आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ - अहमदाबाद ।

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD – BENCH 'A'

BEFORE SHRI RAJPAL YADAV, VICE-PRESIDENT
AND
SHRI WASEEM AHMED, ACCOUNTANT MEMBER

आयकर अपील सं./ ITA No.450/Ahd/2019
Asstt.Year : 2014-15

DCIT, Cir.4(1)(2) Ahmedabad.	Vs	Zydus Infrastructure P.Ltd. 8th Floor, Zydus Tower Satellite cross Road Ahmedabad 380 015. PAN : AAACZ 0629 H

अपीलार्थी/ (Appellant)		**प्रत्यर्थी/** (Respondent)

Revenue by :	Shri S.S. Shukla, Sr.DR
Assessee by :	Shri Mukesh M. Patel, AR

सुनवाई की तारीख/Date of Hearing : 22/07/2021
घोषणा की तारीख /Date of Pronouncement : 28/07/2021

O R D E R

PER RAJPAL YADAV, VICE-PRESIDENT: Revenue is in appeal before the Tribunal against order of the ld.CIT(A)-8, Ahmedabad dated 17.1.2019 passed for the Asstt.Year 2014-15.

2. Only issue raised by the Revenue in this appeal is that the ld.CIT(A) has erred in deleting the disallowance of deduction under section 80IAB of the Income Tax Act, 1961 amounting to Rs.2,15,25,030.

3. Facts of the case in nutshell are that the assessee company is engaged in development, operation and maintenance of Special Economic Zone. The return of income was filed on 30.9.2014 declaring total income of Rs.97,69,303/-, which was processed under section 143(1)

of the Act. Thereafter, the case of the assessee was selected for scrutiny assessment by issuance of notice under section 143(2) of the Act. During the course of assessment, the ld.AO noticed that the assessee has claimed deduction under section 80IAB of the Act which included profit on business of operation and maintenance of SEZ. The assessee was asked to justify its claim of deduction under section 80IAB. Assessee filed a detailed explanation in this behalf, and submitted amongst other that the assessee being a developer of a SEZ, which develops, operates or maintains and operates an industrial park or special economic zone, as per the notification issued by the Govt. of India, the benefit of the deduction under section 80IA should be allowed in respect of the profits and gains derived by an undertaking, and therefore, the claim of the assessee was fully in accordance of with the law. However, the explanation of the assessee was not found to be acceptable by the AO. He was of the view that the activities of development of SEZ is distinct and separate from the activities of "operation and maintenance" of SEZ, and benefit of deduction on profits and gains derived from operation and maintenance activities which are specifically available to a transferee developer cannot be extended to the transferor developer, i.e. assessee in the present case, as the assessee was not transferee but transferor. After a detailed discussion, the ld.AO held that the assessee company was not eligible for deduction under section 80IB of the Act on the income derived from "operation and maintenance activities" of SEZ. Aggrieved by order of the ld.AO, the assessee went in appeal before the ld. first appellate authority. The ld.CIT(A) following order of his predecessor in the Asstt.Year 2012-13, who in turn relied on the order of the Tribunal in the assessee's own case on similar set of facts for the

Asstt.Years 2010-11 and 2011-12, held that the assessee is entitled for deduction under section 80IAB. Dissatisfied with order of the ld.CIT(A) the Revenue is before the Tribunal with the present appeal.

4. Before us, while the ld.DR supported order of the AO, the ld.counsel for the assessee defended in support of order of the ld.CIT(A). He further submitted that continuously for the last two years, similar claim has been agitated both before the ld.first appellate authority and before the Tribunal, and the claim of deduction under section 80IAB has been allowed to the assessee. In this year also, claim is similar, facts are identical and therefore there is no reason to deviate from the view taken by the Tribunal on the issue on hand. The ld.CIT(A) has rightly appreciated the factum of earlier years' claim and allowed the claim of the assessee on the basis of the Tribunal's order passed in the assessee's case. The ld.counsel for the assessee has filed copies of orders of the Tribunal in the case of the assessee for the asstt.Years 2009-10, 2010-11 and 2011-12 involving identical issue.

