

अपीलीय अधिकरण, इन्दौर न्यायपीठ, इन्दौर

**IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE**

**BEFORE SHRI MANISH BORAD, ACCOUNTANT MEMBER
AND
MISS MADHUMITA ROY, JUDICIAL MEMBER**

**ITA Nos.955 & 956/Ind/2016
Assessment Years:2010-11 & 2011-12**

ACIT, Circle- Ratlam	बनाम/ Vs.	M/s. Mahalaxmi Investment and Trading Pvt. Ltd. Shri Ram Bhawan Gaushala Road, Ratlam (MP)
(Appellant)		(Respondent)
P.A. No. AADCM9703G		

**CO Nos. 02 & 03/Ind/2020
(Arising out of ITA No.955 & 956/Ind/2016)
Assessment Years:2010-11 & 2011-12**

M/s. Mahalaxmi Investment and Trading Pvt. Ltd. Shri Ram Bhawan Gaushala Road, Ratlam (MP)	बनाम/ Vs.	ACIT, Circle-Ratlam
(Appellant)		(Respondent)
P.A. No. AADCM9703G		

Appellant by	Shri S.N. Agrawal, CA
Revenue by	Shri Harshit Bari, Sr. DR
Date of Hearing:	09.04.2021
Date of Pronouncement:	25.05.2021

आदेश / O R D E R

PER MANISH BORAD, A.M:

These two appeals filed by the revenue for Assessment Year 2010-11 & 2011-12 and Cross Objection filed by the assessee for both the assessment years are directed against the order of Id. CIT(A), Ujjain evenly dated 24.06.2016 which are arising out of the order u/s 143(3) r.w.s. 147 of the Act dated 31.03.2015 & 31.08.2015 framed by DCIT, Ratlam.

2. Registry has informed that the Cross objection No.02/Ind/2020 and Cross Objection No.03/Ind/2020 filed by the assessee are time barred by three years 29 days. Ld. counsel for the assessee referring to the affidavit and condonation application requested for condoning the delay in filing these cross objections. Ld. Departmental Representative (DR) opposed this request.

3. We, however do not find any merit in the reason mentioned in the application because the assessee's case was reopened on the basis of notice u/s 148 of the Act issued on 28.03.2014 and 16.03.2015 for A.Y. 2010-11 & 2011-12. After lapse of a considerable time of around 4 years assessee had approached to the Right to Information (RTI). Assessee is a Private Limited Company and regularly filing income tax return. It has also challenged the assessment orders and succeeded.

4. Looking to the totality of facts, we are of the view that the reason mentioned by the assessee in the condonation application have no

merits and cannot be of any help to the assessee. Further we are of the view that no undue hardship will be caused to the assessee if the condonation application is rejected. The same is rejected and thus delay in filing of the cross objections is not condoned. Accordingly, both cross objections No. 2 & 3/Ind/2020 are dismissed.

5. Now we take up revenue's appeal for A.Y. 2010-11 & 2011-12 for which following grounds are raised:

ITANo.955/Ind/2016 for A.Y. 2010-11

"1. On the facts and in the circumstances of the case the Id. CIT is erred i holding that the AO has reopened the case on the basis of date mentioned i Audit report, which is factually incorrect. Even in appellate order in para 4.3 the Id.CIT(A) has reproduced the Reasons of reopening of the case according to which the case was reopened on the basis of information received from VAT department Mumbai, that the purchases from Motion Tradres Pvt. Ltd was non genuine, and in para 4.2 of the appellate order the Id. CIT(A) has confirmed the addition on this issue, as such the reasons of reopening are valid. So Ld. CIT(A) is not justified in holding that proceedings u/s 148 have not been validly initiated.

2.On the facts and in the circumstances of the case the Id. CIT is erred in allowing deduction u/s 80IB which was available only for the undertakings started their production before 31-03-2002, while as per Form No 10CCB date of commencement of production was 11.03.2003 and the assessee has also claimed deduction for AY 2012-13. If the claim of the assessee is correct how it has claimed deduction for 11th year of starting of manufacturing.

