

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

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER
AND
SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER

आयकर अपील सं. / ITA Nos.1668 & 1669/PUN/2018
निर्धारण वर्ष / Assessment Years : 2013-14 & 2014-15

The Asst. Commissioner of Income-tax,
Circle – 1, Kolhapur

.....अपीलार्थी / Appellant

बनाम / V/s.

Priyadarshini Polysacks Ltd.,
F 41, Trade Centre, 1st Floor,
Station Road, Kolhapur

PAN: AABCP5804F

.....प्रत्यर्थी / Respondent

Assessee by : Shri Pramod Shingte
Revenue by : Shri S.P. Walimbe

सुनवाई की तारीख / Date of Hearing : 28-10-2021

घोषणा की तारीख / Date of Pronouncement : 29-10-2021

आदेश / ORDER

These are two appeals filed by the Revenue directed against common order of the Commissioner of Income Tax (Appeals)-1, Kolhapur, dated 03.08.2018 for the assessment years 2013-14 and 2014-15.

2. Since the identical facts and issues are involved in both the appeals, we proceed to dispose of the same vide this common order.

3. For the sake of clarity and convenience, the facts relevant for the appeal in ITA No.1668/PUN/2018 for A.Y. 2013-14 are stated herein.

4. The Revenue has raised the following grounds of appeal:

- (1) *On the facts and in the circumstances of the case and in law, the CIT(A) has erred in holding that assessee is eligible for deduction u/s 80IA(5) on its business profit whereas the earlier year's business losses/unabsorbed depreciation should be adjusted against the income of the eligible undertaking which assessee has set off against current year's income from other business / sources.*
- (2) *On the facts and in the circumstances of the case and in law, the CIT(A) erred in not appreciating the fact that the provisions of set off or carry forward and set off as laid down in Chapter-VI in general and particularly in Sections 70 and 71 of the Income Tax Act, 1961 are required to be applied first before determining the gross total income u/s. 80IA(5) for the purpose of giving deduction u/s.80IA belonging to Chapter VI-A of the Income Tax Act, 1961.*
- (3) *On the facts and in the circumstances of the case and in law, the CIT(A) is not justified in relying the decision of the ITAT in the case of M/s Jsons Foundry Ltd. for the AY 2008-09 wherein it interpreted the provisions of section 80IA(2) of the Act in respect of the assessee company's prerogative to choose any consecutive period of 10 years from the first 15 years of its operation in context of substantiating its inference that the provision is intended to consider each unit of the eligible business as a separate profit centre for computing allowable deduction as against the clear mandate of sub-sec.(1) of sec. 80IA of the Act to compute allowable deduction on the basis of profit of the eligible business and not individual units of eligible business.*
- (4) *On the facts and in the circumstances of the case and in law, the CIT(A) has erred in not appreciating the fact that the combined reading of section 80IA(4) & 80IA(5) makes it amply clear that the deduction is with reference to the profits derived from eligible business of the assessee and not with reference to the profits derived from every unit engaged in the eligible business.*
- (5) *The appellant prays that the order of the CIT(A) be vacated and that of the Assessing Officer be restored.*

5. Briefly, the facts of the case are as under:

The respondent-assessee is a company incorporated under the provisions of Companies Act, 1956. It is engaged in the business of manufacturing of HDPE & PP Woven Sacks and Wind mill. The return of income for the A.Y. 2013-14 was filed on 20.09.2013 disclosing income of Rs.3,47,52,530/-. Against the said return of income, assessment was completed by the Assessing Officer (hereinafter referred to as 'AO') vide

order dated 15.02.2016 passed u/s 143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') at total income of Rs.6,81,00,110/-.

6. While doing so, the AO allowed the deduction u/s 80IA of the Act to the extent of Rs.57,17,348/- as against the claim of assessee of Rs.3,89,97,853/-. The brief factual matrix of the case leading to the restriction of deduction u/s 80IA of the Act to Rs.57,17,348/- is as under:

