

THE INCOME TAX APPELLATE TRIBUNAL
“J” Bench, Mumbai
Shri B.R. Baskaran (AM) & Shri ABY T Varkey (JM)

I.T.A. No. 3908/Mum/2016 (A.Y. 2011-12)

Nhava Sheva International Container Terminal Pvt. Ltd. Operation Centre, Sheva Navi Mumbai-400 707. (Appellant)	Vs.	DCIT (OSD)-2(3) Aayakar Bhavan M.K. Road Mumbai-400 020. (Respondent)
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Assessee by	Shri Nishant Thakkar, Ms. Jasmine Amalsadvala
Department by	Ms. Vatsalaa Jha
Date of Hearing	11.08.2022
Date of Pronouncement	11.08.2022

O R D E R

Per B.R.Baskaran (AM) :-

This appeal was originally disposed of by the Tribunal on 3.2.2020. Subsequently the assessee filed a Miscellaneous Application numbered as M.A. No. 76/Mum/2021 and the said Miscellaneous Application disposed by the Tribunal on 29.6.2021. Paragraph 8 and 9 of the order passed by the Tribunal in the above said Miscellaneous Application is relevant here and the same reads as under:-

“8. Another issue raised in M A No.76/Mum/2021 is that there was a claim of deduction u/s 80IA in respect of income from Served from India Script (SFIS) Rs.4,90,000/-. It has further been claimed that ITAT order has not adjudicated this issue of claim of 80IA and it has been pleaded that this issue may be recalled for adjudication.

9. Upon careful perusal of the ITAT order, we agree that aforesaid issue was not adjudicated. Hence, there is a mistake apparent from the record in the order of the Tribunal for this issue. Hence ITA No.76/Mum/2021 may be recalled only to consider this issue.”

The Ld A.R submitted that there are certain typographical errors in the above said order. The receipt in question, which was recalled is titled as “Served

from India Scheme entitlement” and the amount of receipt is Rs.4,90,00,000/-. He submitted that the AO & Tribunal has recorded the name of the receipt as “served from India scrip”. The amount was erroneously recorded by the Tribunal as Rs.4,90,000/-.

3. The Learned AR submitted that the assessee has claimed deduction u/s 80IA of the Act to the extent of Rs.105.50 crores. In the assessment order, the AO disallowed the claim to the extent of Rs.32.68 crores and accordingly allowed deduction of Rs.72.82 crores only. According to the AO, the assessee is not eligible to claim deduction u/s 80IA of the Act in respect of certain receipts aggregating to Rs.32.68 crores. The break-up details of Rs.32.68 crores are given below:-

S. No.	Description	Amounts in Rs.
1.	Interest	25,58,66,020
9	Rent	5,02,951
3.	Served From India Scrips	4,90,00,000
5.	Exchange Fluctuation Gain	1,52,06,000
4.	Misc. Income	62,59,000
	Total	32,68,35,971

It can be noticed that the amount of Rs.32.68 crores disallowed by the AO included the impugned receipt of Rs.4,90,00,000/- in Serial no.3 in the above said table. Since the Tribunal did not adjudicate the claim of the assessee with regard to the above said amount of Rs.4.90 crores, the assessee filed miscellaneous application and accordingly, the Tribunal was pleased to recall its order for the purpose of adjudicating the eligibility of the assessee to claim deduction u/s 80IA of the Act on the above said amount of Rs.4.90 crores.

4. The Learned AR submitted that the assessee has recently found that it has not claimed deduction under section 80IA of the Act on the above said amount of Rs. 490,00,000/-. In support of this submission, the learned AR invited our attention to the Statement of total income filed alongwith the return of income. The Learned AR submitted that the assessee has reduced the amount of Rs. 4,90,00,000/- from the Net profit declared by it and accordingly arrive at the business income of Rs. 105.50 crores. The assessee also claimed deduction u/s 80IA of the Act for the above said amount of Rs.105.50 crores only. The Ld A.R submitted that the assessee has taken the view that the above said amount of Rs.4.90 crores is not taxable at all and hence it has reduced the same from the net profit. However, while passing assessment order. the Assessing Officer reduced the claim for deduction u/s 80IA of the Act by a sum of Rs. 32.68 crores, which included the impugned amount of Rs.4.90 crores. Since the assessee has not claimed deduction u/s 80IA of the Act on the amount of Rs.4.90 crores, the AO should not have reduced the amount of deduction by the above said amount of Rs.4.90 crores and the same has resulted in allowing shorter amount of deduction. In view of the above, the assessee has raised following additional ground before the Tribunal.

“Based on the facts and circumstances of the case and in law, the Ld Assessing Officer/CIT(A) erred in reducing the claim under section 80IA of the Act of Rs. 1,05,50,06,392/- made in the return of income by Rs. 4,90,00,000 being receipt under SFIS Scheme, when no deduction on Rs. 4,90,00,000 was claimed by the assessee.”

The Learned AR submitted that, in all fairness, this issue may be restored to the file of the Assessing Officer for examining the claim of the assessee that there was no necessity to reduce the amount of Rs. 4.90 crores from the deduction claimed under section 80IA of the Act.

5. The Learned DR also submitted that the assessee is making new claims and the same requires verification at the end of AO.

6. Having regard rival submissions, we notice that the contention raised in additional ground requires factual verification at the end of the Assessing Officer. Accordingly, we are of the view that the additional ground needs to be restored to the file of the AO. Accordingly, we restore the issue urged in the additional ground to the file of the Assessing Officer for examining the same on the basis of facts available on record. After hearing the assessee, the AO may take appropriate decision in accordance with law.

7. In the result ground relating to the deduction under section 80IA in respect of Rs.4.90 crores is treated as allowed for statistical purposes.

Order pronounced in the open court on 11.08.2022.

Sd/-
(ABY T VARKEY)
JUDICIAL MEMBER

Sd/-
(B.R. BASKARAN)
ACCOUNTANT MEMBER

Mumbai; Dated : 11/08/2022

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

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BY ORDER,
(Assistant Registrar)
ITAT, Mumbai