

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.76/PUN/2019
निर्धारण वर्ष / Assessment Year : 2012-13

Asst. Commissioner of Income Tax,
Circle – 7, Pune

.....अपीलार्थी / Appellant

बनाम / V/s.

M/s. L.B. Kunjir,
S. No. 52/1, Swanand Building,
Shriram Co-op. Hsg. Soc. Kharadi,
Pune – 411014

PAN : AABFL9816E

.....प्रत्यर्थी / Respondent

आयकर अपील सं. / ITA No.2614/PUN/2017
निर्धारण वर्ष / Assessment Year : 2013-14

Dy. Commissioner of Income Tax,
Circle – 7, Pune

.....अपीलार्थी / Appellant

बनाम / V/s.

M/s. L.B. Kunjir,
S. No. 50/1, Swanand Building,
Shriram Co-op. Hsg. Soc. Kharadi,
Pune – 411014

PAN : AABFL9816E

.....प्रत्यर्थी / Respondent

आयकर अपील सं. / ITA No.07/PUN/2018
निर्धारण वर्ष / Assessment Year : 2014-15Jt. Commissioner of Income Tax (OSD),
Circle – 7, Pune

.....अपीलार्थी / Appellant

बनाम / V/s.M/s. L.B. Kunjir,
S. No. 52/1, Swanand Building,
Shriram Co-op. Hsg. Soc. Kharadi,
Pune – 411014

PAN : AABFL9816E

.....प्रत्यर्थी / Respondent

Assessee by : Shri Nikhil Pathak
Revenue by : Shri N. Ashok Babuसुनवाई की तारीख / Date of Hearing : 25-07-2019
घोषणा की तारीख / Date of Pronouncement : 27-08-2019**आदेश / ORDER****PER VIKAS AWASTHY, JM :**

These three appeals by the Revenue for the assessment years 2012-13, 2013-14 and 2014-15 are directed against the orders of Commissioner of Income Tax (Appeals)-5, Pune for the respective assessment years. The order of Commissioner of Income Tax (Appeals) for the assessment year 2012-13 is dated 17-09-2018. The impugned order of Commissioner of Income Tax (Appeals) for assessment year 2013-14 is dated 30-06-2017 and the order of Commissioner of Income Tax (Appeals) for assessment year 2014-15 is dated 18-09-2017.

Since, the issue raised in all these appeals is identical and is emanating from same set of facts, these appeals are taken up together for adjudication and are being disposed of vide this common order.

2. The Revenue in all the three appeals has assailed the action of Commissioner of Income Tax (Appeals) in allowing assessee's claim of deduction u/s. 80IA(4) of the Income Tax Act, 1961 (hereinafter referred to as "the Act").

Since, the order of First Appellate Authority for assessment year 2013-14 is first in time, the facts are culled out from the appeal for assessment year 2013-14.

ITA No. 2614/PUN/2017 (A.Y. 2013-14)

3. The assessee has set up four windmills at different locations viz. Jaisalmer (Rajasthan), Dhulia, Nandurbar and Sinnar. The assessee claimed deduction u/s. 80IA(4) of the Act in respect of income derived from the four windmills separately. The Assessing Officer rejected assessee's claim by treating all the four windmills as single undertaking.

Aggrieved against the assessment order dated 29-02-2016 passed u/s. 143(3) of the Act, the assessee filed appeal before the Commissioner of Income Tax (Appeals). The First Appellate Authority after appreciating the facts of the case and the decision of Pune Bench of Tribunal in the case of Malpani Tea Corporation Vs. Dy. Commissioner of Income Tax in ITA No. 912/PN/2011 for assessment year 2006-07 decided on 31-12-2012 allowed assessee's claim of deduction u/s. 80IA(4) of the Act in full.

Against the findings of Commissioner of Income Tax (Appeals), the Revenue is in appeal.