The respondent-assessee earned profit from Windmill division during the previous year relevant to the assessment year under consideration. From the perusal of the statement of computation filed along with return of income it would be clear that the Windmill Division had earned book profit of Rs.96,80,916/- net of depreciation. However, after adding back the book depreciation of Rs.3,31,89,953/- to the profits so arrived at and reducing the depreciation admissible as per Income-tax Act and adding back the loss incurred in WM RB 07 of (-) Rs.1,03,51,926/-, the profits of Windmill were arrived at Rs.3,89,97,853/- and the same was claimed as deduction u/s 80IA of the Act. However, the AO observed that the unabsorbed depreciation for earlier years of Rs.2,25,91,079/- should be set off against current year's profits of the eligible units of 80IA and accordingly arrived at the eligible profits at Rs.57,17,348/- and restricted the deduction to the extent of Rs.57,17,348/-. While adopting this methodology, the AO observed that the initial assessment year commences from the year of commencement of operations irrespective of the fact that whether the assessee opts for the benefit of provisions of section 80IA of the Act or not. Being aggrieved by the above addition, an appeal was filed before the Id. CIT(A) contending that each Windmill has to be treated as

separate undertaking for the purpose of computing the amount of deduction allowable u/s 80IA of the Act and also contending that the losses prior to the initial year cannot be set off against the profits of eligible units of 80IA for the purpose of computing the amount of quantum of deduction u/s 80IA of the Act. The ld. CIT(A) after due consideration of submissions made and after making a reference to the decisions of Coordinate Bench of Tribunal in *Shreem Capacitators Pvt. Ltd. Vs JCIT and Jsons Foundry Pvt. Ltd. Vs. DCIT* in ITA No.815/PN/2011 for A.Y. 2008-09 allowed the claim of the appellant.

7. Being aggrieved by the decision of ld. CIT(A), the Revenue is in appeal before us in the present appeal.

8. The ld. Sr. DR argued that having regard to the provisions of subsection (5) of section 80IA of the Act, the amount of deduction allowable u/s 80IA should be computed after set off of unabsorbed losses of earlier years and current year's loss in view of the provisions of sections 70 and 71. He further submitted that the ratio of decision of Pune Tribunal in the cases of *Shreem Capacitators Pvt. Ltd. Vs JCIT (supra)* and *Jsons Foundry Pvt. Ltd. Vs. DCIT (supra)* have no application to the facts of the present case.

9. On the other hand, the ld. AR for the assessee submitted that losses incurred prior to the initial year cannot be set off against current year of Windmill Division for the purpose of arriving at the eligible profits for deduction u/s 80IA of the Act. He submitted that the reasoning of AO is

totally fallacious and is contrary to the CBDT Circular No.1/2016 dated 15.02.2016. Thus, it is prayed that the order of ld. CIT(A) may be upheld.

10. We have heard the rival submission and perused the material on record. The issue in the appeal relates to the manner of computation of amount of deduction allowable u/s 80IA of the Act. There is no dispute as to the eligibility of undertaking for availing the benefits u/s 80IA of the Act. The dispute is only with regard to the manner of computation of the amount of deduction allowable u/s 80IA of the Act. The AO had arrived at the amount of eligible profits for the purpose of deduction u/s 80IA of the Act by setting off of unabsorbed losses of earlier years against current year profits of the eligible unit i.e. Windmill. The relevant provisions of sub-section (5) of section 80IA of the Act are reproduced hereunder for the purpose of better appreciation of law:

“80IA....

(5) Notwithstanding anything contained in any other provision of this Act, the profits and gains of an eligible business to which the provisions of sub-section (1) apply shall, for the purposes of determining the quantum of deduction under that sub-section for the assessment year immediately succeeding the initial assessment year or any subsequent assessment year, be computed as if such eligible business were the only source of income of the assessee during the previous year relevant to the initial assessment year and to every subsequent assessment year up to and including the assessment year for which the determination is to be made.”

11. On perusal of above provisions it is evident that the provisions of section 80IA of the Act are separate and distinct and has to be treated on standalone basis and also lays down a special method of computing the profits and gains entitled to deduction u/s 80IA of the Act. Further, it also suggests that the provisions of section 80IA of the Act are overriding in nature and the provisions of section 80IA of the Act shall be applied as if each unit is an independent unit and one and only source of income which means that the profits and losses of other units cannot be mixed up. The

Hon'ble Delhi High in the case of CIT Vs. Dewan Kraft Systems 297 ITR 305 (Del) also held to the same effect and there is long line of authority in support of the this proposition. As a natural corollary of this, the losses of ineligible units cannot be set off against the profits of eligible units for the purpose of computing the amount of deduction and this line of approach has been consistently followed by several High Courts. The Hon'ble Kerala High Court in the case of CIT Vs. Swarnagiri Wire Insulations P Ltd. in ITA No.5050/Bang/2010, dated 27.05.2011 held as under:

