

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.2736/PUN/2016

निर्धारण वर्ष / Assessment Year : 2012-13

ACIT, Circle-2,
Kolhapur.

.....अपीलार्थी / Appellant

बनाम / V/s.

M/s. Preetam Enterprises,
1325/91, Shivaji Udyam Nagar,
Kolhapur-416008.

PAN : AACFP2436P

.....प्रत्यर्थी / Respondent

Revenue by : Mrs. Shabana Parveen
Assessee by : Shri Nikhil Pathak

सुनवाई की तारीख / Date of Hearing : 09.07.2019

घोषणा की तारीख / Date of Pronouncement : 27.08.2019

आदेश / ORDER

PER D. KARUNAKARA RAO, AM:

This appeal is filed by the Revenue against the order of CIT(A)-2,
Kolhapur dated 25.10.2016 for the Assessment Year 2012-13.

2. The grounds raised by the Revenue are as under :-

"1. On the facts and in the circumstances of the case and in law, the CIT(A) was not justified in deleting the addition made by the AO on account of **suppression of sale price** of CI Boring scrap without considering the fact that **onus was on the assessee** to give proper justification for selling of scrap **below the market price**.

2. On the facts and in the circumstances of the case and in law, the CIT(A) was not justified in deleting the entire addition made by the AO on account of generation of scrap without consideration the fact that assessee has neither maintained details of generation of scrap nor accounted them in the books of accounts.

3. On the facts and in the circumstances of the case and in law, the CIT(A) was not justified in allowing the assessee's claim of deduction u/s 80IA(4)(iv) without considering set off of earlier years unabsorbed depreciation of Rs.2,54,00,525/- and if set off is allowed, there would be no positive income from the windmill.

4. The appellant prays that the order of the CIT(A) be vacated and that order of the Assessing Officer may be restored.

5. The appellant craves leave to add, alter, amend or delete any of the above grounds of appeal at the time of proceedings before the Tribunal which may kindly be granted."

3. Briefly stated the relevant facts include that the assessee is a firm engaged in the business of manufacturing of automobile parts, engineering goods job work and also power generation through windmill. The assessee filed the return of income declaring total income of Rs.13,52,13,257/-. At the end of the assessment, the Assessing Officer assessed the total income of the assessee at Rs.15,20,65,117/- after making three additions. The details of the said three additions are given in para 6 of the assessment order and the same are extracted hereunder :-

6. Subject to the above remarks, the total income of the assessee is computed as under:

Particulars		Amount (Rs.)	Amount (Rs.)
Total income as per return of income			13,52,13,257
Add:- Additions/Disallowances			
(i)	Addition on account of suppression in sale price of C.I. Boring scrap as discussed in para No.4.7	9900000	
(ii)	Addition on account of disallowance out of repairs and maintenance towards generation of scrap as per para No.5	500000	
(iii)	Addition on account of disallowance of expenses claimed u/s. 80IA of the I.T. Act, 1961 as discussed in para No.5.4	6451860	1,68,51,860
Total Assessed Income			15,20,65,117
Rounded off to			15,20,65,120

4. The CIT(A) granted relief to the assessee and allowed the appeal of the assessee.

5. Aggrieved with the said decision of the CIT(A), the Revenue is in appeal before us with the above extracted grounds.

6. From the above extracted grounds of appeal, it is evident that there are only two issues for adjudication raised in the aforesaid grounds no.1, 2 and 3. The **first issue** relates to the addition on account of suppression of sale price of C.I. Boring scrap amounting to Rs.99,00,000/- and the **second issue** relates to the claim of deduction u/s 80IA(4) of the Act amounting to Rs.64,51,860/-.

7. Before us, at the outset, ld. DR for the Revenue fairly submitted that the issue raised in the ground no.3, relating to the claim of deduction u/s 80IA(4) of the Act, stands covered in favour of the assessee by way of order of the Tribunal in **assessee's own case** for the assessment years 2007-08 to 2009-10 vide ITA Nos.2293 to 2295/PN/2012 dated 29.11.2013, copy of which is placed on the record.

8. On the other hand, ld. Counsel for the assessee heavily relied on the order of the CIT(A) and the decision of the Tribunal (supra) on this issue and prayed for dismissing the said ground no.3 of the Revenue.

9. On hearing both the sides on this issue relating to the claim of deduction u/s 80IA(4) of the Act, we perused the contents of para 6 and its sub-paragraphs of the order of the CIT(A) and find that the CIT(A)

rightly granted relief to the assessee following the judicial precedent in assessee's own case for the earlier assessment years. We find relevant to extract the contents of para 6.1.2 of the order of the CIT(A) and the same are extracted hereunder :-

*“6.1.2 From the above it is evident that the matter regarding initial assessment year has now been clearly settled in favour of the appellant. As per both, the Hon'ble ITAT as well as the CBDT, the appellant has an option to choose the initial assessment year for the purposes of deduction under section 80IA. In the present case, the appellant has chosen the initial assessment year as AY 2004-05 for the windmill at Satar and AY 2009-10 for the windmill at Sangli. In the light of the above discussion and respectfully following the decision of the Hon'ble ITAT in the **appellant's own case** as well as the Circular of the CBDT cited supra, the assessing officer is directed to allow the deduction under section 80IA(4)(iv) as claimed. In the circumstances, the disallowance made by the assessing officer is deleted. Grounds 1&2 are allowed.”*

10. From the above, it is evident that the CIT(A) fairly followed the judicial precedent in assessee's own case in the earlier assessment years and the ld. DR for the Revenue has not brought to our notice any incriminating material in this regard. Therefore, we are of the opinion, the finding of the CIT(A) given in para 6.1.2 of his order is fair and reasonable and it does not call for any interference. Accordingly, ground no.3 raised by the Revenue is **dismissed**.

