

आयकर अपीलीय अधिकरण, कटक न्यायपीठ, कटक

IN THE INCOME TAX APPELLATE TRIBUNAL CUTTACK BENCH CUTTACK
श्री जार्ज माथन, न्यायिक सदस्य एवं श्री अरुण खोड़पिया लेखा सदस्य के समक्ष ।

**BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER
AND
SHRI ARUN KHODPIA, ACCOUNTANT MEMBER**

ITA No.138/CTK/2010

(निर्धारण वर्ष / Assessment Year : 2006-2007)

M/s Tata Sponge Iron Ltd., At/PO: Joda, Dist : Keonjhar	Vs	DCIT, Circle-2(1), Sambalpur
PAN No. : AABCT 0230 D		

(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)
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निर्धारिती की ओर से / Assessee by	:	Shri A.K.Sabat & B.K.Mahapatra, ARs
राजस्व की ओर से / Revenue by	:	Shri S.K.Mohapatra, CIT-DR

सुनवाई की तारीख / Date of Hearing	:	06/05/2022
घोषणा की तारीख / Date of Pronouncement	:	06/05/2022

आदेश / ORDER

Per Bench :

This is an appeal filed by the assessee against the order of the Id. CIT(A), Cuttack, in I.T.Appeal No.0319/08-09, dated 20.01.2010 for the assessment year 2006-2007.

2. This appeal had originally been disposed off by the Tribunal vide order dated 12.08.2011, wherein the assessee had been granted relief on some of the issues and more specifically in respect of deduction u/s.80IA of the Act regarding captive power plant operated by the assessee, the issue had been held against the assessee. Aggrieved against the order of the Tribunal, the assessee had carried the matter in appeal to the Hon'ble High Court of Orissa in ITA No.163 of 2011. The Hon'ble Jurisdictional High Court had in its order dated 31.07.2019 adjudicated the issues of

80IA and had in page 4 of the Hon'ble High Court's order following the decision of the Hon'ble Gujarat High Court in the case of CIT Vs. Alembic Limited, reported in Manu/GJ/1414/2016 (decided on 20.07.2016), against which SLP had been filed before the Hon'ble Supreme Court bearing SLP No.8070 of 2017, had held that subject to the result of the SLP in the case of Alembic Limited (supra), the issue of deduction u/s.80IA of the Act was held in favour of the assessee. However, the Hon'ble jurisdictional High Court in page 7 of its order further went on to hold that the Tribunal had not considered the issue in its true perspective and only for the adjudication on the factual matrix in terms of the discussion and the adjudication of law as done by the Hon'ble High Court, the matter was remitted to the Tribunal for fresh adjudication. Today, the matter has come up for hearing before the Tribunal.

3. Shri S.K.Mohapatra, CIT-DR represented on behalf of the revenue and Shri A.K.Sabat & Shri B.K.Mahapatra, CAs, represented on behalf of the assessee.

4. Ld. AR drew our attention to the assessment order, more specifically at page 5 para 3.5 to para 3.7 at page 6. It was the submission that the Id. AO has denied the assessee the benefit of deduction u/s.80IA of the Act on the two grounds. The first ground being that the assessee has not maintained and produced the separate books of accounts, more specifically separate sets of P&L account and balance sheet in respect of power plant. Second reason is that the assessee had failed to furnish the separate sets of audited profit and loss account in

respect of power plant. It is an admitted fact that the audit report in respect of Sponge Iron Plant had been submitted (representing the whole company).

5. Ld. AR drew our attention to the provisions of Section 80IA of the Act to submit that there was no requirement of maintenance of separate books of accounts under the provisions of Section 80IA of the Act. The Id. AR further drew our attention to page 405 of the paper book which was the copy of the audit report in Form 10CCB being the audit report u/s.80IA of the Act. Ld. AR also drew our attention to page 140 of the paper book which was the copy of the letter dated 11.12.2006 from the assessee to the ACIT, Circle-1(1), Sambalpur, wherein in para 2.3, the audit report in Form 10CCB is specifically mentioned. It was the submission that the audit report in the Form 10CCB had been specifically produced before the AO. It was the submission of the Id. AR that as both the objections of the Id. AO have been met on a factual matrix and on the legal plain, the issue has been held in favour of the assessee by the Hon'ble jurisdictional High Court. Therefore, it was prayed that the issue may be held in favour of the assessee. Further, the Id. AR submitted that, in any case, from the legal point, the Hon'ble jurisdictional High Court has put fetters on the allowances itself to be subject to the outcome of the decision of the Hon'ble Supreme Court in the case of Alembic Limited (supra).

6. In reply, the Id. CIT-DR vehemently opposed to allowing deduction u/s.80IA of the Act. It was the submission that nothing stopped the

assessee from maintaining the separate sets of books in respect of power plant. Ld. CIT-DR strongly supported the order of the AO.

7. We have considered the rival submissions. A perusal of the provision of Section 80IA of the Act does not show the requirement of maintenance of separate sets of books of accounts in respect of the eligible business on which the claim of Section 80IA of the Act is made. What is required is that the profit/loss attributable to the power plant should be ascertainable from the regular books of accounts maintained. In the present case, a perusal of the assessment order itself clearly shows that the same is possible insofar as the assessee filed the revised statement giving the break-up of the income and expenditure in respect of Sponge Iron operation and also the power plant. This bifurcation has not been dislodged by the AO though disregarded as he was of the view that separate books should have been maintained. A perusal of the paper book also clearly shows that the requisite audit report u/s.80IA of the Act being in the Form 10CCB has also been submitted by the assessee before the AO. This being so, we are of the view that the assessee has, on the factual matrix, complied with the requirements which have been objected to by the AO in the assessment order for the purpose of denial of deduction u/s.80IA of the Act. This being so, we are of the view that the assessee is entitled to deduction u/s.80IA of the Act as claimed. This decision, however, is subject to the direction given by the Hon'ble Jurisdictional High Court in page 4 of its order and the same is subject to the decision of the Hon'ble Supreme Court in the SLP pending before the

Hon'ble Supreme Court in the case of Alembic Limited (supra). Thus, the ground Nos.2,3 & 9 of the assessee are allowed.

8. Ground No.1 is general, which requires no adjudication. Ground Nos.4 to 8, being not before us to adjudicate in view of the order of the Hon'ble jurisdictional High Court, dated 31.07.2019, therefore, the same do not require any adjudication by us.

9. In the result, appeal of the assessee is partly allowed.

Order dictated and pronounced in the open court on 06/05/2022.

Sd/-

(अरुण खोड़पिया)

(ARUN KHODPIA)

लेखा सदस्य/ **ACCOUNTANT MEMBER**

Sd/-

(जार्ज माथन)

(GEORGE MATHAN)

न्यायिक सदस्य / **JUDICIAL MEMBER**

कटक Cuttack; दिनांक Dated 06/05/2022

Prakash Kumar Mishra, Sr.P.S.

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant-
M/s Tata Sponge Iron Ltd.,
At/PO: Joda, Dist : Keonjhar
2. प्रत्यर्थी / The Respondent-
DCIT, Circle-2(1), Sambalpur
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कटक / DR,
ITAT, Cuttack
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

(Assistant Registrar)

आयकर अपीलीय अधिकरण, कटक/ITAT, Cuttack