

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND
DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER
ITA No. 27/SRT/2017 (AY: 2010-11)
(Hearing in Virtual Court)

D.C.I.T. Circle-1(1)(2), Surat.	Vs.	M/s Gujarat JHM Hotels Ltd., Hotel Holiday In, Near Ambica Niketan, Athwalines, Surat- 395001. PAN : AAACG 8562 E
APPELLANT		RESPONDEDNT

C.O. No. 02/SRT/2022

(Arising out of ITA No. 27/SRT/2017)(AY: 2010-11)

M/s Gujarat JHM Hotels Ltd., Hotel Holiday In, Near Bharti Park, Ambikaniketan, Athwalines, Surat-395007. PAN : AAACG 8562 E	Vs.	D.C.I.T. Circle-1(1)(1), Surat.
APPELLANT		RESPONDEDNT

Department by	Shri J.K. Chandnani, Sr.DR
Assessee by	Shri Hiren Vepari, AR.
Date of hearing	07/06/2022
Date of pronouncement	25/07/2022

Order under section 254(1) of Income Tax Act

PER PAWAN SINGH, JUDICIAL MEMBER:

1. The appeal by the Revenue and Cross Objection (CO) by the assessee are directed against the order of ld. Commissioner of Income tax (Appeals)-1, Surat [‘ld. CIT(A)’ for short] dated 25/05/2017 for the Assessment Year (AY) 2010-11. The

Revenue in its appeal has raised the following grounds of appeal:-

- “1. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was justified in allowing 80IA claim of the assessee without appreciating the fact that the assessee did not maintain separate & independent books of account, bank account in respect of each wind mills. In absence of which report submitted u/s 80IA(7) in form no. 10CCB cannot prepaid and relied. Hence, in absence of separate books of accounts actual profit/loss from the each windmill unit cannot be ascertained.*
- 2. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was justified in allowing 80IA claim of the assessee without appreciating the fact that if all windmills were considered as one undertaking and profit & loss of all windmills are worked out after adjusting the losses from the profit of the units, then net result came to loss. Hence, no income remained for allowing the deduction u/s 80IA.*
- 3. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was justified in allowing 80IA claim of the assessee without appreciating the fact that assessee company had installed 9 windmills, out of these 9 windmills in the six windmills assessee company had earned profit of Rs. 2,36,96,214/- which was claimed u/s 80IA of the Act whereas in the remaining three windmills assessee company had incurred loss to the turn of Rs. 5,95,39,450/- which was set off against the income of Hotel Business. Thus, overall effect in the eligible was loss of Rs. 3,58,43,236/-. Since the assessee company had not earned any income from the eligible business. Hence, benefit of deduction u/s 80IA should not be given to the assessee.*
- 4. On the facts and circumstances of the case, the Id. CIT(A) ought to have upheld the order of the assessing officer.*
- 5. It is, therefore, prayed that the order of the Id. CIT(A) may be set aside and that of assessing officer may be restored to the above extent.*

2. The assessee in its CO has raised solitary grounds of appeal, which reads as under:

“1. On the facts and circumstances of the case and as per law, the Assessing Officer erred in re-opening the matter on the basis of audit objections.”

3. Initially, this appeal was dismissed by this Tribunal vide order dated 15/04/2021, on prima facie view that tax effect in the present appeal is less than Rs. 50.00 lacs as fixed by the Central Board of Direct Tax (CBDT) Circular No. 17/2019 dated 08/08/2019 for filing the appeal before the Tribunal. In this appeal, the tax effect is only of Rs. 32,25,971/-. However, after passing the order dated 15/04/2021, the Revenue filed Misc. application (MA) inter alia stating therein that the present case falls under the exception clause of CBDT Circular No. 3/2018 dated 11/07/2018 as amended by subsequent circular dated 20/08/2018 as the reopening of assessment was based on revenue audit objection. The M.A. was registered as MA No. 11/Srt/2021. At the time of hearing of aforesaid M.A. the ld. AR has raised no objection, if the Bench allows the prayer for recalling of order of the Tribunal and fixed the appeal for hearing on merit. Therefore, on the

basis of submissions of both the parties, this Bench vide order dated 15/02/2022 has recalled the order of the Tribunal dated 15/04/2021 and fixed the appeal for hearing on merit afresh. Accordingly the appeal is heard afresh for decision on merit.

