

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

BEFORE SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND
SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.901/PUN/2018

निर्धारण वर्ष / Assessment Year : 2013-14

Kirloskar Industries Ltd.,
13 – A, Karve Road,
Kothrud, Pune – 411038

PAN : AAACP3590P

.....अपीलार्थी / Appellant

बनाम / V/s.

The Pr. Commissioner of Income Tax – 6,
Pune

.....प्रत्यर्थी / Respondent

Assessee by : Shri C.H. Naniwadekar
Revenue by : Smt. Nandita Kanchan

सुनवाई की तारीख / Date of Hearing : 20-11-2019

घोषणा की तारीख / Date of Pronouncement : 16-12-2019

आदेश / ORDER

PER S.S. VISWANETHRA RAVI, JM :

This appeal by the assessee against the order dated 20-03-2018 passed by the Pr. Commissioner of Income Tax (Appeals)-6, Pune u/s. 263 of the Act for assessment year 2013-14.

2. The assessee raised two grounds challenging the action of Pr. Commissioner of Income Tax u/s. 263 of the Act in setting aside the order of Assessing Officer passed u/s. 143(3) of the Act ignoring the assessment proceedings conducted in detail in relating to the issue in hand in the facts and circumstances of the case.

3. Heard both parties and perused the materials available on record. The assessee is a company and engaged in the business of generation of power from non-conventional resources. The assessee filed return of income declaring a total income of Rs.19,18,73,400/-. Notices u/s. 143(2) and 142(1) of the Act were issued. In response to which the authorized representative on behalf of assessee attended from time to time and produced supporting/details called for in scrutiny assessment proceedings. The Assessing Officer made disallowances on account of legal expenses, expenses relating to exempt income u/s. 14A of the Act and security and garden. Thus, the Assessing Officer assessed total income of the assessee at Rs.23,01,97,210/-vide this order dated 18-03-2016 passed u/s. 143(3) of the Act.

4. The Pr. CIT on verification of assessment record was of the opinion that the Assessing Officer disallowed the deduction u/s. 80IA of the Act for the earlier assessment year as well as subsequent assessment year for non-availability of profit. The same was confirmed by the CIT(A). According to him it is a recurring issue and the Assessing Officer without proper verification and application of mind allowed claimed u/s. 80IA of the Act for the year under consideration. The Pr. CIT show caused the

assessee why the assessment order passed u/s. 143(2) of the Act should not be revised u/s. 263 of the Act.

5. It was explained, the assessee started claiming deduction u/s. 80IA of the Act from assessment year 2009-10 being initial year and the year under consideration is the fifth year of the claim. The losses prior to the initial assessment year (A.Y. 2009-10) were set off against the other business income of assessee and placed reliance on the decision of Hon'ble High Court of Bombay in the case of CIT Vs. Hercules Hoists Ltd. in Income Tax Appeal No. 707 of 2014 vide order dated 14-06-2017. Further, contended that the Assessing Officer has taken one of the two views permissible under law which cannot be treated as erroneous order and prejudicial to the interest of Revenue and such view of Assessing Officer was now settled in favour of the assessee by the decision of Hon'ble High Court of Bombay in the case of Hercules Hoists Ltd. (supra). The Pr. CIT found the submissions of the assessee not acceptable and proceeded to set aside the order of Assessing Officer by holding it is erroneous and prejudicial to the interest of Revenue for the reasons stated hereunder.

- i. As per section 80IA(5) of the Act neither the income nor the losses of eligible business can be set off or carry forward against any other source of business.
- ii. Granting of setting off of losses of eligible business against other income is tantamount to granting double benefit when eligible business incurs losses against other income and claiming deduction u/s. 80IA when eligible business incurs profit.
- iii. Disallowance of claim u/s. 80IA for earlier and subsequent years for non-availability of profit which was confirmed by the CIT(A).

- iv. Appeals pertaining to earlier years 2010-11, 2011-12 and 2012-13 and subsequent assessment year 2014-15 are pending before ITAT.
- v. Placed reliance on the decision of Hon'ble High Court of Karnataka in the case of Microlabs Ltd. which considered the decision of Hon'ble High Court of Madras in the case of Velayudhaswamy Spinning Mills P. Ltd. and the order of Special Bench of ITAT, Ahmadabad Benches and affirmed the order of Special Bench of Ahmadabad, ITAT.
- vi. The SLP preferred by Microlabs Ltd. is pending before the Hon'ble High Court of Supreme Court.