“4. Against the said order of the Commissioner of Income Tax (Appeals), the assessee preferred appeal. The Tribunal held, the carried forward loss of the eligible business was required to be set off first against the income of the subsequent years of eligible business while determining the profits eligible for deduction under Section 80IA of the Act and set off losses from other sources under the same head is not permissible. However, it should not forgotten that section 80IA of the Act is a beneficial section permitting certain deduction in respect of certain income under Chapter VIA of the Act. A provision granting incentive for promotion of economic growth and development in taxing statues should be liberally construed and restriction placed on it by way of exception, should be construed in a reasonable and purposive manner so as to advance the objects of the provision. It is a generally accepted principle that deeming provision of a particular section cannot be breathed into another section. Therefore, the deeming provision contained in section 80IA(5) cannot override the section 70(1) of the Act. The assessee incurs loss after claiming eligible depreciation. Hence section 80IA becomes insignificant since there is no profit from which this deduction can be claimed. Section 70(1) comes to the rescue of the assessee, whereby he is entitled to set off the losses from one source against income from another source under the same head of income. However, once set off is allowed under section 70(1) from the income from another source under the assessee makes surplus profits after claiming eligible allowances and he is entitled to claim deduction under section 80IA, the earlier benefit given under ocher sections of the Act should b taken into account before granting deduction under Section 80IA. Therefore, the order of the Commissioner o Income Tax (Appeals) came to be set aside arid the assessee was given the benefit of setting off the profits of one business against the losses incurred in another business.”

12. The next question that comes up for our consideration is whether the unabsorbed losses of eligible units should be set off against the profits of current year for the purpose of computing the amount of deduction u/s 80IA of the Act. There can be no quarrel as to the proposition that the unabsorbed losses of eligible units should be set off against the profits of current year for the purpose of computing the amount of deduction u/s

80IA of the Act, but losses incurred prior to the initial assessment year opted by the assessee cannot be set off against the profits of eligible units in the light of provisions of sub-section (5) of section 80IA of the Act. In the present case, the AO was of the opinion that the initial year should be reckoned from the year in which the unit or undertaking had commenced the commercial production. The approach of AO is obviously against the plain provisions of sub-section (2) of section 80IA of the Act. The Hon'ble Madras High Court in the case of Velayudhaswamy Spinning Mills Vs. ACIT 340 ITR 477 (Mad) clearly held that the initial assessment year would mean the first year opted by the assessee for claiming deduction u/s 80IA of the Act out of block of years and not the first year of commencement of operations of eligible business. In fact, the CBDT also issued a Circular No.1/2016, dated 15.02.2016 accepting the legal position enunciated by the Hon'ble Madras High Court in the case of Velayudhaswamy Spinning Mills Vs. ACIT (supra). Therefore, the finding of AO that the initial assessment year commences from the first year of commencement of commercial operations of eligible business has no legs to stand. However, neither the ld. CIT(A) nor AO had dealt with the factual aspects as to whether the unabsorbed losses of Rs.2,25,91,079/- are pertaining to the prior period to the initial assessment year as opted by the assessee or after the initial assessment year. The ld. CIT(A) merely granted the relief by accepting the legal position without discussing it in detail on the factual aspects. Since the order of ld. CIT(A) is bereft of material facts necessary for adjudication of issue in appeal, we have no other option but to remit the matter back to the file of AO to examine the claim of assessee after due verification on the aspects whether the unabsorbed losses set off by the AO against current year eligible profits falls prior to the initial assessment year

or after the initial assessment year. Accordingly, the appeal of Revenue for A.Y. 2013-14 is partly allowed for statistical purposes.

13. The facts and issues involved in A.Y. 2014-15 are similar to the facts and issues involved in A.Y. 2013-14. Therefore, the decision rendered in A.Y. 2013-14 shall apply *mutatis mutandis* to A.Y. 2014-15.

14. In the result, both the appeals filed by the Revenue are partly allowed for statistical purposes.

Order pronounced in the open court on 29th October, 2021.

Sd/-
S.S.VISWANETHRA RAVI
JUDICIAL MEMBER

Sd/-
INTURI RAMA RAO
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 29th October, 2021

GCVSR

आदेश की प्रतिलिपि अग्रहित/Copy of the Order is forwarded to :

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. आयकर आयुक्त(अपील) / The CIT(A)-1, Kolhapur;
4. The Pr.CIT-1, Kolhapur;
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "B" / DR 'B', ITAT, Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार / BY ORDER,

//सत्यापित प्रति// True Copy//

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