

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

BEFORE SHRI D. KARUNAKARA RAO, AM AND
SHRI PARTHA SARATHI CHAUDHURY, JM

आयकर अपील सं. / ITA No. 546/PUN/2013

निर्धारण वर्ष / Assessment Year : 2009-10

Prabhat Dairy Pvt. Ltd.
Ranjankhol, Tal. Shrirampur,
Dist. Ahmednagar.
PAN : AACCP8872E

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer,
Ward-2, Ahmednagar.

.....प्रत्यर्थी / Respondent

Assessee by : Shri S. N. Puranik
Revenue by : Shri Milind Chahure

सुनवाई की तारीख / Date of Hearing : 03.10.2019
घोषणा की तारीख / Date of Pronouncement : 03.10.2019

आदेश / ORDER

PER PARTHA SARATHI CHAUDHURY, JM :

This appeal preferred by the assessee emanates from the order of the
Ld. CIT(Appeals)-I, Pune dated 07.12.2012 for the assessment year 2009-10
as per the grounds of appeal on record.

2. The assessee has filed grounds of appeal in the memo as well as modified grounds of appeal. The sole grievance of the assessee is the denial of claim for deduction u/s.80IB of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').

3. The contentions of the Revenue is that such deduction is not allowable in the case of the assessee since it does not qualify under the definition of Small Scale Industry Unit for assessment year 2009-10 i.e. relevant year as Rs.5 Crore was the limit for getting approval as Small Scale Industry Unit. The Ld. AR of the assessee had filed certificate from District Industrial Centre wherein the assessee qualified as a Small Scale Industrial Undertaking (SSI) Unit.

4. The Ld. AR of the assessee submitted that in assessee's own case in ITA No.785/PN/2008 for the assessment year 2005-06. The Tribunal was faced with the similar question which is as follows:

"1.On the facts and circumstances of the case, the CIT(Appeals) erred in directing the Assessing Officer to grant deduction u/s.80IB.

In that year, the limit for qualifying as Small Scale Industrial Unit was Rs.3 Crore and the Tribunal held the assessee as a qualified Small Scale Industry Unit by observing as under:

"5. We have heard both the parties and perused the orders of the revenue as well as paperbook filed before us. The moot for decision in this appeal relevant is whether the assessee is S.S.I. unit or not and whether it is engaged in the manufacturing activity of any article or thing. For this purpose, we find that the clause (g) of section 80IB(4) is relevant which reads as under.

“(g) “Small-scale industrial undertaking” means an industrial undertaking which is, as on the last day of the previous year, regarded as a small-scale industrial undertaking under section 11B of the Industries (Development and Regulation) Act, 1951 (65 of 1951).”

6. *From the above, it is evident that the industrial undertaking which is regarding as a small scale industrial undertaking under section 11 B of the Industries (Development and Regulation) Act, 1951 is the deciding factor and there is no clear definition in the Act. Therefore, the certificate issued by D.I.C placed at pages 3 to 11 of the paper-book, is done under the provisions of section 11B of Industries (Development and Regulation) Act, 1951 that plant and machinery of an industrial undertaking must be below Rs.3 crores. In the light of the same, we find there is no reason to reject the said endorsement of the DIC. Further regarding the issue of manufacturing activity raised in ground 2 of the appeal, pages 5 and 13 of the paper book, issued by the concerned D.I.C., are categorical in stating that the assessee is engaged in manufacturing activity of various items as listed on page 5 and 13 of the paperbook. We find no reason to reject the said endorsement. Considering the validity of the said documents relied upon by the assessee, which were not appreciated by the assessing authorities, we are of the opinion that the order of the CIT(A) does not call for any interference.”*

The Ld. AR for the assessee further submitted in that year when limit for Small Scale Industrial Unit was Rs.3 Crore, the Tribunal has held the assessee being eligible for deduction u/s.80IB of the Act and therefore, for this year also, similar treatment may be given to the assessee.

5. Per contra, the Ld. DR has placed strong reliance on the orders of the Sub-ordinate Authorities.

6. We have perused the case records and heard the rival contentions. On perusal of the Tribunal's order in assessee's own case for assessment year 2005-06 (supra.) such claim of deduction u/s.80IB of the Act was granted to the assessee on examination that the assessee had qualified as Small Scale Industrial Unit and even certificate issued by District Industrial Centre was

found to be relevant and considered. That however, the limit for the relevant assessment year under consideration is Rs.5 Crore but here also District Industrial Centre certificate given which recognizes the assessee as Small Scale Industrial Unit and therefore, in light of our findings given in assessee's own case for assessment year 2005-06, for the interest of justice, we find it deem and appropriate to restore the issue to the file of Assessing Officer for examination in this background and adjudicate the same after providing reasonable opportunity of hearing to the assessee. We, therefore, set aside the order of the Ld. CIT(Appeals) and restore the matter to the file of Assessing Officer to examine the qualification whether the assessee is eligible as Small Scale Industry Unit to get deduction u/s.80IB of the Act as claimed by them. This examination has to be done as per law and in the backdrop of the findings given in the Tribunal's order in assessee's own case for assessment year 2005-06. Thus all grounds in appeal and modified grounds are restored to the file of the Assessing Officer as indicated above.

7. In the result, **appeal of the assessee is allowed for statistical purposes.**

Order pronounced on 3rd day of October, 2019.

Sd/-
D. KARUNAKARA RAO
ACCOUNTANT MEMBER

Sd/-
PARTHA SARATHI CHAUDHURY
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 3rd October, 2019.

SB

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

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

// True Copy //

आदेशानुसार / BY ORDER,

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

		Date	
1	Draft dictated on	03.10.2019	Sr.PS/PS
2	Draft placed before author	03.10.2019	Sr.PS/PS
3	Draft proposed and placed before the second Member		JM/AM
4	Draft discussed/approved by second Member		AM/JM
5	Approved draft comes to the Sr. PS/PS		Sr.PS/PS
6	Kept for pronouncement on		Sr.PS/PS
7	Date of uploading of order		Sr.PS/PS
8	File sent to Bench Clerk		Sr.PS/PS
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R		
11	Date of dispatch of order		