6. On perusal of above reasons we find that the Pr. CIT is of the opinion that the decision of Hon'ble High Court of Bombay in the case of Hercules Hoists Ltd. (supra) is not good law for the reasons the Hon'ble High Court of Karnataka in the case of Microlabs Ltd. (supra) considered the decision of Hon'ble High Court of Madras in the case of Velayudhaswamy Spinning Mills P. Ltd. (supra) and the decision of Special Bench in the case of ACIT Vs. Goldmine Shares and Finance (P) Ltd. of ITAT, Mumbai and affirmed the decision of Special Bench of ITAT, Ahmedabad Benches. Further, the Pr. CIT was of the opinion that for earlier year and subsequent year the CIT(A) confirmed the order of Assessing Officer in disallowing the claim u/s. 80IA of the Act and same are pending for adjudication before the ITAT.

7. Shri C.H. Naniwadekar, the ld. AR reiterated the submissions made by the assessee before the Pr. CIT in 263 proceedings and placed reliance in the case of Hercules Hoists Ltd. (supra) and by referring to para No. 9, submitted that the Hon'ble High Court of Bombay by placing reliance in the case of Velayudhaswamy Spinning Mills P. Ltd. (supra) held *that the Hon'ble Supreme Court confirmed the decision of Hon'ble High Court of*

Madras and its attained finality, the Hon'ble High Court of Madras held that once the set off is taken place in earlier year against the other income of assessee, Revenue cannot rework the set off of amount and bring it notionally. It does not allow the Revenue to look forward and find out if there is any loss of earlier year and bringing forward notionally even though the same were set off against other income of assessee and the set of against the current income of eligible business.

8. Shri C.H. Naniwadekar, the ld. AR has placed reliance on the order of this Tribunal in the case of Kirloskar Oil Engines Limited in consolidated order dated 17-07-2019 and referred para 16 of the said order and submitted that this Tribunal consistently following the law laid down by the Hon'ble High Court of Madras on similar issues in assessee's own case.

9. Smt. Nandita Kanchan, the ld. DR submits that the issue in hand is highly debatable issue and the Assessing Officer has not made any enquiries relating to claim u/s. 80IA of the Act. The idea of Pr. CIT in remanding the matter to the file of Assessing Officer only to examine the issue view of decisions referred by Pr. CIT in his impugned order. She further submitted that the Assessing Officer failed to examine the said issue, being original authority all the details has to be examined by the Assessing Officer. Pr. CIT is correct in treating the said assessment order is erroneous and prejudicial to the interest of Revenue and prayed to dismiss appeal of the assessee.

10. Considering the submissions of ld. AR and ld. DR and the decisions referred above, we find that the Hon'ble High Court of Bombay in the case

of Hercules Hoists Ltd. (supra) by placing reliance in the case of Velayudhaswamy Spinning Mills P. Ltd. (supra) the Tribunal is right to hold that profit earned during the assessment year would be entitled for deduction u/s. 80IA(5) of the Act without deducting losses which were absorbed in the earlier years. The Pr. CIT was of the opinion that the Hon'ble High Court of Karnataka in the case of Microlabs Ltd. (supra) considered the decision of Hon'ble High Court of Madras in the case of Velayudhaswamy Spinning Mills P. Ltd. (supra) but however affirmed the decision of Special Bench of ITAT Ahmedabad so therefore according to him the decision as relied by the Hon'ble High Court of Bombay in the case of Hercules Hoists Ltd. (supra) is not applicable.

11. In this regard, we find that this Tribunal in assessee's own case vide order dated 17-07-2019 for assessment year 2009-10 by placing reliance in the case of Hercules Hoist Ltd. (supra) of Hon'ble Bombay High Court held losses in the year earlier to initial assessment year already absorbed against the profit of other business cannot be notionally brought forward and set off against the profits of eligible business in the year under consideration. There is no dispute the Tribunal has been consistently following the law laid down by the Hon'ble High Court of Madras on similar issues relating to other assesseees and the Hon'ble High Court of Bombay is being Jurisdictional High Court and the decision rendered therein are binding on us. Therefore respectfully following the decision of Hon'ble High Court of Bombay in the case of Hercules Hoist Ltd. (supra), we hold that the assessee is entitled to claim deduction u/s. 80IA of the Act for the year under consideration without deducting any losses that have been already absorbed in the earlier years to initial assessment year. Therefore, the

impugned order passed by the Pr. CIT u/s. 263 is not maintainable and it is set aside. Thus, grounds raised by the assessee are allowed.

12. In the result, the appeal of assessee is allowed.

Order pronounced in the open court on 16th December, 2019.

Sd/-
(Anil Chaturvedi)
ACCOUNTANT MEMBER

Sd/-
(S.S. Viswanethra Ravi)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 16th December, 2019

RK

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

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

//सत्यापित प्रति// True copy //

आदेशानुसार / BY ORDER,

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