5. We have considered submission of the ld.representatives and gone through the material placed on record and also earlier orders of the Tribunal passed in the case assessee's case for the Asstt.Years 2009-10, 2010-11 and 2011-12 on the similar issue. We find that the ld.CIT(A) while allowing claim of the assessee has followed order of his predecessor for the Asstt.Year 2013-14 in the assessee's own case. The relevant part of the CIT(A)'s reads as under:

> *"4. In Ground No.1 of the appeal, appellant had challenged the action of AO denying the deduction u/s,80IAB of the Act amounting to Rs.2,15,25,030/-. Facts of the case are that appellant established a Special Economic Zone and on*

the profits on Operations and Maintenance of the said SEZ claimed deduction u/s.80IAB of the Act. AO disallowed the said deduction by holding that the income derived from 'Operation and Maintenance Activities' of SEZ are not eligible for such deduction. Before the AO, appellant inter-alia contended that the first claim of such deduction was made by them in A.Y.2009-10 which was denied by the then AO but the CIT(A) allowed their claim. However, Assessing Officer was not convinced as the CIT(A)'s order was challenged before the ITAT.

In the course of appellate proceedings, the Id.AR contended that the issue is now squarely covered by the decision of Hon'ble ITAT in their orders pertaining to A.Ys.2009-10, 2010-11 & 2011-12. The department's appeal in all these years have been dismissed by the Hon'ble ITAT. I find that in ITA No.1464/Ahd/2012, A.Y.2009-10 order dated 21.07.2016, Hon'ble ITAT, Ahmedabad have dismissed the appeal of the department on this very issue. Relevant part of the said judgment is reproduced as below;-

> *"24. From going through the proviso(2) of section 80IAB of the Act as referred above, which says that if the work of operation and maintenance of SEZ is transferred from one developer to another then the deduction allowable in sub-sec(1) of sec. 80IAB will be allowed to transferee developer for the remaining period of the remaining of consecutive 10 years. This proviso gives a very clear picture that when the transferee is eligible for deduction u/s.80IAB for the income from operation and maintenance of SEZ then certainly transferor i.e. developer is eligible for deduction u/s.80IAB from operation and maintenance.*
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> *25. Further from going through the letter issued by Government of India Ministry of Commerce & Industries dated 21st June, 2006 to the assesses for setting up of a sector specific Special Economic Zone for Pharmaceuticals at Ahmedabad, we find that in clause (ii) under the main clause (iii) referring to general condition it reads that operation and maintenance of the facilities will be met as per the standard in the specific manner and proposition of the user.*
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> *26. In view of our above discussion as well as observation made by Id. CIT(A), we are of the view that assessee being a developer of SEZ is eligible for deduction u/s 80IAB for income earned from operation and maintenance of SEZ. In the result ground no.3(a) of Revenue is dismissed."*

Relying upon this judgment, Hon'ble ITAT have allowed the same disallowance in A.Y.2010-11 vide their Order No.lTA/2236/Ahd/2014, dated 27.10.2017 and for A.Y.2011-12 in 1TA No.1088/Ahd/2015, dated

02.02,2018. Following the Hon'ble ITAT's order, appellant's appeal have been allowed by my Id.predecessor in A.Y.2013-14. As the denial of deduction u/s.80IAB of the Act claims since A.Y.2009-10 have been allowed by the Hon'ble ITAT, respectfully following the Hon'ble ITAT's above judgment, it is held that appellant is entitled to deduction u/s.80IAB on Operations & Maintenance of SEZ. Accordingly, the disallowance made by the AO is deleted on this account. Ground No.1 of the appeal is allowed.

6. After going through orders of the ld.CIT(A) and the Tribunal, we find that the impugned issue is no more remain *res integra* with the Tribunal, because, the Tribunal on identical set of facts for the earlier years cited (supra) had allowed similar claim of the assessee. The Tribunal has discussed the issue at length both on facts and in law. We are of the view that being a settled issue, there is no need for repeatedly recording the finding of the Tribunal given in the earlier years in this order as well, but it is sufficient to follow the findings and the ratio laid in those orders. The ratio is that a combined reading of provisions of section 80IAB of the Act with section 2(g) and Section 3(10) of the Special Economic Zone Act that a person would be considered as a developer with the grant of letter of approval from competent authority, if the approval has been granted for development, operating and maintaining the SEZ. Therefore, activities of the assessee being a developer, include operation and maintenance of SEZ, and therefore entitled for deduction under section 80IAB of the Act. The ld.DR has not disputed or point out any material difference in this year from that of earlier years, so that the Tribunal can take a different view on the issue of claim of deduction under section 80IAB of the Act. Therefore, respectfully following orders of the Tribunal for the Asstt.Years 2009-10 to 2013-14 in the assessee's own case cited (supra), based on which the ld.CIT(A) has allowed the

claim of the assessee, we uphold order of the ld.CIT(A) and dismiss the ground of appeal of the Revenue.

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

Pronounced in the Open Court on 28th July, 2021

Sd/-	**Sd/-**
(WASEEM AHMED)	**(RAJPAL YADAV)**
ACCOUNTANT MEMBER	**VICE-PRESIDENT**