4. Brief facts of the case are that the assessee is a company and besides this, engaged in the business of hotel and also have power generation wind mills. The assessee filed its return of income for the Assessment Year (A.Y.) 2010-11 on 15/10/2010 declaring income of Rs. 1,58,68,916/-. The case was selected for scrutiny and assessment was completed under Section 143(3) r.w.s. 147 of the Income Tax Act, 1961 (in short, the Act) on 25/02/2013 determining total income at Rs. 1,59,68,950/-. Subsequently, the case of assessee was reopened under Section 147 of the Act. Notice under Section 148 was issued to the assessee on 23/03/2015. In response to notice under Section 148, the assessee filed its reply dated 13/04/2015 stating that the return of income filed on 15/10/2010 be treated as return in report to notice under Section 148 of the Act. The assessee also requested for copy

of reasons recorded. Copy of reasons recorded were provided to the assessee. The assessee filed objection against the reopening and notice under Section 148 of the Act. The objection of assessee was disposed of vide speaking order dated 31/08/2015. After disposing objection, the assessing officer proceeded for assessment. During the reassessment proceedings, the Assessing Officer noted that the assessee has incurred losses from the eligible business of generation of power. The assessee claimed deduction under Section 80IA(iv) of Rs. 1,06,84,759/-. The Assessing Officer was of the view that deduction under Section 80IA is allowable only when income is earned (profit is shown) from eligible business. The assessee has nine wind mills, out of which, in six wind mills, the assessee has shown profit of Rs. 2.369 crore, however, in the remaining three wind mills, the assessee company had incurred losses of Rs. 5.953 crores. Thus, overall effect in the eligible business loss of Rs. 3.58 crore as the assessee has not earned any income from eligible business, therefore, not eligible for deduction under Section 80IA of the Act. The Assessing Officer was of the view that the deduction claimed

by assessee of Rs. 1,06,84,579/- is not allowable and accordingly issued a show cause notice to the assessee. The assessee filed his reply on 10/10/2016. The contents of reply by assessee is scanned in para 4 of assessment order. The assessee in its reply has given details of profit from hotel business, with the details of year of installation of various undertakings/wind mills and explained that the assessee has loss in undertaking No. 7,8 and 9 and there is profit in remaining six undertaking eligible for deduction under Section 80IA(iv) of the Act. And the assessee has incurred loss of Rs. 5,95,39,450/- and overall effect of eligible business loss is Rs. 3,58,43,236/- which is already set off against the profit of total business and the assessee has claimed deduction of Rs. 1.068 crore. The assessee by referring the provisions of Section 80IA submits that the assessee has one hotel undertaking and nine wind mills undertaking in various geographical area in Rajasthan, Gujarat and Maharashtra. The Assessing Officer merged all nine wind mills undertaking as one undertaking which is not in accordance with the provisions of Section 80IA of the Act. At no place, it is

stipulated that one needs to club profit and loss of all the undertakings of wind mill to arrive at the deduction specified under Section 80IA of the Act. The word “undertaking” itself means singular, thus segregating each undertaking as separate business unit, entitling each business undertaking to claim Section 80IA relief independently. The assessee also relied on certain case laws. On the basis of which the assessee asserted that the assessee installed various wind mills in various geographical area like, Rajasthan, Gujarat and Maharashtra over a different periods of time. The claim of assessee has been in respect of only two wind mills in State of Gujarat. Section 80IA allowed the deduction in respect of undertaking separately that too as per choice of assessee specified in Section 80IA(1). The assessee claimed deduction of profit in respect of every undertaking for a consecutive period of ten years out of the fifteen years. Section 80IA itself is clear as to the treatment of each undertaking independently and that too profit of every undertaking will have different years of relief. Thus, the approach of clubbing all the undertakings as one business is not in accordance with law.

5. The reply of assessee was considered and not accepted by the Assessing Officer. The Assessing Officer held that the assessee maintained consolidated figure of power generation units and no separate and independent books of account was maintained by the assessee for each and every wind mill, hence, the profit/loss of each wind mill cannot be ascertained from the incomplete record, therefore, deduction under Section 80IA of Rs. 1.068 crore was disallowed.
6. On appeal before the ld. CIT(A), the assessee challenged the validity of disallowance of deduction under Section 80IA only. The assessee filed detailed written submission as recorded in para 8 of order of ld. CIT(A). In the submission, the assessee furnished following details about the installation of various wing mills undertaking. Before assessing officer, the details of the year of installation of various unit, location and the profit or the loss earned by individual unit was furnished by the assessee, the details are scanned below;

