

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

श्री डी. करुणाकरा राव, लेखा सदस्य, एवं श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष ।
BEFORE SHRI D. KARUNAKARA RAO, AM AND SHRI VIKAS AWASTHY, JM

आयकर अपील सं. / ITA No.1193/PUN/2017
निर्धारण वर्ष / Assessment Year : 2012-13

Assistant Commissioner of Income Tax,
Circle – 10, Pune

.....अपीलार्थी / Appellant

बनाम / V/s.

Sanghvi Movers Ltd.,
Survey No. 92, Tathwade,
Tal.-Mulshi, Pune – 411033

PAN : AACCS3775K

.....प्रत्यर्थी / Respondent

Assessee by : Shri Aniruddha Asgokar
Revenue by : Shri Vilas Munde

सुनवाई की तारीख / Date of Hearing : 20-08-2019

घोषणा की तारीख / Date of Pronouncement : 26-08-2019

आदेश / ORDER

PER VIKAS AWASTHY, JM :

This appeal by the Revenue is directed against the order of Commissioner of Income Tax (Appeals)-6, Pune dated 13-01-2017 for the assessment year 2012-13.

2. The Revenue in appeal has assailed the findings of Commissioner of Income Tax (Appeals) in allowing assessee's claim of deduction u/s. 80IA(5) of the Income Tax Act, 1961 (hereinafter referred to as "the Act").

3. Shri Aniruddha Asgokar appearing on behalf of the assessee submitted at the outset that the assessee is engaged in the business of operating and hiring of cranes and trailers. The assessee has also set up windmills. The assessee claimed deduction u/s. 80IA on the windmills installed. The Assessing Officer disallowed assessee's claim of deduction u/s. 80IA on the ground that the deduction in respect of eligible unit can be claimed only after setting off of brought forward losses of earlier years against income from the eligible business. The issue is now well settled by the judgment of Hon'ble Madras High Court in the case of Velayudhaswamy Spinning Mills (P) Ltd. Vs. Assistant Commissioner of Income Tax reported as 340 ITR 477. The assessee's claim of deduction u/s. 80IA(5) was denied in assessment year 2010-11, as well. The Commissioner of Income Tax (Appeals) allowed assessee's claim. The Revenue carried the issue in appeal before the Tribunal in ITA No. 2259/PUN/2014. The Tribunal vide order dated 23-08-2017 dismissed the appeal of Revenue and held that the assessee is eligible for claiming deduction u/s. 80IA(5) of the Act. The facts in the assessment year under appeal are identical.

4. On the other hand Shri Vilas Munde representing the Department vehemently defended the assessment order. However, the ld. DR fairly admitted that in assessee's own case in the preceding assessment year, the Tribunal has upheld the findings of Commissioner of Income Tax (Appeals) in allowing the benefit of deduction u/s. 80IA(4) to the assessee.

5. Both sides heard. Orders of the authorities below perused. The only issue agitated in appeal by the Revenue is assessee's eligibility to claim deduction u/s. 80IA(5) without adjusting notional brought forward losses of earlier years of eligible unit. This issue has been laid to rest by the Hon'ble Madras High Court in the case of Velayudhaswamy Spinning Mills (P) Ltd. Vs. Assistant Commissioner of Income Tax (supra). The Hon'ble High Court has held that losses or depreciation of the years earlier to initial assessment year which have already been absorbed against the profits of other business cannot be notionally brought forward and set off against the profits of the eligible business for computing deduction u/s. 80IA of the Act.

6. The Co-ordinate Bench of Tribunal in assessee's own case in assessment year 2010-11 has granted relief to the assessee by in turn following the decision of Tribunal in assessment year 2009-10. The Revenue has been consistently denying the benefit of deduction u/s. 80IA(5) to the assessee and the Tribunal has been consistently allowing the same by following the well settled law on this issue. The Id. DR has not brought before us any material to distinguish the facts in the assessment year under appeal, nor any contrary judgment has been brought to our notice. The Commissioner of Income Tax (Appeals) has granted relief to the assessee by following the order of Tribunal in assessee's own case in assessment year 2009-10 and by applying the ratio in the case of Velayudhaswamy Spinning Mills (P) Ltd. Vs. Assistant Commissioner of Income Tax (supra). We do not find any infirmity in the impugned order. The same is upheld and the appeal of Revenue is dismissed being devoid of any merit.

7. In the result, the appeal of Revenue is dismissed.

Order pronounced on Monday, the 26th day of August, 2019.

Sd/-	Sd/-
(डी. करुणाकरा राव/D. Karunakara Rao)	(विकास अवस्थी / Vikas Awasthy)
लेखा सदस्य / ACCOUNTANT MEMBER	न्यायिक सदस्य / JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 26th August, 2019

RK

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

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

//सत्यापित प्रति // True Copy//

आदेशानुसार / BY ORDER,

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