

आयकर अपीलीय अधिकरण 'सी' न्यायपीठ चेन्नई में।

IN THE INCOME TAX APPELLATE TRIBUNAL

"C" BENCH, CHENNAI

मजनीय श्री वी. दुर्गाशिव, न्यायिक सदस्य एव

मजनीय श्री मनोज कुमार अग्रवाल, लेखक सदस्य के समक्ष।

BEFORE HON'BLE SHRI V. DURGA RAO, JUDICIAL MEMBER AND

HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ **ITA No.2376/Chny/2019**

(निर्धारण वर्ष / **Assessment Year: 2017-18**)

M/s. Venkateswara Hospitals 36A, Chamiers Road, Nandanam, Chennai – 600 035.	बनाम/ Vs.	ACIT Non Corporate Circle-2(1), Chennai.
स्थायी लेखा सं./जी आइ आर सं./ PAN/GIR No. AADFV-4354-M		
(पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से/ Appellant by	:	Shri Arjunraj (CA) – Ld. AR
प्रत्यर्थी की ओर से/ Respondent by	:	Shri G. Johnson (Addl.CIT) – Ld. DR

सुनवाई की तारीख/ Date of Hearing	:	05-01-2022
घोषणा की तारीख / Date of Pronouncement	:	15-02-2022

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by assessee for assessment year 2017-18 arises out of the order of Ld. Commissioner of Income Tax Appeals-2, Chennai, [CIT(A)], dated 31-07-2019 in the matter of intimation issued by Centralized Processing Center (CPC) u/s 143(1) for the year on 13.12.2018. The grounds raised by the assessee read as under:

1. The order of the Commissioner of Income Tax (Appeals) -2, Chennai dated 31.07.2019 in I.T.A.No.7-/CIT(A)-2/2018-19 for the above mentioned Assessment Year is contrary to law, facts, and in the circumstances of the Case.
2. The CIT (Appeals) erred in sustaining the disallowance of the claim for deduction u/s 80IA of the Act .to the extent of Rs.27,58,092/- which disallowance leading to the addition in the computation of taxable total income was made in the intimation issued u/s 143(1) of the Act without assigning proper reasons and justification.
3. The CIT (Appeals) failed to appreciate that the decision rendered defying the law declared by the Supreme Court in the case reported in 391 ITR 274 in the impugned order would demonstrate the gross violation of the principles of judicial discipline and ought to have appreciated that the standalone quantification of the deduction u/s 80IA of the Act would get fortified by the said law declared by the Apex Court.
4. The CIT (Appeals) failed to appreciate that the decision of the Jurisdictional High Court dated 18.6.2019 in T.C.Appeal No.408/2009 considering the earlier decision of the Supreme Court referred to in the impugned order was wrongly ignored and brushed aside while vitiating the related findings.
5. The CIT (Appeals) failed to appreciate that the quantification of the deduction u/s 80IA of the Act was correct and in accordance with the provisions of the Act and further in accordance with the law declared by the Supreme Court while the sustenance of the disallowance of such deduction in the computation of taxable total income on various facets was wrong, erroneous, unjustified, incorrect and not sustainable in law.
6. The CIT (Appeals) failed to appreciate that in any event the disallowance of the claim for deduction u/s 80IA of the Act would be outside the purview of permissible adjustments within the scope of section 143(1) of the Act while non consideration of the said crucial issue in the impugned order to be reckoned as bad in law.
7. The CIT (Appeals) failed to appreciate that there was no proper opportunity given before passing of the impugned order and any order passed in violation of the principles natural justice would be nullity in law.

As evident, the assessee is aggrieved by denial of deduction u/s 80-IA for Rs.27.58 Lacs. Having heard rival submissions, our adjudication would be as under.

2. In an intimation issued by Centralized Processing Center (CPC) to the assessee u/s 143(1), the deduction of Rs.27.58 as claimed by the assessee u/s 80-IA was denied. This was apparently due to the fact that there was a business loss to the assessee from hospital and one wind-mill unit but profits from eligible windmill-unit which was eligible business

u/s 80-IA. During appellate proceedings, the assessee submitted that such adjustment could not be denied u/s 143(1). However, the same was rejected by Ld. CIT(A) on the ground that deduction u/s 80-IA could be denied in case of belated return and in case of incorrect claim also. The Ld. CIT(A) concurred with assessee's submissions that the return was filed within extended due date.

