to 65 of the order of Tribunal, which is placed at page No. 16 and 18 of the paper book, Ld. Counsel submitted that the Tribunal held the issue in favour of the assessee. As such, the assessee has option to choose the initial assessment year.

9. We have heard both parties and perused the said order of the Tribunal and relevant portion is extracted as under:

“64. After hearing both the sides, we find the issue as to whether initial assessment year u/s.80IA (5) means year of installation of windmill or year in which the claim of deduction u/s.80IA is first made has been decided in favour of the assessee by the decision

of the Pune Bench of the Tribunal in the case of Poonawalla Estate Stud & Agro Farm Pvt. Ltd. following the decision of Hon'ble Madras High Court in the case of Velayudhaswamy Spinning Mills Pvt. Ltd. has observed as under :

13.....

.....

.....

65. Respectfully following the decision of the Coordinate Bench of the Tribunal cited (supra) and in absence of any contrary material brought to our notice we hold that the provisions of section 80IA(5) are applicable only from the initial assessment year, i.e the assessment year in which deduction u/s.80IA was first claimed by the assessee after exercising his option as per the provisions of section 80IA(2) of the Act,. The grounds raised by the assessee are accordingly allowed.”

10. Considering the above, it is evident that the initial assessment year for the assessee for claiming deduction u/s.80IA (4) r.w.s (5) is the issue adjudicated by the Tribunal in favour of the assessee. While granting relief in para 65 of the Tribunal order, the Tribunal relied on the decision of Coordinate Bench of the Tribunal in the case of Poonawalla Estate Stud & Agro Farm Pvt. Ltd. reported in 136 TTJ (Pune) 236 and also following the judgment of Hon'ble Madras High Court in the case of Velayudhaswamy Spinning Mills Pvt. Ltd reported in 340 ITR 477. As such, Ld. DR could not bring any contrary decision on the issue under consideration. Thus, the initial assessment year constitutes the assessment year in which the deduction u/s.80IA of the Act is first claimed by the assessee after exercising his option as per the provisions of Section 80IA(2) of the Act. Therefore, we are of the opinion that the relief granted by the CIT(A) on this issue does not require any interference. Accordingly, ground No.3 raised by the Revenue is dismissed.

7. Before us, Revenue has not pointed out any distinguishing feature in the facts of the present case and that of assessee's own case in A.Ys. 2011-12 and 2012-13 in ITA Nos.1382 & 1383/PUN/2015 order dt.16.10.2017 (supra) nor has placed any material on record to demonstrate that the decision of Pune Tribunal in assessee's own case in A.Ys. 2011-12 and 2012-13 which has been relied upon by Ld.CIT(A) has been set aside / overturned or stayed by the Higher Judicial Forum. In view of the aforesaid facts, we find no reason to interfere with the order of Ld.CIT(A) and **thus the grounds of Revenue are dismissed.**

8. **In the result the appeal of Revenue is dismissed.**

Order pronounced on 1st day of August, 2019.

Sd/- (SUSHMA CHOWLA) न्यायिक सदस्य / JUDICIAL MEMBER	Sd/- (ANIL CHATURVEDI) लेखा सदस्य / ACCOUNTANT MEMBER
--	---

पुणे Pune; दिनांक Dated : 1st August, 2019.

Yamini

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. CIT(A)-3, Pune.
4. Pr. CIT-2, Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" / DR,
ITAT, "B" Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER

// True Copy //

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