

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH: 'E' NEW DELHI**

**BEFORE SHRI R.K.PANDA, ACCOUNTANT MEMBER  
&  
SHRI K.NARASIMHA CHARY, JUDICIAL MEMBER**

**ITA No.- 5988 /Del/2017  
(Assessment Year: 2012-13)**

ACIT, circle-52 (1)  
New Delhi

**Vs. M/s NS software,  
12, Ring Road, Lajpat Nagar-IV,  
New Delhi-110024  
PAN AAEFN 9135B**

**Appellant**

**Respondent**

**Assessee by** Sh. Sudhesh Garg. Advocate  
**Revenue by** Sh. Umesh Takiyar, Sr. DR

Date of hearing: 17/1/2022  
Pronouncement on 17 1/2022

**ORDER**

**PER K. NARASIMHA CHARY, JM**

Aggrieved by the order dated 8/5/2017 in appeal No. 3/16-17 passed by the learned Commissioner of Income Tax (Appeals)-23, New Delhi ("Ld. CIT(A)") in the case of NS Software ("the assessee"), for the assessment year 2012-13, Revenue preferred this appeal challenging the deletion of the addition made by the learned Assessing Officer under section 80 IA (4) (iii) of the Income Tax Act, 1961 (for short "the Act") to the tune of Rs. 14, 21, 855/-and also the deletion of the disallowance on

account of interest paid being the expenses to the tune of Rs. 4, 47, 78, 048/-.

2. Brief facts of the case are that the assessee is a firm and filed their return of income on 26/9/2012 declaring nil income after claiming deduction of Rs. 14, 21, 855/- under section 80 IA of the Act. Assessment under section 143(3) of the Act was complete by order dated 26/3/2015 determining the income of the assessee at Rs. 4, 88, 99, 900/-after disallowing not only the claim under section 80IA of the Act, but also interest paid and claimed as expenses to the tune of Rs. 4, 74, 78, 048/-.

3. According to the learned Assessing Officer in the case of assessee for the earlier assessment years, where the facts are similar, a decision against the claim of the assessee under section 80IA of the Act was reached by his predecessors and therefore, facts being similar, such disallowance has to be maintained. Insofar as the disallowance of the interest expense is concerned, according to the learned Assessing Officer an amount of Rs. 6.20 crores was charged by the bank towards interest against the loan of Rs. 50.36 crores taken by the assessee firm, out of which a sum of Rs. 37.53 crores was advanced to the partners of the firm without charging any interest; and that since the interest-bearing loan was diverted to non-interest-bearing advances, the interest claimed during the year cannot be attributed to the business carried out by the assessee and therefore a proportionate expense to the tune of Rs. 4, 74, 78, 048/- was to be disallowed.

4. When the assessee preferred appeal against such additions made by the learned Assessing Officer, insofar as the claim under section 80IA of the Act is concerned, Ld. CIT(A) recorded that the facts of the matter

are similar/same as that of the assessment year 2011-12, and the assessment as well as the submissions of the assessee are identical and are considered in the earlier years in the case of assessee where the relief was granted, Ld. CIT(A) followed the same and granted relief. On the issue of addition due to disallowance of Rs. 4, 74, 78, 048/- out of interest paid on bank loan under section 36 (1)(iii) of the Act holding that the interest was not charged on the advances given to partners for non-commercial purposes, Ld. CIT(A) granted relief on the ground that the disallowance of interest is not in the interest of Revenue since if the interest is imputed on the debit balance in the partners account, on account of the funds advanced by the firm to the partners, the same would be allowable expenditure in the hands of the partners thus, reducing the declared income of the partners while the entire income of the firm, including the imputed interest, the assessee would otherwise be exempt under section 80IA (4) (iii) of the Act, which was allowed by him. Ld. CIT(A) accordingly allowed the appeal and granted relief to the assessee by deleting both the additions.

5. Revenue is aggrieved by such an action of the Ld. CIT(A) and filed this appeal contending that the findings of the Ld. CIT(A) insofar as the disallowance under section 80IA (4) (iii) of the Act is concerned is contrary to the findings given by the Ld. CIT(A) in the assessment year 2005-06 to 2009-10 and also that the Ld. CIT(A) failed to appreciate the contention of the learned Assessing Officer insofar as the disallowance of Rs. 4, 47, 78, 048/- is concerned.

6. At the outset, it is submitted by the Ld. AR that for the assessment years 2005-06 to 2009-10, claim for deduction under section 80IA of the

Act was denied by both the learned Assessing Officer and also the Ld. CIT(A) but such findings of the learned Assessing Officer and the Ld. CIT(A) were reversed by the Tribunal in appeals in ITA numbers 3584-3588 /Del/ 2014 and upheld by the jurisdictional High Court in ITA No. 790, 791 and 795 of 2017; whereas for the assessment years 2010-11 and 2011-12, Ld. CIT(A) granted relief, and upheld by the Tribunal in ITA numbers 3161/Del/2016. In respect of the assessment year 2010-11, the Hon'ble High Court upheld the order of the Tribunal granting relief to the assessee in respect of claim under section 80IA of the Act.

7. Ld. DR though placed heavy reliance on the assessment order, but does not dispute the fact of the Tribunal and the Hon'ble High Court holding the issue in favour of the assessee for the assessment years 2005-06 to 2010-11 and the Ld. CIT(A) granting relief for the assessment year 2011-12 also, as upheld by the Tribunal.

8. We have gone through the record in the light of the submissions made on either side. As recorded in the preceding paragraphs, consistently the Tribunal and the Hon'ble High Court holding the issue relating to the claim of the assessee under section 80IA of the Act in favour of the assessee and the same stands undisturbed for the assessment year 2010-11 also. In this year also, Ld. CIT(A) granted relief to the assessee by following this consistent view taken in assessee's own case for the earlier assessment years by his predecessor as well as the higher fora, namely, the Tribunal and the Hon'ble High Court.

9. Both the authorities below recorded a finding that the facts are similar for this year also as those are for the assessment years 2005-06 to 2011-12. In these circumstances we are of the considered opinion that in

the absence of any compelling changed circumstances, the consistent view taken in assessee's own case for the earlier years are not be disturbed. While respectfully following the same, we hold the issue in favour of the assessee and return a finding that the deletion of the disallowance of claim of assessee under section 80IA of the Act by the Ld. CIT(A) is neither illegal nor irregular and the same has to be upheld. Consequently, we dismiss ground No. 1 of Revenue's appeal.

10. Insofar as the disallowance of the expenses is concerned, Ld. AR submitted that in view of the fact that the assessee is entitled to claim the deduction under section 80IA of the Act, no adjudication is necessary on this aspect and as rightly observed by the Ld. CIT(A) in his order the assessee would otherwise be exempt under section 80IA (4) (iii) of the Act and therefore, this issue becomes academic. We agree with him and find that no adjudication is necessary on this issue.

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

Order pronounced in the open court on this the 17<sup>th</sup> day of January, 2022 immediately on conclusion of hearing or virtual mode.

Sd/-

**(R.K.Panda)**  
**ACCOUNTANT MEMBER**  
Dated: 17/ 1/2022

Sd/-

**(K. NARSIMHA CHARY)**  
**JUDICIAL MEMBER**