3.On the facts and in the circumstances of the case the Id. CIT is erred in allowing deduction u/s 80IB of the Act on the plea of the assessee that plant & machinery was ready to

put to use prior to 31.03.2002, as such ignoring the decisions of Commissioner of Income Tax, Poona vs. Hindustan Antibiotics Ltd., 93 ITR 548(Bom), Commissioner of Income Tax vs. Food Specialities Ltd., 156 ITR 790 (Del) and Commissioner Of Income Tax ... vs Nestor Pharmaceuticals Limited (2010) 322 ITR 631 (Delhi),

4. On the facts and in the circumstances of the case the Id. CIT is erred in holding "that plant & machinery was ready to put to use prior to 31.03.2002, while the assessee has shown fixed assets as capital work in progress and claimed no depreciation for the A.Y. 2002-03.

5. On the facts and in the circumstances of the case the Id. CIT is erred in allowing deduction u/s 80IB which was available only for the undertakings started their production before 31-03-2002, while in Form No 10CCB of audit report the date of 11/03/2003 has been mentioned as starting date of production, in the application form for permanent registration at small scale industries made on 17/03/2003 by the assessee has also mention the date of 11/03/2003 as the date of commencement of production and lastly the eligibility certificate for Sales Tax Incentive under PSI-1993 Scheme issued on 28/03/2003 has also mention the date of 11.03.2003 as the date of commencement of production.

6. On the facts and in the circumstances of the case the Id. CIT is erred in allowing deduction u/s 80IB(3) of the Act, while initially the assessee claimed the deduction initially u/s 80IBeS), which is clear from the Note of Audit report in which it is clearly mentioned that "the company is having factory and branch situated at backward area Akola w.e.f. 11-03-2003. Further in point no 13 of the reply dated 13-03-2013 the AR of the assessee submitted that "The company is mainly involved in manufacturing of L.T. distribution box, meter box, feeder piller, C.T. operated energy metering cabinet etc. at Akola unit which is situated in backward area & eligible for deduction u/s. 80IB." However, when it is found that the Akola is not covered in Backward Area as per Schedule AKOLA district of Maharashtra which is covered neither category 'A' nor category 'B', the assessee changed its stand and claimed that it has made trial production before 31.03.2002 as deduction is available u/s 80IB(3), and the date mentioned by the Auditor is

not correct.

(Note - The matter is covered under the exceptions mentioned in Para 8 (c) of circular 21/2015).

ITANo.956/Ind/2016 for A.Y. 2011-12

“1. On the facts and in the circumstances of the case the Id. CIT is erred i holding that the AO has reopened the case on the basis of date mentioned in Audit report, which is not correct as the AO has formed his opinion on the basis of assessment proceeding for ASSESSMENT YEAR 2012-13. While making assessment for A.Y.2012-13, the AO found that the assessee claimed deduction u/s 80IB fo the Act ASSESSMENT YEAR 2011-12, being start period is ASSESSMENT YEAR 2002-03. The deduction is not available for the undertaking which started their production after the period relevant to ASSESSMENT YEAR 2002-03. Further the assessee in its Audit Report has mentioned that its Akola Unit is located under backward Area while on verifying the AO found that the Akola Unit is not locating in back ward area, as such the claim u/s 80IB(5), was not allowable to the assessee. The location of unit is located in backward area or not is a material fact for allowing deduction, as such the ratio of decisions of Supreme Court in the case of Ess Ess Kay Engineering Co. P. Ltd. vs. CIT-Tax 247 ITR 818 Hon'ble Supreme Court and Seimens Information System ltd. vs. ACIT [2012} 343 ITR 188 (BOM) is clearly applicable in this case.

2. On the facts and in the circumstances of the case the Ld. CIT(A) was not justified in holding that reopening proceedings have not been validly initiated even when assessee has failed to disclose fully and truly all material facts necessary for assessment during original proceedings u/s 143(3) of the Income Tax Act, 1961.

3. On the facts and in the circumstances of the case the Id. CIT is erred in allowing deduction u/s 80IB which was available only for the undertakings started their production before 31-03-2002, while as per Form No 10CCB date of

commencement of production was 11.03.2003 and the assessee has also claimed deduction for AY 2012-13. If the claim of the assessee is correct how it has claimed deduction for 11th year of starting of manufacturing.

4. On the facts and in the circumstances of the case the Id. CIT is erred in allowing deduction u/s 80IB of the Act on the plea of the assessee that plant & machinery was ready to put to use prior to 31.03.2002, as such ignoring the decisions of Commissioner of Income Tax, Poona vs. Hindustan Antibiotics Ltd., 93 ITR 548(Bom), Commissioner of Income Tax vs. Food Specialities Ltd., 156 ITR 790 (Del) and Commissioner Of Income Tax ... vs Nestor Pharmaceuticals Limited (2010) 322 ITR 631 (Delhi),

5. On the facts and in the circumstances of the case the Id. CIT is erred in holding "that plant & machinery was ready to put to use prior to 31.03.2002, while the assessee has shown fixed assets as capital work in progress and claimed no depreciation for the A.Y. 2002-03.

6. On the facts and in the circumstances of the case the Id. CIT is erred in allowing deduction u/s 80IB which was available only for the undertakings started their production before 31-03-2002, while in Form No 10CCB of audit report the date of 11/03/2003 has been mentioned as starting date of production, in the application form for permanent registration at small scale industries made on 17/03/2003 by the assessee has also mention the date of 11/03/2003 as the date of commencement of production and lastly the eligibility certificate for Sales Tax Incentive under PSI-1993 Scheme issued on 28/03/2003 has also mention the date of 11.03.2003 as the date of commencement of production.

(note –The matter is covered under the exceptions mentioned in para 8(c) of circular 21/2015).

6. From perusal of the above grounds we find that two common issues have been raised by the Revenue challenging the finding of Ld. CIT(A). Firstly, holding that reopening of the assessee's

case was not valid and secondly allowing the claim of deduction u/s 80IB of the Act.

We will first take up the grounds of appeal raised for A.Y.2010-11

7. Brief facts of the case as culled out from the records are that the assessee is a Private Limited Company engaged in Manufacturing of Transformers and Switchgears. Assessment u/s 143(3) of the Act was completed on 28.03.2013 determining income at Rs.98,62,840/-. Notice u/s 148 of the Act was issued on 28.03.2014 to the assessee after recording reasons for reopening on the issue of bogus purchases of Rs.51,116/-. Assessee filed necessary submissions which could not find any favour of the assessing officer. Reassessment proceedings were completed after disallowing deduction u/s 80IB of the Act at Rs.42,94,354/- by observing that assessee could not commence production within the statutory time limit provided under the provisions of section 80IB of the Act and also disallowed purchase at Rs.51,116/- alleged to be bogus purchase. Income assessed at Rs.1,41,58,310/-.

8. Aggrieved, assessee preferred an appeal before the Id. CIT(A) and partly succeeded as Ld. CIT(A) confirmed the addition for bogus purchase of Rs.51,116/-, allowed the claim of deduction u/s 80IB of the Act and also held the reopening as invalid being based merely on a change of opinion.

9. Now the Revenue is in appeal before the Tribunal.

10. Ld. Departmental Representative (DR) vehemently argued supporting the order of Ld. AO.

11. Per contra Ld. counsel for the assessee apart from relying the finding of Ld. CIT(A) and submissions made before both lower authorities also referred to the written submissions and detailed paper book along with list of various decisions running from pages 1 to 336.

12. We have heard rival contentions and perused the records placed before us. For A.Y.2010-11 through first issue raised in ground no.1 revenue has challenged the finding of Ld. CIT(A) holding the reopening to be invalid.