Sr. No	Particulars	Year of Installation	View taken by assessee (Rs.)
1	Profit from Hotel Business		62,923,322
2	Losses adjusted against Hotel Business		
	Undertaking : 9 Rajasthan	16.03.2010	(25,488,498)
	Undertaking : 8 Rajasthan	30.03.2009	(28,937,756)
	Undertaking : 7 Maharashtra	29.03.2008	(5,113,196)
	Net profit from Hotel after adjusting losses		(59,539,450)
	Undertaking : 6 Maharashtra	23.09.2006	3,383,872
	Undertaking : 5 Maharashtra	28.06.2006	2,802,026
	Undertaking : 4 Maharashtra	29.03.2006	2,944,645
	Undertaking : 3 Gujarat	22.03.2006	3,441,708
	Undertaking : 2 Gujarat	02.08.2003	3,823,078
	Undertaking : 1 Gujarat	02.08.2003	5,615,514
	Gross Total Income		5,069,243
	Less: Deduction u/s 80IA(4)(iv) of the Act		23,696,214
	Total Income		27,080,086
			10,684,757
			16,395,329

7. The assessee further stated that from the aforesaid details, the gross total income of assessee is positive. Profit from wind mill undertaking are included in the gross total income. The conclusion of Assessing Officer in clubbing all the undertaking is ill founded for the reasons that Section 80IA stipulated that every undertaking is different undertaking and every undertaking needs to be viewed separately. In Section 80IA, at no place, it stipulated that one needs to combine profits and losses of all the undertakings of windmills to arrive at the deduction specified under Section 80IA. The Delhi Tribunal in the case of DCIT Vs Eastern Medikit Ltd. 100 TTJ 383 has held that each unit of assessee

being independent undertaking showing separate profit and loss which has been accepted in the past, deduction under section 80IA is to be computed with respect to each of the unit separately. The assessee also relied on the decision of Bangalore Bench in case of Jindal Aluminum Ltd. 54 SOT 283, Mumbai Tribunal in Meera Cotton & Synthetics Mills P Ltd. 29 SOT 177 and the decision of Hon'ble Delhi High Court in CIT Vs Sona Koyo Steering Systems Ltd. 35 DTR 273.

8. The ld. CIT(A) after considering the submission of assessee held that as per the various decisions relied by the assessee i.e. the Hon'ble High Court and Tribunal have taken a consistent view that as per provisions of Section 80IA, deduction is available with respect to an undertaking which is eligible under the provisions of that Section. Further, there can be different undertaking which one assessee, as is the case of assessee, there is possibility that the different undertaking may start operation at different point of time, though, they may be engaged in the same business. There is no restriction that two undertakings manufacturing the same type of product will be considered as one undertaking. The

deduction under Section 80IA(iv) of the Act is to be computed with respect to each unit independently, taking into consideration the profit of each unit only without clubbing loss of other unit. Sub-Section (5) of Section 80IA which starts with non-obstante clause also says to treat each undertaking as independent undertaking and nowhere it has been provided that profit or loss of under undertaking is to be merged or aggregated. The ld. CIT(A) specifically held that this is undisputed fact that separate accounts are maintained for each windmill undertaking. Thus, the deduction is to be computed with respect to each unit independently taking into consideration the profit of each unit without clubbing loss of others. The ld. CIT(A) by referring the decision of Hon'ble Supreme Court in the case of Synco Industries Ltd. Vs ITO (2008) 299 ITR 444 (SC) held that deduction under Chapter VIA of the Act would be available only if the computation of gross total income as per the provisions of the Act after setting of different carries forward losses and unabsorbed depreciation of earlier year is not NIL. The ld. CIT(A) also noted that after adjusting the losses of Rs. 5.953 crores of

windmill units 7 to 9 against the profit of hotel, profit was Rs. 6.292 crores and profit from windmill NO. 1 to 6 was Rs. 2.369 crore and the resultant income is worked out at Rs. 2.708 crore. Against which the assessee has claimed deduction to the extent of Rs. 1.068 crore, thus the claim of assessee is in accordance with ratio laid down in the case of Sintex Industries Ltd. Vs. ACIT 37 taxmann.com 217 (Guj). The Id. CIT(A) after referring the decision in Eastern Medikit Ltd., Jindal Aluminum, Meera Cotton and Synthetics Mills P Ltd. (supra) and Dewan Kraft Systems 297 ITR 305 (Del) concluded that in the said case, it has been held that the primary step for considering the grant of deduction under Chapter VIA is to be determine the gross total income which in turn is computed by aggregating the total income from all sources in the year after aggregating the income. There is no question of adjusting loss of any other business against the business income of eligible undertaking for deduction under Chapter VIA and the deduction under Section 80IA is to be allowed unit wise without deducting incurred loss by the

other unit of eligible business and allowed the appeal of assessee.

