

**IN THE INCOME TAX APPELLATE TRIBUNAL
LUCKNOW BENCH 'A', LUCKNOW**

**BEFORE SHRI A. D. JAIN, VICE PRESIDENT
AND SHRI T. S. KAPOOR, ACCOUNTANT MEMBER**

I.T.A. Nos.712 to 715/Lkw/2018
Asstt. Yrs:2009-10, 10-11, 15-16 & 16-17

M/s Magrath Properties Pvt. Ltd. 117/618, Pandu Nagar, Kanpur. PAN:AACCM 6577 D (Appellant)	Vs.	Dy.C.I.T.-1, Central Circle-1, Kanpur. (Respondent)
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Appellant by	Shri S. K. Garg, Advocate Shri P. K. Kapoor, C. A.
Respondent by	Shri A. K. Bar, CIT (D.R.)
Date of hearing	21/08/2019
Date of pronouncement	22/08/2019

ORDER

PER BENCH:

These appeals have been filed by the assessee against the separate orders of CIT(A), all dated 31/10/2018. The assessee has taken similar grounds of appeal in all cases which were heard together therefore, a common and consolidated order is being passed. For the sake of convenience, the grounds of appeal taken by the assessee in I.T.A. No.712/Lkw/2018 are reproduced below:

BECAUSE

- 1. the CIT(A) has erred in law and on facts in deciding the appeal ex-parte, on the ground that notice dated 25.09.2018*

issued through e-mail on the address mentioned in appeal memo and another notices for hearing on 23.10.2018 and 31.10.2018, remained 'uncomplied with', as neither anybody attended on behalf of the appellant nor any application seeking adjournment, was filed;

2. the appellant has got its office 'set up' at Bangalore and owing to non-accessibility of e-mail, the appellant had failed to take cognizance of notices, if any, sent from the office of Id. CIT(A), Kanpur and accordingly it should have been held that alleged non-appearance/non-filing of application for adjournment is sufficient and reasonable cause for non-compliance;

3. various case laws as have been referred and relied upon by the CIT(A), as mentioned in para 4.01 of the appellate order (under appeal here) are not applicable on the facts of the case, and the appellant deserved an opportunity of being heard, before rejection of its claim for exemption/deduction under section 80-IA(4)(iii) of the Act;

WITHOUT PREJUDICE TO THE AFORESAID

4. the authorities below have failed to appreciate and missed to note that:-

(a)the appellant had setup, developed and maintained an 'industrial park' under 'Industrial Park Scheme, 2002';

(b)the project was completed in the year 2003 in support of which completion/occupancy certificate dated 17.06.2003 was issued vide Commissioner approval No.2278 dated 13.06.2003 (which had duly been placed on record) before the Assessing Officer (as per narration appearing in the assessment order itself, which was subject matter of 1st Appeal;

(c)the appellant had duly applied to the Ministry of Commerce and Industry, New Delhi for sanction of industrial park vide non-automatic route, which was sanctioned also;

(d)it was to provide 4 units (as defined in the policy) and it had duly provided IPS - 2 which was to be filed every six month (twice in a year) although belatedly;

(e)there was delay in filing IPS-2 for which condonation application was filed, which was duly approved by the Ministry of Commerce and Industry, with the result that 'industrial park' developed by the appellant was fully approved;

and accordingly the claim for admissibility of benefit under section 80-IA(4)(iii) should have been ipso-facto made available to the appellant;

5. the claim of the appellant for deduction under section 80-IA(4)(iii) amounting to Rs.8,79,80,270/- could not have been denied in the set aside proceedings in view of express directions of Hon'ble IT AT, while setting aside the assessment order passed earlier;

6. in any case, relief giving provisions have to be construed liberally, in view of large number of case laws, as are listed on pages 8 & 9 of the assessment order that had been impugned in the 1st appeal;

7. the appellant disputes the computation of income as has been arrived at without allowing statutory deduction which it was entitled to under section 80-IA(4)(iii) and it denies the income tax liability fastened on it (with reference to the income computed/assessed in the set aside proceedings);

8. the order appealed against is contrary to the facts, law applicable thereto and principles of natural justice."

2. At the outset, Learned A. R. submitted that he will not be pressing ground Nos. 1 to 3 and therefore, these grounds are dismissed as not pressed.

3. Learned A. R. submitted that the sole grievance before the Bench is the action of learned CIT(A) by which he has not allowed benefit u/s

80IA(4)(iii) of the Act and in this respect our attention was invited to the findings of learned CIT(A) wherein he has held that since the project was not approved and notified therefore, the deduction u/s 80IA(4)(iii) of the Act was not available to the assessee. Learned A. R. in this respect invited our attention to page No. 2 of the paper book wherein the CBDT vide letter dated 28/06/2019 had forwarded to Pr. CIT, the copy of notification No.47/2019 dated 20/06/2019 notifying eligibility of the assessee u/s 80IA(4)(iii) of the Act and, therefore, it was prayed that the appropriate relief may be granted to the assessee.

4. Learned D. R., on the other hand, relied on the orders of the authorities below and argued that in the absence of notification, the learned CIT(A) has rightly dismissed the appeals of the assessee.

5. We have heard the rival parties and have gone through the material placed on record. We find that the CIT(A) has dismissed the appeals of the assessee for grant of deduction u/s 80IA(4)(iii) of the Act solely on the basis that the project of the assessee was not approved and notified by CBDT. The learned CIT(A) has passed this order on 31/10/2018 whereas Learned A. R. had filed the copy of CBDT letter on 28/06/2019 wherein the CBDT has forwarded a copy of notification No.47/2019 to Pr. CIT wherein the project of the assessee has been notified. This notification came after the learned CIT(A) had passed the impugned orders on 31/10/18 and though Learned A. R. had not filed application for admission of additional evidence but since this document is post passing of the order by learned CIT(A) and was not available before the authorities below therefore, this document has to be treated as additional evidence which, in the facts and circumstances of the cases is admitted but since this has not been examined by learned CIT(A)

therefore, we remit the cases back to CIT(A) who should go through the notification regarding approval of projects of the assessee and should decide in accordance with law. Needless to say, the assessee will be provided sufficient opportunity of being heard.

6. In the result, all the appeals are partly allowed for statistical purposes.

(Order pronounced in the open court on 22/08/2019)

Sd/.
(A. D. JAIN)
Vice President

Sd/.
(T. S. KAPOOR)
Accountant Member

Dated:22/08/2019
*Singh

Copy of the order forwarded to :

1. The Appellant
2. The Respondent.
3. Concerned CIT
4. The CIT(A)
5. D.R., I.T.A.T., Lucknow

Assistant Registrar