

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "C", MUMBAI**

**BEFORE SHRI C.N. PRASAD, HON'BLE JUDICIAL MEMBER AND
SHRI G. MANJUNATHA, HON'BLE ACCOUNTANT MEMBER**

ITA.NO. 6503/MUM/2018 (A.Y: 2012-13)

Dy. Commissioner of Income-tax Central Circle – 6(2) Room No. 1903, 19 th Floor Air India Building, Nariman Point Mumbai – 400 021	v.	M/s. Punit Construction Company Agarwal Golden Chambers Fun Republic Road, Plot No. 13A Behind Balaji Telefilms Off. New Link Road, Andheri (W) Mumbai – 400 053 PAN: AAAFP1231E
(Appellant)		(Respondent)

Assessee by	:	Ms. Neelam C. Jadhav
Department by	:	Kumar Padmapani Bora
Date of Hearing	:	27.11.2019
Date of Pronouncement	:	28.11.2019

ORDER

PER C.N. PRASAD (JM)

1. This appeal is filed by the Revenue against the order of the Learned Commissioner of Income Tax (Appeals) – 45 Mumbai [hereinafter in short "Ld.CIT(A)"] dated 02.07.2018 for the A.Y. 2012-13.

2. Revenue has raised the following grounds in its appeal: -

"1. Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) has erred in directing the Assessing Officer to delete the addition of deduction u/s. 80IA of the income Tax Act,

1961 of the ₹.1,75,93,573/- when it is evident that the assessee is making profit in 2 windmills and loss from other three units should set off from the profit of these two units?"

3. At the outset Ld. Counsel for the assessee submits that Ground raised by the revenue relating to deduction u/s. 80IA of the Act is squarely covered by the Tribunal in assessee's own case in ITA.No.6337/Mum/2014 dated 21.02.2018 for the A.Y. 2011-12.
4. Ld. DR fairly submitted that this issue has been decided in favour of the assessee. However, he supports the order of the Assessing Officer.
5. On hearing both the sides and perusing the orders of the Tribunal in assessee's own case, we find that the issue is squarely covered by the decision of the Tribunal in ITA.No. 6337/Mum/2014 dated 21.02.2018 for the A.Y. 2011-12 wherein it has been held as under: -

"10. We have heard both the parties, perused the material available on record and gone through the orders of authorities below. We have also carefully considered provisions of section 80IA and case laws relied upon by both parties. The facts with regard to eligibility for claiming deduction under section 80IA has not been disputed by the lower authorities. The lower authorities had admitted that the assessee is eligible for claiming deduction under section 80IA in respect of power generation business though setting off of windmills. The only dispute is with regard to computation of quantum of deduction. Whether the profits and gains of the eligible business as per the words of section 80IA(5) have to be considered unit-wise or as a total eligible business comprising of profits of all units. The provisions of section 80IA(5) provided mechanism for determination of quantum of deduction from eligible business and as per which the eligible business shall be considered as if the only source of income of the assessee during the initial year and every subsequent AYs. Therefore, one has to see what eligible business is whether it is the total business as a whole or each unit or undertaking. No doubt the provision of section 80IA speaks about profit and gains from

industrial undertakings or enterprises engaged in infrastructure development, etc. Sub-section (5) speaks about eligible business. Now the controversy to be resolved is whether the power generation segment of the assessee is an eligible business or each windmill is a separate unit eligible for deduction without considering profit or loss of other windmill. The assessee claims that each windmill shall be considered as an eligible unit for the purpose of determination of deduction. The assessee also cited certain judicial precedents in support of its arguments.

11. *To understand the eligibility for deduction under section 80IA of the Act, the questions that need to be addresses are whether the gross total income of the assessee is positive, whether the assessee has an eligible business and whether different units in such eligible business are to be taken as one eligible business. To ascertain gross total income, the first step would be to compute income under each head of income separately. In this case admittedly, the assessee does not have any other head of income except income from Business or Profession. The assessee have only two segment of business income i.e. construction business and power generation business. Admittedly, construction business is not eligible business for claiming deduction under section 80IA, therefore, there is controversy about consolidation of profit from construction business activity. The assessee is having power generation segment through windmills. The assessee has set up five windmills. All the five units are part of power generation segment. Now the question is whether deduction provided under section 80IA shall be given on profits and gains derived from power segment business as the only eligible business or profits and gains derived from each windmills as an eligible business without considering profit or loss of other windmills. There is no dispute with regard to deduction to be given under chapter VIA against gross total income computed from all source of income. Even various decisions of the Hon'ble Supreme Court, including in the case of CIT vs. Liberty India (supra) have clearly held that special deduction under chapter VIA has to be computed on the gross total income and such gross total income has to be computed segment wise business after allowing all the deduction allowable under section 32 to 43D. The Hon'ble Bombay High Court in the case of Plastiblends India Ltd. Vs. ACIT (2009) 185 Taxman 187 after considering the ratio of Hon'ble Supreme Court in the case of Liberty India (supra) held that there has to be profit in the eligible business and such eligible business can be any of the business as referred to in subsection 3(ii) to 11(a) of section 80IA of the Act.*