13. We observe that notice u/s 148 of the Act was issued on the basis of information received by the Ld. AO about a purchase from M/s. Motion Traders Pvt. Ltd. and as per the Value Added Tax (VAT) Department, Mumbai, this party issued bogus bills. Based on this information notice was issued by Ld. AO u/s 148 of the Act.

14. However, records shows that after receiving the information Ld. AO has not made an independent application of mind on the information. Before initiating the reassessment proceedings in motion he was bound to examine the facts related to the purchase from M/s. Motion Traders Pvt. Ltd. which is available on record. The purchase was made from a Pvt. Limited company assessed to tax. Material was received by the AKOLA unit of the assessee and on

18.12.2009 payments made through account payee cheque. Copy of bank account in support already stood filed during the assessment proceedings. Books of account are not rejected and after detailed scrutiny assessment u/s 143(3) of the Act was completed. Gross turnover of the assessee stood at 3.81 Cr. and profit offered to tax is Rs. 72,19,639/-. Against these figures the purchase of Rs.51,116/- is too little and all the documentary evidences shows no iota of evidence that there was any intention of the assessee to evade tax by over stating the purchase. The above stated facts were required to be examined by the Ld. AO to form an opinion before issuing notice u/s 148 of the Act. We, however, find that in the instant case, no such efforts were made and just based on the information received from VAT Department notice was issued. It has been consistently held that mere change of opinion cannot be a basis to issue a notice u/s 148 of the Act. We find support from in the judgment of Hon'ble Apex Court in the case of *CIT vs. Kelvinator of India Ltd. 320 ITR 561 (SC)*.

15. Under these given facts and circumstances of the case, we find no reason to interfere in the finding of Ld. CIT(A) quashing reassessment proceedings. Ground No.1 raised by the Revenue is dismissed.

16. Now we take second issue raised in ground nos. 2 to 6 with regard to claim of deduction u/s 80IB of the Act. We find that Ld. CIT(A) after examining the facts of the case had allowed deduction

u/s 80IB of the Act at Rs.42,92,354/- observing as follows:

4.1 Ground No.1: Through these grounds of appeal the appellant has challenged the addition of Rs.42,92,354/- by disallowing the claim of the appellant u/s 80IB of the I.T. Act. The appellant has claimed the deduction u/s 80IB as 'per the return of income filed originally. The claim u/s 80IB was supported by audit report filed along with the return of income. The claim of the appellant has been examined in terms of section 80IB(3) of the I.T. Act. It is Provided that it must begin to manufacture or produce article or things during the period beginning on 01-04-1995 and ending on 31-03-2002. The appellant company started the commercial production within the eligibility period as prescribed in sub-section 2 of clause 3 of section ~OIB'. The appellant company is ready for manufacturing activities which can also be proved from the flowing:-

- i. Water connection was allowed by the MIDC dt 11-02-2002.*
- ii. Electricity connection was installed for 40 HP on 16-01-2002.*
- iii. Maharashtra Pollution control Board Registration was issued on 28-02-2002.*
- iv. Sales Tax registration was also obtained by the assessee on 12-02-2002.*
- v. Professional Tax registration was also obtained on 15-02-2002*
- vi. Machinery was installed and ready for commencement of production by March, 2002.*

4.1.1 The appellant in response to the open bid of tenders filed its Tender on 2nd March, 2002 which was opened on 16-03-2002 and' the same was successfully awarded to the appellant. The appellant company has applied for tender only after completion of the construction of Factory building and after installation of the Plant & Machinery. The above facts were duly examined by the then assessing officer at the time of passing of the assessment order and therefore claim of deduction U/s 80IB(3) was allowed to the appellant. The plant of the appellant company was ready for put to use and entire machinery was installed. Building was completed and all other connections were obtained by the appellant company. The claim of the appellant was also examined in detailed while passing the assessment order for the Asst years 2005-06 and 2006-07 i.e. in the first years of profit and after being satisfied with the explanation of the appellant. The claim' was accepted U/s 80IB of the Act.