4. Shri Nikhil Pathak appearing on behalf of the assessee submitted at the outset that the Assessing Officer has erred in holding that all the four windmills set up by the assessee at four different locations are single undertaking. The Tribunal in the case of Dy. Commissioner of Income Tax Vs. J-Sons Foundry Pvt. Ltd. in ITA No. 2349/PN/2012 for assessment year 2009-10 decided on 28-01-2014 has held that every unit constitute separate undertaking engaged in eligible business. Similar view was taken by the Tribunal in the case of D.J. Malpani Vs. ACIT in ITA Nos. 1148 to 1154/PN/2013 for assessment years 2004-05 to 2010-11 decided on 30-10-2015. The Tribunal held that each windmill has to be considered as separate undertaking eligible for deduction u/s. 80IA and the deduction should be computed independently for each unit and not on consolidated basis. The Commissioner of Income Tax (Appeals) has granted relief to the assessee by following the decision of Tribunal and the decision 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.

5. On the other hand Shri N. Ashok Babu representing the Department vehemently defended the impugned order. The ld. DR submitted that the Department has filed appeal against the order of Tribunal in the case of D.J. Malpani Vs. ACIT (supra).

6. We have heard the submissions made by representatives of rival sides and have perused the orders of authorities below. The assessee has

set up four windmills and claimed deduction u/s. 80IA(4) in respect of each of the windmills as per the table given below :

Sr. No.	Location of windmills	Date of commencement of operation	Income from operation claimed as deduction u/s. 80IA(4)	Initial Assessment Year from when deduction is being claimed
1	Jaisalmer, Rajasthan	31.03.2004	11,39,020/-	2011-12
2	Dhulia	20.09.2005	64,10,668/-	2011-12
3	Nandurbar	06.03.2006	61,53,036/-	2011-12
4	Sinnar	30.03.2009	57,03,873/-	2013-14
		Total	1,94,06,597/-	

7. The assessee has claimed deduction u/s. 80IA(4) separately for each unit of windmill. It is an undisputed fact that the date of commencement of operation of each windmill is different. The stand of the Revenue is that instead of claiming deduction u/s. 80IA(4) on each windmill as separate unit, the assessee should have computed deduction on all the windmills as single undertaking.

We find that the issue whether deduction u/s. 80IA(4) is to be computed on each windmill unit separately or on consolidated basis was considered by the Co-ordinate Bench in the case of M/s. D.J. Malpani Vs. ACIT (supra). The Tribunal after considering the earlier decision rendered in the case of Dy. Commissioner of Income Tax Vs. J-Sons Foundry Pvt. Ltd. (supra) concluded as under :

*“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 grounds raised by the assessee on this issue is accordingly allowed.”*

8. Since, the issue has already been considered by the Tribunal and has held that each unit of windmill has to be considered separately for computing deduction u/s. 80IA(4), we see no reason to deviate from the view already taken. No contrary judgment has been placed on record before us by the Revenue. The ld. DR has pointed that the Department has filed appeal against the Tribunal's decision in the case of M/s. D.J. Malpani Vs. ACIT (supra), however, no order by the Hon'ble High Court either staying or reversing the aforesaid decision of Tribunal has been furnished by the ld. DR.

9. We do not find any infirmity in the order of Commissioner of Income Tax (Appeals) in allowing assessee's claim of deduction u/s. 80IA(4) considering each windmill as separate unit for allowing deduction u/s. 80IA(4) of the Act. Hence, the impugned order is upheld and the appeal of Revenue is dismissed.

ITA Nos. 76/PUN/20019 for A.Y. 2012-13 and

ITA No. 07/PUN/2018 for A.Y. 2014-15)

10. Both the sides are unanimous in stating that the facts in assessment years 2012-13 and 2014-15 are identical to the facts in assessment year 2013-14. The disallowance of deduction u/s. 80IA(4) in respect of windmills has been made by the Assessing Officer on similar lines and the Commissioner of Income Tax (Appeals) has allowed assessee's claim of deduction by following the decision of Tribunal in the case of M/s. D.J. Malpani Vs. ACIT (supra) in both the impugned assessment years. Since, the issue in both the appeals are identical to the one already adjudicated by us in appeal of Revenue for assessment year 2013-14, the findings given

by us while adjudicating the appeal for assessment year 2013-14 would *mutatis mutandis* apply to the appeals for assessment years 2012-13 and 2014-15. Both the appeals of Revenue are dismissed, accordingly.

11. In the result, all the three appeals by the Revenue are dismissed.

Order pronounced on Tuesday, the 27th 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 : 27th 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)-5, Pune
4. The Pr. Commissioner of Income Tax-4, 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