3. On merits, the assessee relied on the decision of Hon'ble Supreme Court in **CIT V/s Yokogawa India Ltd. (391 ITR 274)** as well as the decision of Hon'ble High Court of Madras in **Sundaram Fasteners Ltd V/s CIT (TCA No.408 of 2009; 18.06.2019)** for the argument that the profits from an eligible undertaking u/s 80-IA could not be set-off against other business losses. The attention was drawn to sub-section (5) of 80-IA which provide that the profits of eligible business need to be computed as if such eligible business were the only source of income of the assessee. However, both these case laws were held to be not applicable to the case of the assessee. Rather the decision of Hon'ble Supreme Court in **Synco Industries Ltd. (299 ITR 444)** was relied upon to conclude that the gross total income was to be determined after adjusting the losses. If gross total income was 'nil', the assessee would not be entitled for deduction under Chapter-VI-A. Since the assessee had net loss from business for Rs.51.53 Lacs, the said deduction was rightly denied. Aggrieved the assessee is in further appeal before us.

4. The Ld. AR has submitted that the issue of deduction u/s 80-IA being debatable one, could not be denied in an intimation u/s. 143(1) of the Act. However, in this regard, we concur with the findings of Ld. CIT(A) that such deduction could be denied to the assessee in case of

belated return and in case of incorrect claim also. The plea raised by Ld. AR stand rejected.

5. On merit, the Ld. AR has submitted that the assessee's gross total income was not 'Nil' and therefore, the deduction could not be denied to the assessee as per the decision of Hon'ble Madras High Court in the case of **M/s. Sundaram Fasteners Ltd vs CIT (TCA No. 408 of 2009 dated 18-06-2019)**. A copy of the decision has been placed on record. It has been submitted that this decision considers the decision of **Synco Industries Ltd. (299 ITR 444)** as relied upon by Ld. CIT(A) in denying the claim.

6. We find that the assessee's has incurred net business loss of Rs.51.53 Lacs. The eligible unit has earned profit of Rs.27.58 Lacs whereas the other businesses have earned losses. The assessee has earned capital gains also for Rs.248.55 Lacs and accordingly, the net business loss of Rs.51.53 Lacs has been adjusted as per the provisions of the Act. Thus, the gross total income turns out to be Rs.197.02 Lacs against which the assessee has claimed deduction u/s 80-IA. Thus, quite clearly, it is not the case where the gross total income of the assessee has become 'nil' rather the assessee has positive gross total income. This being the case, the case law of Hon'ble Madras High Court in **M/s. Sundaram Fasteners Ltd vs CIT (TCA No. 408 of 2009 dated 18-06-2019)** would apply. This case law has already considered the decision of **Synco Industries Ltd. (299 ITR 444)** as relied upon by Ld. CIT(A) in denying the claim. The adjudication of Hon'ble Court was as under: -

6. Identical issue came up for consideration before High Court of Delhi in the case of **The Commissioner of Income Tax III Vs. Sona Koyo Steering Systems Limited in I.T.A.No.1279/2008 dated 10.02.2010**, the Court after taking into consideration the decision in the case of **Synco Industries Ltd., (Supra)** and the

decision in the case of **Commissioner Income Tax Vs. Kotagiri Industrial Co-operative Tea Factory Ltd., reported in 224 ITR 605** held as follows:

“From the above extract, it is apparent that the Supreme Court did not at all hold that while computing the deduction under Section 80-l(6), the loss of one eligible industrial undertaking is to be set off against the profit of another eligible industrial undertaking. All that the Supreme Court said was that in computing the gross total income of the assessee, the same has to be determined after adjusting the losses and that, if the gross total income of the so determined turns out to be 'Nil', then the assessee would not be entitled to deduction under Chapter VI-A of the said Act.”

7. The above referred decision is a clear answer to the case of the Revenue before us. To be noted that the Assessing Officer failed to consider that the gross total income of the assessee before deduction was Rs.78,90,64,628/-, whereas in the case of **Synco Industries Ltd., (Supra)** as noted by Hon'ble Supreme Court, the factual position was different. In the said case, the Assessing Officer, noticed that the gross total income of assessee therein before deductions under Section 80 IB is nil.

8. Therefore, in our considered view, the Tribunal was right in reversing the order passed by Commissioner of Income Tax (Appeals). Therefore, the appeal filed by the assessee is allowed and the order passed by the Tribunal dated 17.12.2008 is set aside and the order of Commissioner of Income Tax (Appeals) is restored and the substantial questions of law are answered in favour of the assessee.

Thus, respectfully following the same, we direct revenue authorities to allow the deduction u/s 80-IA as claimed by the assessee.

7. The appeal stands partly allowed in terms of our above order.

Order pronounced on 15th February, 2022

Sd/-
(V. DURGA RAO)
न्यायिकसदस्य / JUDICIAL MEMBER

Sd/-
(MANOJ KUMAR AGGARWAL)
लेखासदस्य / ACCOUNTANT MEMBER

चेन्नई/ Chennai; दिनांक/ Dated : 15-02-2022.

JPV

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त (अपील)/CIT(A)
4. आयकरआयुक्त/CIT
5. विभागीयप्रतिनिधि/DR6. गार्डफाईल/GF