4.1.2 The AO is not justified in denying the claim of the appellant u/s 80IB because:-

The Plant of the appellant was ready for Production by 31.03.2002 and for want of order from the, Electricity board, the commercial . production started on 11.03.2003., The appellant contended that Plant was ready for production but due to delay in order from the Electricity board, commercial Production was started on 11.03.2003. In the application as filed for permanent registration also mentioned the investment made in the Plant & Machinery and Building. The investment was made till 31.03.2002 was considered in the application itself proved that Plant was ready to put to u.se by 31.03.2002. That prior to commencement of production, water connection was taken on 11.02.2002. Since, building was completed prior to 31.03.2002 and no additional amount towards water bill was paid by the appellant.

4.1.3 The sales tax ,registration was obtained after completion of the plant when plant was ready for production and sale. The sales tax registration itself proved that Plant was ready for production. For the production of Transformer no big plant was required. Bills for Plant & machinery was also prior to March,2002 and there was no major time required for Installation of the Plant & Machinery. That from the Balance sheet it appears that major investment was made prior to March 2002 and Plant was also ready for commencement Of production and therefore note as appended with the" Audited final accounts was correct. The appellant claims that Plant was ready to put to use for Production but in absence of order from the Electricity board, actual production was not yet started. The appellant in sales tax department also obtained registration under the Professional Tax for payment of Professional Tax liability. The appellant only after completion of the Plant applied for Tender with the Maharashtra Electricity Board. The plant. of the appellant at AKOLA [Maharashtra] was started for supply to the Electricity Board in Maharashtra only. Since, the order was finalized late in 2002 and at the beginning in 2003, the actual sale was on 11.03.2003. That in "Form there was no column to put, two dates. One for plant ready to put to use which iii the present case is prior to 31.03.2002 and another actual date of commencement of production which in the present case is 11.03.2003. For this reason, date of commencement was mentioned as 11.03.2003.

4.1.4 Since, the Plant was ready to put to use by 31.03.2.002 but the actual production was started on 11.03.2003. For this reason sales was shown at Rs 15,67,404/-. The said contention supports the claim of the appellant. Since, the Plant of the appellant was ready to put to use and therefore claim of deduction U/s'80lB [3] of the Act was legal and Proper. The decisions as referred by the assessing officer were

*distinguishable on the facts of the present case and the same has been discussed above. When deductions as claimed by the appellant were allowed in the initial assessment years after duly examining the claim of the assessee, in that case there was no reason in the subsequent year to differ the same and withdraw the claim of deduction as allowed U/s 80IB of the Act. Therefore, the addition made by the AO amounting to 42,92,354/- is **deleted**. The appeal on these grounds is allowed.*

17. From perusal of the above finding as well as the documentary evidences placed before us in the paper book including water connection, electricity connection, Maharashtra Pollution Control Board Registration, Sales Tax registration, professional Tax registration and the date of installation of machinery and found that all these events occurred before 31.03.2002 which was the deadline for commencing the commercial production. Ld. DR failed to rebut this fact by placing any contrary material.

18. We, therefore, under the given facts and circumstances of the case, are of the considered view that the assessee is eligible for deduction u/s 80IB of the Act and thus, find no reason to interfere in the finding of Ld. CIT(A) allowing the assessee's claim of deduction u/s 80IB of the Act at Rs.42,92,354/-. We accordingly dismiss revenue's ground nos. 2,3,4,5 & 6. Accordingly all the grounds raised by the revenue for A.Y.2010-11 are dismissed.

Now we take up Revenue's appeal for A.Y.2011-12

19. Ground no.1 & 2 challenges the action of Ld. CIT(A) holding the reopening proceedings being not justified and not initiated validly and the remaining grounds 3 to 6 relates to deduction u/s 80IB of

the Act.

20. Brief facts of the case are that e-return of income for A.Y. 2011-12 was filed on 22.09.2011 declaring total income at Rs.74,20,390/-. Assessment u/s 143(3) of the Act was completed on 27.03.2014 determining income at Rs.75,45,390/-. Notice u/s 148 of the Act was issued on 16.03.2015 which was based on the information received on the basis of audit objection alleging wrong claim of deduction u/s 80IB of the Act. Reassessment proceedings were initiated and after considering the submissions of the assessee deduction u/s 80IB of the Act at Rs.59,15,999/- was denied and income assessed at Rs.1,34,61,390/-.

21. Aggrieved, assessee preferred an appeal before the ld. CIT(A) and partly succeeded. Now the Revenue is in appeal before the Tribunal.

22. Ld. Departmental Representative (DR) vehemently argued supporting the order of Ld. AO.

23. Per contra Ld. counsel for the assessee apart from relying the finding of Ld. CIT(A) also referred to the written submissions and paper book running from pages no.1 to 211 which *inter alia* includes the plethora of judgments on which the reliance has been placed.

24. We have heard rival contentions and perused the records placed before us. Revenue's first grievance through ground no.1 & 2 is with regard to the reopening of the assessment being held to be invalid by

the Ld. CIT(A). Records clearly show that reopening was made any on the basis of audit objection giving some information about the wrong claim of deduction u/s 80IB of the Act. We observe that Ld. CIT(A) after considering settled judicial precedence and the judgments relied by the Ld. counsel for the assessee held the reopening u/s 147 of the Act as invalid observing as follows:

“Ground No.1,2,7 & 3:- Through these grounds of appeal the appellant has challenged the re-opening u/s 147 of the I.T. Act. I have considered the facts of the case and submissions made by the appellant. The AO has recorded his reasons for re-opening and the said reasons are as under:

In this case, the assessee company was engaged in the manufacturing of transformer and feeder pillars, filed its return of income for A.Y. 2011-12 on 22.09.2011 declaring total income of Rs.74,20,390/-after claiming deduction u/s 80IB for Rs.59,15,999/- for Ashok unit which was processed u/s 143(1). The assessment has been completed u/s 143(3) on 27.3.2014 at a total income of Rs.75,45,390/-.

2. During the course of assessment proceeding for A.Y.2012-13 it is noticed that the Akola unit has registered in Maharashtra as small scale industries and commenced the production activity on 11.3.2003(as per report furnished in from 10CCB certified by the chartered accountant)

3. However, it is found that the Akola district neither covered in category “A industrial backward district nor was covered in category B. therefore assessee company was eligible for deduction u/s 80IB(5). Further, as per conditions of 80IB(3). The production of company should be started between 1st April 1991 to 31.3.2002. Since the assessee company has started the production on 11.3.2003 i.e. beyond the period prescribed as such and not eligible for claiming the deduction u/s 80IB(3).

4. It is also noticed that the assessee company has also claimed deduction of Rs.59,15,999/- u/s 80IB for the year under consideration i.e. 2011-12. As discussed above the assessee company does not fulfill the condition of claiming deduction u/s 80IB as such the claim is not allowable to the assessee company.

5. therefore, I have reason to believe that income amounting to

Rs.59,15,999/- has escaped assessment within the meaning of section 147 of the Act.

From the reasons as recorded, it is clear that the very basis of forming the foundation for initiating re-assessment proceedings is the audit report in form no.10CCB already on record. The appellant had been allowed deduction u/s 80IB of the Act in the earlier years and during the year under consideration while passing the original order u/s 143(3) of the IT Act. this denotes the application of mind of the AO on the eligibility or otherwise of the appellant for the claim of deduction 80IB. Thus, all the primary facts were disclosed in the return of income as filed. It has been laid down by the Hon'ble Supreme Court in the case of Kelvinator of India (320 ITR 561 cited above) that "reasons to believe" cannot be equated with change of opinion. Admittedly, in the instant case, between the date of order of assessment sought to be reopened and the date of forming an opinion that income has escaped assessment, nothing new has happened. There has been a fresh application of mind by the AO on the existing. Same set of fact, thus it amounts to only a change of opinion. In the case of the Kelvinator of India Ltd. it has been held that the AO does not have the power to review the details already on record regarding the claim of deduction u/s 80IB. All the relevant information was disclosed in the return filed, accompanies with the audit report. Under the circumstances, reassessment proceedings have been initiated based on the change of opinion on the same set of acts that were already available on record and considered by the AO. Hence it is held that the ratio of the judgment of Hon'ble Supreme Court in CIT vs. Kelvinator of India Ltd. applies and hence it is held that proceedings leading to issue of notice u/s 148 have not been validly initiated.

