

IN THE INCOME TAX APPELLATE TRIBUNAL "C"
BENCH KOLKATA

Before Shri Sanjay Garg, Judicial Member and Shri Rajesh Kumar, Accountant Member

I.T.A. No.1051/Kol/2017
Assessment Year: 2012-13

M/s SPPL Property Management Pvt. Ltd..... Appellant
11, Crooked Lane, Ground Floor,
Dharamtola, Kolkata-700069.
[PAN: AAICS7168Q]

vs.

JCIT, Range-3, Kolkata..... Respondent

Appearances by:

Shri S. Jhajharia, AR, appeared on behalf of the appellant.

Shri Gaurav Kananjia, CIT-DR, appeared on behalf of the Respondent.

Date of concluding the hearing : June 14, 2022

Date of pronouncing the order : September 07, 2022

ORDER

Per Sanjay Garg, Judicial Member:

The present appeal has been preferred by the assessee against the order dated 01.03.2017 of the Principal Commissioner of Income Tax [hereinafter referred to as 'PCIT'] agitating against the revision order passed by the PCIT exercising his powers u/s 263 of the Income Tax Act (hereinafter referred to as the 'Act').

2. The Id. PCIT noted from the assessment records that the assessee was engaged in the maintenance of various residential and commercial properties and was also engaged in operation and maintenance of Industrial Parks during the previous year relating to the AY 2012-13. Tax Audit Report (SI.No.26) revealed that the assessee claimed deduction of Rs.15,15,36,967/- u/s.80IA(4)(iii) for operation and maintenance of six industrial parks, and the same was allowed in the assessment. The Id. PCIT further noted that "Salarpuria Touchstone" was one of the six projects and the profit of Rs.1,62,44,959/- earned from this project was included in the total deduction claimed u/s 80IA(4)(iii) of the Income Tax Act of Rs.15,15,36,967/-. The project was originally developed by M/s. Salarpuria Properties Pvt. Ltd. and transferred it to the assessee in terms of an agreement dated 28.07.2007 for its operation & maintenance and thus, the assessee claimed deduction u/s.801A(4)(iii).

The Id. PCIT observed from the assessment folder of M/s. Salarpuria Properties Pvt. Ltd. that the project Salarpuria Touchstone was not approved by the competent authority. As a result, no deduction u/s.801A(4)(ii) had been allowed to the said assessee in respect of the said project since the AY 2008-09 by the IT Department. The Id. PCIT, therefore, noted that since the project which was ineligible for deduction u/s.80IA in the hands of the developer, would not also qualify for deduction at the hand of the transferee for its operation and maintenance. The PCIT, therefore, observed that the deduction of Rs.1,62,44,959/- in respect of the project Salarpuria Touchstone claimed by the assessee was not allowable and required to be added back to the total income of the assessee. The Id. PCIT noted that however, during assessment the same was not disallowed by the Assessing Officer, hence, this has resulted in under-assessment of income to the tune of Rs.1,62,44,959/-. The Id. PCIT further observed that the Assessing Officer has failed to apply the provisions of sec.80IA(4)(iii) of Act in the impugned assessment order dt. 23.3.2015. The Id. PCIT noted that the Assessing Officer has not enquired into the ineligibility of the project Salarpuria Touchstone u/s.80IA(4)(iii) of Act.

Further, the Id. PCIT observed in respect of other project M/s Salarpuria Softzone maintained by the assessee that the assessee has claimed deduction u/s 80IA(4)(iii) of the Act on the said project, which was allowed by the Assessing Officer. The Id. PCIT in this respect observed that M/s Salarpuria Softzone, an erstwhile firm, was later on converted into the company M/s Salarpuria Softzone Tech Park Ltd. w.e.f. 29.09.2008 and by virtue of an agreement dated 25.07.2006, the developer M/s Salarpuria Softzone transferred the right of operation and maintenance of the project to the assessee company M/s SPPL Property Management Pvt. Ltd. That the erstwhile firm M/s Salarpuria Softzone had filed application dated 15.12.2006 before DIPP, Ministry of Commerce & Industry, Government of India for granting of approval u/s 80IA(4)(ii) of the Act and the said authority conveyed approval vide F.No.15/23/2006/IP & ID dated 25.07.2006. However, the CBDT did not issue notification under the Rule 18C(4) of the I T Rules, 1962 to the said firm M/s Salarpuria Softzone. The Id. PCIT further observed that the assessee has not disputed that in the assessments of the erstwhile firm M/s Salarpuria Softzone, the claim of 100% deduction u/s 80IA(4)(iii) has been disallowed for A.Y.

2008-09 and 2009-10. However, the AO has allowed the deduction of Rs.3,08,43,285/- in respect of Salarpuria Softzone u/s 80IA(4)(iii) of the Act for the A.Y. 2012-13 vide impugned assessment order dated 23.03.2015.

The Ld. PCIT, therefore, held that order of the Assessing Officer was erroneous and prejudicial to the interest of the Revenue because of the allowing of deduction in respect of the aforesaid two projects to which the assessee was not entitled to. He accordingly set aside the impugned assessment order of the Assessing Officer with a direction to pass a fresh assessment order after considering the aforesaid observations of the Id. PCIT.

