

आयकर अपीलिय अधीकरण, न्यायपीठ –“B” कोलकाता,  
**IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH: KOLKATA**  
[Before Shri P. M. Jagtap, Vice President (KZ) & Shri A. T. Varkey, Judicial Member

**I.T.A. Nos. 2576 to 2578/Kol/2019**  
**Assessment Years: 2013-14 to 2015-16**

ACIT, Circle-37, Kolkata	Vs.	M/s. Sheo Shakti Coke Industries (PAN: AFKPS1614K)
Appellant		Respondent

Date of Hearing (Virtual)	07.10.2021
Date of Pronouncement	28.10.2021
For the Appellant	Shri Kalyan Nath, CIT, DR
For the Respondent	Shri Bisweswar Ghosh, AR

**ORDER**

**Per Bench:**

All these appeals are preferred by the revenue against the separate orders of the Ld. CIT(A)-11, Kolkata dated 24.09.2019 for AYs 2013-14 to 2015-16. Since grounds are common and facts are identical, we dispose of all these appeals by this consolidated order for the sake of convenience.

2. At the outset, it has been brought to our notice that against the impugned order of the Ld. CIT(A), the assessee had also filed appeal before this Tribunal because it was not satisfied with the partial relief given to the assessee by the Ld. CIT(A) in the impugned order. However, it is taken note that the assessee's case was listed before the Tribunal on an earlier occasion and without noticing the fact that the department has also preferred the appeal against the impugned order, this Tribunal had heard assessee's appeal on 09.09.2021 and pronounced the judgment on 14.09.2021 in ITA No. 2595 to 2597/Kol/2019 for AYs 2013-14 to 2015-16 confirming the action of the Ld. CIT(A). It is noted that both sides did not bring this fact at the time of hearing of assessee's appeal to our notice that revenue has also preferred an appeal against the impugned order of Ld CIT(A), so we heard the assessee's appeal and confirmed the impugned order of Ld CIT(A).

3. Be that as it may be, coming back to the appeal of the department, the brief facts of the case are that the assessee is a partnership firm engaged in the business of running coke industries. The assessee had claimed deduction u/s. 80IC of the Income Tax Act, 1961 (hereinafter referred to as the "Act") consistently from AY 2007-08 which was allowed to it. However, for the year under consideration, the assessee claimed deduction u/s. 80IC of the Act at Rs.14,48,09,592/- (for AY 2013-14). However, the AO denied the deduction u/s. 80IC of the Act and, inter alia, made an addition of Rs.17,22,89,990/-. Aggrieved, the assessee preferred an appeal before the Ld. CIT(A), who rejected the books of account of the assessee u/s. 145(3) of the Act and estimated the gross profit at 14% of the total turnover as against the gross profit rate disclosed by the assessee at 57.01% and directed to tax the difference amount as income from other sources. Aggrieved, the assessee preferred an appeal before the Tribunal raising the issue of estimation of the gross profit rate at 14%, which decision of the Ld. CIT(A) was confirmed by this Tribunal by order dated 14.09.2021 (supra) wherein the Tribunal held as under:

"16. We, therefore, under the given facts and circumstances of the case and detailed enquiry conducted by the Ld. CIT(A), which remained uncontroverted by the ld. counsel for the assessee find no reason to interfere in the finding of Ld. CIT(A) applying the gross profit rate of 40% on the turnover disclosed by the assessee as against the gross profit rate of 57.01% disclosed by the assessee and accordingly has rightly charged the difference of the profit that is 17.01% (57.01% less 40%) on the gross turnover for the year as "Income from other sources". Accordingly, ground no. 2, 3 & 4 raised by the assessee are dismissed. Appeal of the assessee for A.Y. 2013-14 is dismissed."

4. And thereafter, confirmed the action of the Ld. CIT(A) for AYs 2014-15 and 2015-16 as under:

"17. Now we take up ITA 2596/Kol/2019 and ITA 2597/Kol/2019 for A.Y. 2014-15 & 2015-16 where similar issue has been raised by the assessee challenging the finding of the Ld. CIT(A) applying gross profit rate of 40% as against the higher gross profit rate disclosed by the assessee thereby claiming deduction u/s. 80IC of the Act. We find that the facts of the case for A.Y. 2014-15 & 2015-16 are similar to that for the A.Y. 2013-14 and so the issue raised before us in the instant two appeals had already been dealt by us in preceding paras while adjudicating in assessee's appeal in ITA 2595/Kol/2019 for A.Y. 2013-14 wherein we have confirmed the finding of the Ld. CIT(A) applying the gross profit rate of 40%. Thus our decision for A.Y. 2013-14 in assessee's case of ITA 2595/Kol/2019 shall apply mutatis mutandis on the assessee's remaining two appeals for A.Y.2-14-15 and 2015-16. We

accordingly confirm the finding of the Ld. CIT(A) and dismiss the appeals raised by the assessee for AY 20-14-15 and 2015-16.”

5. Having carefully gone through the impugned order of the Ld. CIT(A), we note that the Ld. CIT(A) has lucidly dealt with all the facts pertaining to the discrepancies in the financials of the assessee and has also given the details depicted by way of various charts which reflects the profits of the assessee in the preceding years as well as the profits of other related concern of the same group which were operating in the same field and even in the same geographical area and has reasonably estimated the profit of the assessee company, which cannot be faulted as perverse. And we have already agreed with the decision of the Ld. CIT(A) rejecting the books of account, book results and invocation of the provision of section 145(3) of the Act while disposing of the assessee’s appeal. Therefore, in the light of the discussions, we do not find any infirmity in the order of the Ld. CIT(A) in estimating the income of the assessee. We note that from AY 2007-08 the assessee is eligible unit for deduction u/s. 80IC of the Act and, as discussed the estimation is made on the basis of relevant material and has been found by us to be reasonable in the facts and circumstances of the case. Therefore we uphold the impugned action of the Ld. CIT(A) giving partial relief to the assessee and also in the process confirming partly the action of AO. Therefore there is no need for us to interfere with the impugned action of Ld CIT(A) and, ergo, all the captioned appeals of the revenue stands dismissed.

5. In the result, all the appeals of the revenue are dismissed.

Order is pronounced in the open court on 28<sup>th</sup> October, 2021.

Sd/-

(P. M. Jagtap)  
Vice President

Sd/-

(A. T. Varkey)  
Judicial Member

Dated: 28<sup>th</sup> October, 2021

*JD, Sr. PS*

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Copy of the order forwarded to:

1. Appellant- ACIT, Circle-37, Kolkata
2. Respondent – M/s Sheo Shakti Coke Industries, 1/1A, Biplabi Anukul Chandra Street, 5F, Electronic Centre, 5<sup>th</sup> floor, Kolkata-700 072.
3. CIT(A)-11, Kolkata (sent through e-mail)
4. CIT, Kolkata.
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Senior Private Secretary/DDO  
ITAT, Kolkata Benches, Kolkata

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