11. Referring to grounds no.1 and 2 relating to the addition on account of suppression of sale price of C.I. Boring scrap amounting to Rs.99,00,000/-, ld. DR for the Revenue relied on the order of the Assessing Officer.

12. On the other hand, ld. Counsel for the assessee reiterated the facts as made before the revenue authorities and submitted that the assessee generates scrap of C.I. Boring and the same is sold to Melting Centre. The Assessing Officer made enquiries and found that the market rate of the scrap generated by the assessee is Rs.25 per kg and the same scrap is sold by the Melting Centre less than Rs.14 per kg. The difference of Rs.9 is held as “suppression in sale price of C.I. Boring scrap”. However, there is **no incriminating evidence** brought to our notice by the ld. DR for the Revenue on record. The assessee explained that the said difference is on account of saving of transportation and other charges. In this regard, the assessee filed the written submission with reasonable facts but the same was rejected by the Assessing Officer.

13. However, during the first appellate proceedings, the explanation of the assessee was considered appropriate and relevant by the CIT(A) and the CIT(A) granted relief to the assessee as per the discussion given in para 6.2 of his order.

14. After hearing both the sides on this issue relating to the addition on account of suppression of sale price of C.I. Boring scrap amounting to Rs.99,00,000/-, we perused the para 6.2 of the order of the CIT(A) and find relevant to extract the same. The contents of para 6.2 of the order of the CIT(A) are extracted hereunder :-

“6.2 Grounds 3&4: This is against the action of the A.O. in adding Rs.99,00,000 being the rate difference of Rs.9 per kg on the CI Boring scrap sold by the appellant to Melting Centre. I have already discussed the facts in detail earlier in the order. The core issue here is that admittedly there is a difference between the market price of CI Boring

*scrap and the sale price of the same scrap sold to Melting Centre. Enquiries made by the A.O. with Melting Centre itself indicates that he is purchasing CI Boring scrap from the appellant @ Rs.14 per kg and from others at a price ranging from Rs.22 to Rs.25 per kg. There is only one other concern from whom Melting Centre is purchasing CI Boring scrap @ Rs.14 per kg viz. RamchandraEngg Works. The table submitted by Melting Centre in response to the notice u/s 133(6) and reproduced on page 11 of the assessment order is revealing on facts. Everyone agrees that the appellant has sold scrap to Melting Centre @ Rs.14 per kg and Melting Centre in turn confirms that it is buying the same scrap from others at a higher price. One only has to determine why this is so. I specifically requested the appellant to explain the commercial wisdom of selling the scrap @ Rs.14 per kg when the market price with traders is higher, however the appellant could not explain anything more than what was stated before the A.O. The facts before me as well as the A.O. indicate that the appellant's factory is situated next to Melting Centre and therefore the scrap as and when generated is lifted by Melting Centre on an as is where is basis. There is no processing or cleaning on part of the appellant. On the other hand, the scrap purchased from traders by Melting Centre is obviously transported to Melting Centre and also cleaned etc. I have also examined the sale bills and sample sale bills are kept on record. They indicate that the scrap is sold to Melting Centre and is excisable and VAT is also charged. There appears to be no evidence with the A.O. to show that anything **extra over and above Rs.14 per kg has been paid to the appellant**. Finally it is settled law that notional income cannot be charged to tax unless mandated through a deeming provision or existence of a colourable transaction. There is no such case here. Both parties are not related to each other and there appears to be no colourable device employed. The arguments of the A.O. as well as the appellant as reproduced in the assessment order are actually besides the point. In the circumstances, I am inclined to agree with the appellant on the basic premise that no notional income could be charged to tax, notwithstanding the fact that there appears to be no convincing explanation as to why the scrap is sold at lower rate. Accordingly I delete the addition of Rs.99,00,000/- holding that no notional income could be assessed in absence of any evidence to show that something extra has been paid to the appellant or some other benefit has accrued to the appellant on this count. Grounds 3&4 are allowed."*

15. Considering the above, we find it is an undisputed fact that in the case of the sale transactions of scrap between the assessee and the Melting Centre, there is a lot of saving of an expenditure i.e. relating charges for transportation, other coolie/cartage charges etc. The assessee furnished the details of reconciliation rate difference between Rs.25 per kg to Rs.14 per kg. Considering the same, we are of the opinion, the view taken by the CIT(A) on this issue is fair and reasonable

and it does not call for any interference. Accordingly, the grounds no.1 and 2 raised by the Revenue are dismissed.

16. The grounds no.4 and 5 being general in nature are dismissed.

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

Order pronounced on 27th day of August, 2019.

Sd/-
(विकास अवस्थी /**VIKAS AWASTHY**)
न्यायिक सदस्य/**JUDICIAL MEMBER**

Sd/-
(डी. करुणाकरा राव/**D. KARUNAKARA RAO**)
लेखा सदस्य/**ACCOUNTANT MEMBER**

पुणे / Pune; दिनांक / Dated : 27th August, 2019.
Sujeet

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

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

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.