3. Being aggrieved by the aforesaid order of the Assessing Officer, the assessee has come in appeal before us. Though the appellant has assailed the order of the Id. PCIT passed u/s 263 of the Act inter alia on various grounds, e.g. that the Id. PCIT had obtained information and formed the view that the assessment order was erroneous and prejudicial to the interest of the Revenue from the record of the third party, whereas, as per the law, the Id. PCIT should have formed the opinion after examining the record of the assessee; that in some of the earlier years, the deduction has already been allowed to the assessee and that there was a change of opinion; that the Assessing Officer had examined and verified the issue and proper enquiries were made etc. etc., however, the Id. Counsel for the assessee-appellant namely Shri Sidharth Jhajharia, has been fair enough to submit that on merits, the project of the assessee “M/s Salarpuria Touchstone” was not eligible for deduction at this stage for want of approval from the Government as noted above. The Id. counsel in this respect has submitted that the assessee has already approached the High Court in this respect for a direction to the Government to approve the said project u/s 80IA(4)(iii). In view of this, the Id. counsel has fairly submitted that at this stage, the assessee/appellant is not entitled to deduction on this project. He, however, has further submitted that, in case, the matter is decided in favour of the assessee by the Hon’ble High Court and the Government issues approval at a later stage on the said project, then the assessee may be given liberty to approach the Assessing Officer to revise the assessment order and give deduction accordingly. However, in respect of second project namely Salarpuria Softzone project, the Id. counsel has relied upon the decision of the Coordinate Bench of the Tribunal in the case of erstwhile firm

i.e. M/s Salarpuria Softzone vs. JCIT wherein the Tribunal has held that once industrial park was approved by Ministry of Commerce and Industry, CBDT has to suo moto issue notification and if there is any delay on the part of the CBDT in issuing notification, it would not warrant assessee be denied benefit of deduction u/s 80IA(4)(iii) of the Act. The Coordinate Bench of the Tribunal in this respect has relied upon the decision of Gujarat High Court in the case of Creative Infocity Ltd. vs. Union Secretary reported in [2012] 19 Taxmann.com 270 (Guj.). The relevant part of the order of the Tribunal is reproduced as under:

"10. Similarly, Hon'ble Gujarat High Court in the case of Creative Infocity Ltd. Vs. Union Secretary [2012] 19 Taxmann.com 270 (Guj.) also held that, once Industrial Park was approved by Ministry of Commerce & Industry, CBDT has to suo motto issue notification and if there is delay on the part of the CBDT in issuing notification, it would not warrant assessee be denied benefit of deduction u/s. 80IA(4)(ii) of the Act. Hon'ble High Court finally held under:

"Once approval is given by the Commerce Ministry to the petitioner in terms of sub-rule [2] of Rule 18C, the Board is duty bound to notify the industrial parks for benefits under Section 80-IA without any further investigation as to whether the petitioner has complied with the terms and conditions envisaged in the scheme. Since the power of grant of approval has been conferred upon the Commerce Ministry, in the absence of any express provision in the Rules, it should be presumed that the authority, which has given approval, has the power of revocation and examination of compliance of the conditions upon which the approval has been accorded. Therefore, it is the duty of the Commerce Ministry to decide whether an industrial undertaking is complying with the conditions envisaged in the scheme and if the undertaking fails to comply with those conditions, it is the Commerce Ministry alone, which has the right to withdraw the benefit granted under sub-rule [2] of Rule 18C of the Rules. As soon as the approval under sub-rule [2] of Rule 18C is given, it is obligatory on the part of the Central Board of Direct Taxes to notify industrial parks in terms of sub-rule [4] of Rule 18C."

4. The ld. counsel in the above backdrop has submitted that the assessee may not be burdened to fresh assessment proceedings rather in the light of the above facts and legal position, the order of the ld. PCIT may be modified to the extent that the assessee is not eligible for deduction u/s 80IA(4)(iii) on the project namely 'Salarpuria Touchstone'. However, the assessee may be held eligible for deduction u/s 80IA(4)(iii) in respect of 'Salarpuria Softzone'. The ld. counsel has not pressed any other ground either legal or on merits regarding the validity of the revision order passed by the ld. PCIT u/s 263 of the Act.

5. The ld. DR has also fairly agreed to the said submissions of the ld. AR and submitted that the order of the ld. PCIT may be modified accordingly.

6. In view of the above discussion, we find on examination of facts and law that the assessee is eligible for deduction in respect of project namely “Salarpuria Softzone” in the light of the decision of the Hon’ble Gujarat High Court and also of the Coordinate Bench of the Tribunal in the case of erstwhile “Salarpuria Softzone” (supra). However, the assessee is not eligible to claim deduction u/s 80IA(4)(iii) in respect of his project namely “Salarpuria Touchstone” for want of notification/approval by the Government. Therefore, the order of the PCIT is modified by directing the Assessing Officer to withdraw/disallow the deduction in respect of Salapuria Touchstone project only. However, it is further directed that if at a later stage, Government approves/notifies the said project then the assessee will be entitled to move on an application to the Assessing Officer to allow the deduction and the Assessing Officer will examine whether such an approval is applicable to the said project and if so found eligible, the Assessing Officer will accordingly allow the deduction modifying the assessment order. In respect of the other project i.e. “Salarpuria softzone”, it is held that the assessee is eligible for deduction on the said project. Before parting with the order, it is to note here, even at the sake of repetition, that this order has been passed as per the submission and consent of the ld. counsel for the assessee and no other ground either raised in the grounds of appeal or otherwise assailing the order of the PCIT has been pressed by the ld. counsel. In view of the above, the appeal of the assessee is treated as partly allowed.

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

Kolkata, the 7th September, 2022.

Sd/-
[Rajesh Kumar]
Accountant Member

Sd/-
[Sanjay Garg]
Judicial Member

Dated: 07.09.2022.

RS

Copy of the order forwarded to:

1. M/s SPPL Property Management Pvt. Ltd
2. JCIT, Range-3, Kolkata
3. CIT(A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches