

IN THE INCOME TAX APPELLATE TRIBUNAL "F" BENCH MUMBAI

**Before Shri Sanjay Garg, Judicial Member &
Shri Om Prakash Kant, Accountant Member**

I.T.A. No.255/Mum/2022
Assessment Year: 2005-06

M/s Sajjan India LimitedAppellant
2, Ground Floor, Cnergy I.T Park,
Appa Saheb Marathe Marg,
Prabhadevi, Mumbai-400025.
[PAN: AAACS6498M]

vs.

ACIT, Circle-8(1)(1), Mumbai.....Respondent

Appearances by:

Shri S L Jain, appeared on behalf of the appellant.
Shri SN Kabra appeared on behalf of the Respondent.

Date of concluding the hearing : May 19, 2022

Date of pronouncing the order : May 19, 2022

ORDER

Per Sanjay Garg, Judicial Member:

The present appeal has been preferred by the assessee against the order dated 27.12.2021 of the National Faceless Appeal Centre [hereinafter referred to as 'CIT(A)'] passed u/s 250 of the Income Tax Act (hereinafter referred to as the 'Act'). The assessee has taken the following grounds of appeal:

"1. The Hon'ble CIT(A) erred in holding that the appellant is not eligible to claim the deduction U/s.80-IA of the I.T. Act on its income derived out of its captive power plant without appreciating the facts that an independent new industrial undertaking at substantial capital outlay, producing power for consumption in its industrial undertaking entitled for deduction u/s 10B is setup and is approved under various sanctions and permissions.

2. The Hon'ble CIT(A) after holding that appellant is not entitled for deduction u/s 80IA , ought to have decided alternate claim of the appellant that if Captive Power Plant is not a separate undertaking, income and deduction allowable to appellant is to be recomputed as Ld. AO ,in its original order dated 27.12.2007 assessed income of Captive Power Plant on protective basis and treated demand raised Rs 12,31,448/- as protective demand. The Ld. CIT (A) erred in not deciding the alternate ground.

3. Appellant pray that deduction U/s.80-IA as claimed be granted or alternatively deduction allowable U/s.10B be suitable enhanced.

4 Assessee crave your honours leave to add, amend, or modify any grounds of appeals at the time of hearing or before.”

2. At the outset, the Id. Counsel for the assessee has submitted that the assessee established a new captive power plant in the premises of already running chemical manufacturing unit. The assessee claimed on the income of the said captive power plant deduction u/s 80IA(4) of the Act for Assessment Year 2005-06 onwards. The Id. Counsel has further submitted that the chemical manufacturing unit of the assessee is already entitled for exemption u/s 10B of the Act. The Id. Counsel has further submitted that some of the appeals of the Revenue for subsequent Assessment Year i.e. 2008-09 to 2010-11 involving the issue relating to the entitlement of the assessee for deduction u/s 80IA(4) of the Act in respect of the captive power plant are also pending before the Hon'ble High Court. The Id. Counsel has submitted that so far as the assessment year under consideration is concerned, the assessee otherwise is entitled to the deduction u/s 10B of the Act, irrespective of the fact whether deduction u/s 80IA(4) is allowed or not. The Id. Counsel, therefore, has submitted that the issue relating to the entitlement of deduction u/s 80IA(4) in relation to the subsequent years may be kept open. However, for the Assessment Year under consideration, since the assessee otherwise is entitled to exemption u/s 10B of the Act, therefore, the issue relating to entitlement of the assessee of deduction u/s 80IA(4) will not have any tax implication for this relevant year. The Id. Counsel has further submitted that for the Assessment Year under consideration, the Assessing Officer may be directed to re-compute the eligible profits from power captive unit as part of the manufacturing unit of the assessee, which otherwise is eligible for exemption u/s 10B of the Act. However, the above admission/comment of the assessee should not have any bearing regarding the issue of eligibility of the assessee of claiming deduction u/s 80IA(4) in respect of the said power captive unit in relation to subsequent years, wherein the assessee may be affected by some tax implications. In view of above submissions, for the assessment year under consideration without adjudicating upon the issue of the eligibility of the assessee for claiming deduction u/s 80IA(4) on the power captive unit, the appeal is disposed off with the direction to the Assessing Officer to

compute the eligible profits of the assessee by taking the entire unit as single unit including power captive unit and determine eligible profits of the assessee for exemption u/s 10B of the Act. At the sake of repetition, it is again reiterated that our directions given above will not have any bearing on the issue of entitlement of the assessee for deduction u/s 80IA(4) in any of the previous or subsequent years. In view of this, the appeal of the assessee is treated as partly allowed.

3. In the result, the appeal of the assessee stands partly allowed.

Mumbai, the 19th May, 2022.

Sd/-
[Om Prakash Kant]
Accountant Member

Sd/-
[Sanjay Garg]
Judicial Member

Dated: 19.05.2022.

RS

Copy of the order forwarded to:

1. M/s Sajjan India Limited
2. ACIT, Circle-8(1)(1), Mumbai
3. CIT(A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar,
Mumbai Benches