12. *In this case, admittedly the assessee is having two segment of business i.e. one is power generation through five windmills which is eligible business and another is construction segment. The assessee has generated profit from two windmills and incurred losses from three windmills. The assessee also derived profit from construction business. The gross total income computed from two*

segment of business is positive. If you consider each segment of business stand alone, then there is a loss from the power generation segment, if profit or losses of all five windmills are consolidated. The assessee has considered each wind Mill as a separate unit eligible for deduction under section 80IA, without considering profit or loss of other windmills and accordingly claimed deduction towards profit generated from two windmills. If one considered power generation business as one eligible business, certainly the assessee is not eligible for deduction under section 80IA, as from power generation business the assessee has incurred losses. If you strictly apply the provisions of section 80IA(5), the words used therein are clearly states that each eligible business shall be considered as the only source of income of the assessee for the purpose of determination of deduction. If, one goes by the words used in sub section (5), of section 80IA, then there is logic in the unit wise deduction claimed by the assessee, for the reason that deductions under chapter VIA is a incentive based deduction and period specific. The provisions provides for deduction of profits and gains of eligible business for a certain period starting from the period of initial claim. To understand the issue in a better manner, let us take an example. The assessee is in to the business of manufacturing products from different units located at different places. Meantime, the Govt. has announced incentives for setting up units in some places and within such period. The assessee has set up one eligible unit and starts claiming deduction under that provision. Next year, the assessee has set up one more eligible unit at different place and starts claiming deduction from that year and so on. Now both units are eligible units. The period of deduction specified under the act is 10 years for eligible units. Unit one is claiming deduction from initial assessment year and it may end up in some period. Unit two is claiming deduction from next year and it may end up in different year. If one takes initial assessment year from which unit one claims deduction for ten years, the assessee may loose benefit of deduction for one year for unit two, because it has commenced deduction from next year. If you take initial year of claim from the date on which unit two starts claiming deduction, then the assessee may get the benefit for more than 10 years for unit one, if you consider both units as one eligible business and profit or loss of both units is consolidated. This may not be the true intention of the legislature and for that reason the legislature consciously used the word undertaking or unit so as to give a deduction towards eligible units, in a situation where, the assessee is having more than one units in different locations, out of which one unit may be an eligible unit and another unit may not be eligible unit and also one unit may get deduction for different period and another unit may get deduction for different period. This is why the courts and tribunals has consistently held that deduction provided u/s 80IA has to be given unit wise without considering profit or loss of other units. This legal proposition is strengthened by the decision of ITAT, Ahmadabad, special bench in the case of CIT vs. Goldmine Shares

and Finance Pvt. Ltd. (2008) 113 ITD 209 and also the ITAT Bangalore in the case of Jindal Aluminium Ltd. Vs. ACIT (2012) 19 ITR (T) 255.

13. In this case, the assessee is into two segment of business i.e. construction business which is non eligible and power generation business which is eligible business u/s 80IA of the Act. Admittedly, the assessee has set up 5 wind mills out of which two wind mills are set up in the financial year relevant A.Ys. 2005-06 and 2006-07 and remaining 3 wind mills have been set up during the financial year relevant to A.Y. 2011-12. All 5 wind mills are situated at different locations and commenced production at different point of time. All 5 wind mills are eligible units for deduction u/s 80IA of the Act. The assessee has derived profit from 2 wind mills and incurred losses from 3 wind mills. The assessee has claimed deduction u/s 80IA in respect of profit of 2 wind mills without set off of losses of 3 wind mills, considering each wind mill as a separate unit eligible for deduction u/s 80IA of the Act. Considering the facts and circumstances of this case, we are of the considered view that the assessee's claim of deduction u/s 80IA is in accordance with the provisions of section 80IA(5) of the Act and also in consonance with the decisions of ITAT, Ahmedabad special Bench and ITAT, Bangalore decision. Hence, we direct the AO to allow deduction claimed u/s 80IA of the Income Tax Act, 1961."

6. Facts being identical, respectfully following the said decision in assessee's own case, we uphold the order of the Ld.CIT(A) and reject the grounds raised by the Revenue.

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

Order pronounced in the open court on the 28th November, 2019

Sd/-
(G. MANJUNATHA)
ACCOUNTANT MEMBER

Mumbai / Dated 28/11/2019
Giridhar, Sr.PS

Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mum