The appellant is engaged in the business of manufacturing of transformers and switch gears. The assessment for the year under consideration was completed u/s 143(3) by allowing the deduction u/s 80IB of the Act claimed by the appellant. The AO subsequently noticed the appellant has commended manufacturing activity on 11.32003 whereas as per the provisions of section 80IB(3), the production should have started before 31.3.2002. The appellant had been allowed deduction u/s 80IB of the IT. Act in the earlier years and hence the AO has reopened the assessment only on change of opinion. The details related to the deduction claimed u/s 80IB was available before the AO in the original assessment proceedings pertaining to the assessment year 2005-06, 2006-07,2010-11 and 2011-12 which has been completed u/s 143(3) of the I.T. Act. The

AO has not brought out any fresh material on record therefore reopening was done on mere change of opinion. Therefore, the appeal on these grounds is allowed.

25. From perusal of the above finding as well as the settled judicial precedence and our finding in the case of assessee for preceding assessment year we observe that the claim of deduction u/s 80IB of the Act was already examined by the assessee during the regular assessment proceedings. There was no new material available on record which could indicate that the excess or wrong claim made by the assessee. All the facts pertaining to claim of deduction u/s 80IB of the Act stood duly filed before the Assessing Officer. Considering the totality of facts and the ratio laid down by Hon'ble Supreme Court in the case of *CIT vs. Kelvinator of India Ltd. 320 ITR 561(SC)* that "reasons to believe" cannot be equated with change of opinion. We, therefore, respectfully following the same, are of the considered view that the Ld. CIT(A) has rightly held that the reopening of assessment for A.Y.2011-12 invalid. Thus, no interference is called for in the finding of Ld. CIT(A). Thus, ground No.1 & 2 raised by the revenue are dismissed.

26. Now we come to remaining ground Nos. 3,4,5, & 6 which commonly challenges the finding of Ld. CIT(A) allowing the deduction u/s 80IB of the Act. We find that the ld. CIT(A) has allowed the claim observing as follows:

"Ground No.3,4,5 & 6:- Through these grounds of appeal the appellant has challenged the addition of Rs.59,15,999/- by disallowing the claim of the appellant u/s 80IB of the Act. The appellant has claimed the deduction u/s 80IB as per the return of

income filed originally. The claim u/s 80IB was supported by audit report filed along with the return of income. The claim of the appellant has been examined in terms of section 80IB(3) of the Act. It is provided that it must begin to manufacture or produce article or things during the period beginning on 1.4.1995 and ending on 31.3.2002. The appellant company started the commercial production within the eligibility period as prescribed in sub-section 2 of clause 3 of section 80IB. The appellant company is ready for manufacturing activities which can also be proved from the following:

- i. Water connection was allowed by the MIDC dated. 11.2.2002.
- ii. Electricity connection was installed for 40HP on 16.1.2002.
- iii. Maharashtra Pollution control Board Registration was issued on 28.2.2002
- iv. Sales Tax registration was also obtained by the assessee on 12.2.2002.
- v. Professional tax registration was obtained on 15.2.2002.
- vi. Machinery was installed and ready for commencement of production by March, 2002.

4.2.1 The appellant in response to the open bid of tenders filed its Tender on 2nd March 2002 which was opened on 16.3.2002 and the same was successfully awarded to the appellant. The appellant company has applied for tender only after completion of the construction of factory building and after installation of the plant & machinery. The above facts were duly examined by the then assessing officer at the time of passing of the assessment order and therefore claim of deduction u/s 80IB(3) was allowed to the appellant. The plant of the appellant company was ready for put to use and entire machinery was installed. Building was completed and all other connections were obtained by the appellant company. The claim of the appellant was also examined in detailed while passing the assessment order for the Assessment. Years 2005-06 and 2006-07 i.e. in the first years of profit and after being satisfied with the explanation of the appellant. The claim was accepted u/s 80IB of the Act.