9. Aggrieved by the order of Id.CIT(A), the revenue has filed the present appeal before this Tribunal. On service of notice of memo of appeal, the assessee has filed its cross objection as recorded above raising the grounds of C.O. as noted above.

10. We have heard the submissions of learned Senior Departmental Representative (Sr. DR) for the revenue and the learned Authorised Representative (AR) of the assessee and have gone through the orders of the lower authorities carefully. The Id. Sr. DR for the revenue supported the order of Assessing Officer. The Id. Sr. DR for the revenue submits that the assessee not submitted separate books of account for each power generation unit being considered as separate undertaking. The assessee is not maintaining separate books of account which is clearly evident from the audited financial statement furnished by the assessee during the assessment. No admissible expenses were claimed in respect of windmill units and direct expenses were not allocated. If all the windmills are considered one undertaking and profit and loss

of all windmills are worked out after adjusting the losses from the profit of all the units, the net result will be loss. Hence, no income remains for allowing deduction under Section 80IA. Thus, no deduction can be allowed in respect of windmill undertakings. The assessee claimed that each and every windmill unit is separate and profit and loss for each undertaking has to be separately considered on the basis of decision of Delhi Tribunal in DCIT Vs Eastern Medikit Ltd. 100 TTJ 383. The said decision is not applicable on the facts of the present case as in the said case, separate and independent books for each unit were maintained. The ld. Sr. DR for revenue prayed for reversing the order of ld. CIT(A) and to restore the order of the Assessing Officer.

11. On the other hand, the ld. AR of the assessee has supported the order of ld. CIT(A). The ld. AR submits that the Assessing officer had considered all nine different windmill as separate undertakings which are spread across the States of Gujarat, Rajasthan and Maharashtra. All undertakings were installed on different points of time, hence loss inter se on certain undertaking were adjusted against the profit of certain

undertaking and thus, relief under Section 80IA was restricted to the extent of Rs. 1.068 crore. Before the Id. CIT(A), the assessee furnished detailed written submissions, copy of which has been placed before the Tribunal. The assessee before the Id. CIT(A) submitted that the gross total business income of assessee is positive. The profit from all windmills undertaking are included in the gross total income. The assessee has installed various windmill undertakings on different locations at different point of time. The claim under Section 80IA is claimed from different period. The assessee is eligible to claim deduction in respect of every undertaking for a consecutive period of 10 years out of the Act 15 years. Section 80IA itself is a clear as to claim the relief under the said Section for each undertaking independently and that too profit of every undertaking will have different years of reliefs. The conclusion drawn by the Assessing Officer in clubbing all the undertakings as one business is not in accordance with law. The relief could be denied to the assessee, if there had been negative total income which is not the case of assessee.

To support his submission, the ld. AR of the assessee relied upon the following decisions:

- (a) Agricultural Produce Market Committee 63 DTR 7 (Guj)
- (b) Cadila Healthcare Ltd. 65 DTR 383 (Guj)
- (c) Gujarat Fluor Chemicals Ltd. 353 ITR 398 (Guj)
- (d) Jagat Jayantilal Parikh 355 ITR 400 (Guj)
- (e) N.K. Roadways (P) Ltd. 362 ITR 522 (Guj)
- (f) Shree Ram Builders 377 ITR 631 (Guj)
- (g) P.C. Patel & Co. 379 ITR 151 (Guj)
- (h) Sahajanand Medical Technologies (P) Ltd. 397 ITR 607 (Guj)
- (i) Eastern Medikit Ltd. 100 TTJ 382 (Del Trib)
- (j) Eastern Medikit Ltd. 153 Taxmann 48 (Del Trib)(Magazine)
- (k) Jindal Aluminium Ltd. 54 SOT 283 (Bang Trib)
- (l) Meera Cotton & Synthetics Mills Ltd. 29 SOT 177) (Mum Trib)
- (m) Sona Koyo Seering Systems Ltd. 35 DTR 273 (Del)
- (n) Rangamma Steels & Malleables 132 TTJ 365 (Che Trib)
- (o) Metal Powder Co Ltd. 51 Taxmann.co, 304 (Che Trib)

12. We have considered the rival submissions of both the parties and have gone through the orders of the authorities below carefully. We have also deliberated upon the various case laws relied by the ld. CIT(A) as well as by the ld. AR of the assessee. We find that the Assessing officer disallowed claimed of deduction under Section 80IA of the Act by taking a view that deduction under Section 80IA is allowable only when there is

profit from eligible business. The assessee has nine wind mills out of which in six wind mills, the assessee has shown profit of Rs. 2.369 crore, however, in the remaining three wind mills, the assessee company had incurred losses of Rs. 5.953 crores. Thus, overall effect in the eligible business loss of Rs. 3.58 crore. As the assessee has not earned any income from eligible business, therefore, not eligible for deduction under Section 80IA of the Act. The Assessing Officer held that the assessee maintained consolidated figure of power generation unit and no separate and independent books of account was maintained by the assessee for each and every wind mill, hence, the profit/loss of each wind mill cannot be ascertained from the incomplete record, therefore, deduction under Section 80IA of Rs. 1.068 crore was disallowed. We find that the ld. CIT(A) while granting relief to the assessee has held that this is an undisputed fact that separate accounts are maintained for each windmill undertaking. Thus, the deduction is to be computed with respect to each unit independently taking into consideration the profit of each unit without clubbing loss of others. The ld. CIT(A) by referring the

decision of Hon'ble Supreme Court in the case of Synco Industries Ltd. Vs ITO (supra) held that deduction under Chapter VIA of the Act would be available, only if the computation of gross total income as per the provisions of the Act after setting of different carries forward losses and unabsorbed depreciation of earlier year is not NIL. The Id. CIT(A) also held that after adjusting the losses of Rs. 5.953 crores of windmill units 7 to 9 against the profit of hotel, the profit was Rs. 6.292 crores. The profit from windmill No. 1 to 6 was Rs. 2.369 crore and the resultant income is worked out at Rs. 2.708 crore. Against which the assessee has claimed deduction to the extent of Rs. 1.068 crore, thus the claim of assessee is in accordance with ratio laid down in the case of Sintex Industries Ltd. Vs. ACIT 37 (supra).

13. We find that the Id. CIT(A) after referring the decision in Eastern Medikit Ltd., Jindal Aluminum, Meera Cotton and Synthetics Mills P Ltd. and Dewan Kraft Systems (supra) concluded that in the said cases, it has been held that the primary step for considering the grant of deduction under Chapter VIA is to be determine the gross total income which

in turn is computed by aggregating the total income from all sources in the year after aggregating the income. There is no question of adjusting loss of any other business against the business income of eligible undertaking for deduction under Chapter VIA and the deduction under Section 80IA is to be allowed unit wise without deducting incurred loss by the other unit of eligible business and allowed the appeal of assessee.

14. We find that the Coordinate Bench of Chennai Tribunal in Metal Power Co Ltd. (supra) held that the positive gross total income of each undertaking has to be considered separately for working out deduction under Section 80IA. Further in case of Rangamma Steels & Malleables (supra), the Chennai Tribunal while considering the eligibility under Section 80IA held that in respect of different windmills plant installed in different years is to be considered as a separate undertaking and profit/loss cannot be clubbed in order to compute the deduction under Section 80IA. The Bench while allowing relief to the assessee relied in its earlier decision in Bennari Amman Sugars in ITA No. 1162/Mad/2008 in which it has been held

that each co-generation, plant installed in different years has to be considered as separate undertaking and the profit/loss cannot be clubbed in order to compute the deduction under Section 80IA.

15. We find that the facts of case in hand is almost similar in case of Rangamma Steels & Melleables (supra) as recorded above. As per the spirit of Section 80IA of the Act, the assessee is eligible to claim deduction of profit of each undertaking from different period. Thus, each undertaking has to be considered as a separate undertaking and cannot be clubbed in order to compute the deduction under Section 80IA of the Act. In view of the aforesaid factual and legal discussion, we affirm the order of Id. CIT(A) with this additional observations. No contrary facts or law is brought to our notice to take other view.

16. In the result, the grounds of appeal raised by the revenue are dismissed.

17. Considering the fact that we have affirmed the order of Id. CIT(A) on merit, therefore, adjudication on the grounds of

cross objection raised by the assessee have become academic and accordingly dismissed as infructuous.

18. In the final result, the appeal of revenue is dismissed and the cross objection of the assessee is also dismissed as infructuous.

Order pronounced on 25/07/2022 in open court and result was placed on notice board.

Sd/-
(Dr. ARJUN LAL SAINI)
ACCOUNTANT MEMBER

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Surat, Dated: 25/07/2022

**Ranjan*

Copy to:

1. Assessee –
2. Revenue -
3. CIT(A)
4. CIT
5. DR
6. Guard File

By Order

Sr. Private Secretary, ITAT Surat