4.2.2 The AO is not justified in denying the claim of the appellant u/s 80IB because:

The plant of the appellant was ready for production by 31.3.2002 and for want of order from the Electricity board, the commercial production started on 11.3.2003. The appellant contended that plant was ready for production but due to delay in order from the electricity board, commercial production was started on 11.3.2003.

In the application as filed for permanent registration also mentioned the investment made in the Plant & machinery and building. The investment was made till 31.3.2002 was considered in the application itself proved that plant was ready to put to use by 31.3.2002. That prior to commencement of production, water connection was taken on 11.2.2002. Since the building was completed prior to 31.3.2002 and no additional amount towards water bill was paid by the appellant.

4.2.3 the sales tax registration was obtained after completion of the plant when plant was ready for production and sale. The sales tax registration itself proved that plant was ready for production. For the production of transformer no big plant was required. Bills for plant and machinery was also prior to March, 2002 and there was no major time required for installation of the plant and machinery. That from the balance sheet it appears that major investment was made prior to March 2002 and plant was also ready for commencement of production and therefore note as appended with the Audited Final accounts was correct. The appellant claims that plant was ready to put to use for production but in absence of order from the electricity board, actual production was not yet started. The appellant in sales tax department also obtained registration under the professional tax for payment of profession tax liability. The appellant only after completion of the plant applied for tender with the Maharashtra Electricity Board. The plant of the appellant at Akola was started for supply to the Electricity Board in Maharashtra only. Since, the order was finalized late in 2002 and at the beginning in 2003, the actual sale was on 11.3.2002. That in form there was no column to put two dates. One for plant ready to put to use which in the present case is prior to 31.3.2002 and another actual date of commencement of production which in the present case is 11.3.2003. For this reason, date of commencement was mentioned as 11.3.2003.

4.2.4 Since the plant was ready to put to use by 31.3.2002 but the actual production was started on 11.03.2003. for this reason sales was shown at Rs.15,67,404/-. The said contention supports the claim of the appellant. Since, the plant of the appellant was ready to put to use and therefore claim of deduction u/s 80IB (3) of the Act was legal and proper. The decisions as referred by the assessing officer were distinguishable on the fact of the present case and the same has been discussed above. When deductions as claimed by the appellant were allowed in the initial assessment years after duly examining the claim of the assessee, in that case

there was no reason in the subsequent year to differ the same and withdraw the claim of deduction as allowed u/s 80IB of the Act. therefore, the addition made by the AO amounting to Rs.59,15,999/- is deleted. The appeal on these grounds is allowed.

27. We further find that in the preceding assessment year i.e. A.Y. 2010-11 this issue has already been examined by us and in the light of facts and documentary evidences have held that as the appellant company was ready for manufacturing before 31.03.2002 and deduction claimed by the assessee were allowed in the initial assessment year and the assessee is eligible for deduction u/s 80IB of the Act. We, therefore, confirm the finding of Ld. CIT(A) and dismiss the grounds No.3,4,5 & 6 raised by the revenue.

28. In result, appeals filed by the Revenue in ITA No.955 & 956/Ind/2016 and Cross Objections No.02 & 03/Ind/2020 filed by the assessee are dismissed.

Order was pronounced as per Rule 34 of the I.T.A.T. Rules 1963 on 25.05.2021.

Sd/-
(MADHUMITA ROY)
JUDICIAL MEMBER

Sd/-
(MANISH BORAD)
ACCOUNTANT MEMBER

Indore; दिनांक Dated : 25 /05/2021

Patel/PS

Copy to: Assessee/AO/Pr. CIT/ CIT (A)/ITAT (DR)/Guard file.

By order

Assistant Registrar, Indore