आयकर अपीलीय अधिकरण 'बी' न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH, CHENNAI

माननीय श्री मनोज कुमार अग्रवाल ,लेखा सदस्य एवं
माननीय श्री संजय सरमा, न्यायिक सदस्य के समक्ष।
BEFORE HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM AND
HON'BLE SHRI SONJOY SARMA, JUDICIAL MEMBER

आयकर अपील सं./ **ITA No.2341/Chny/2017**
(निर्धारण वर्ष / Assessment Year: 2012-13)

M/s. Wheels India Ltd. C/o. M/s. Subbaraya Aiyar Padmanabhan & Ramamani (Advocates) New No.75A (Old No.105A), Dr. Radhakrishnan Salai, Mylapore, Chennai – 600 004.	**बनाम** / Vs.	**DCIT(LTU-2),** Chennai.
स्थायी लेखा सं./जीआइ आर सं./**PAN/GIR No. AAACW-0315-K**		
(अपीलार्थी**/Appellant**)	:	(प्रत्यर्थी / **Respondent**)

अपीलार्थी की ओरसे/ **Appellant by**	:	Shri Vikram Vijayaraghavan (Advocate)-Ld. AR
प्रत्यर्थी की ओरसे/**Respondent by**	:	Ms. M.S. Deeptha (JCIT) – Ld. Sr. DR

सुनवाई की तारीख**/Date of Hearing**	:	23-08-2022
घोषणा की तारीख **/Date of Pronouncement**	:	07-09-2022

आदेश / O R D E R

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by assessee for Assessment Year (AY) 2012-13 was disposed-off by the Tribunal vide order dated 11.10.2018. However, upon assessee's Miscellaneous Application, the order was recalled Vide MP No.1/Chny/2019 order dated 22.03.2019 for limited purpose of adjudication of ground nos. 7 & 8 since these grounds remained to be adjudicated in the order. Accordingly, the appeal has

been placed before us for disposal of ground nos. 7 & 8 which read as under: -

> 7. The Commissioner of Income tax (Appeals) erred in confirming the disallowance of deduction u/s 80IC amounting to Rs.8,96,68,083/-.
> 7.1 The Commissioner of Income tax (Appeals) ought to have appreciated that the losses of earlier year assessment years shall not be set off against the total income of the 80IC undertaking for arriving at the benefit available for the current assessment year. Appellant relies on the decision of Honb'le Madras High Court in the case of Velayadhaswamy Spinning Mills P Ltd Vs. ACIT, Reported in 340 ITR 477(Mad).
> 8. The CIT(A) erred in confirming the disallowance of expenditure u/s.14A r.w.Rule 8D(2)(iii) of the IT Rules amounting to Rs. 88,70,609/-.
> 8.1 The CIT(A) ought to have appreciated that the expression 'does not form part of the total income' in Section 14A of the Act envisages that there should be an actual receipt of income, which is not includible in the total income, during the relevant previous year for the purpose of disallowing any expenditure incurred in relation to the said income.
> 8.2 The CIT(A) ought to have appreciated that during the relevant year, the appellant had not received any exempt income from the investments and hence, the provisions of sec 14A r.w. rule 8D are not applicable.
> 8.3 The CIT(A) ought to have followed the judgment of the jurisdictional High Court in ***Redington (India) Ltd Vs ACIT - 97 CCH 0210*** and CIT Vs Chettinad Logstics - 98 CCH 0151 which has held that disallowance u/s 14A r.w. Rule 8D cannot be made in the absence of exempt income.
> 8.4 The appellant also relies on the Delhi High Court judgment in ***Joint Investments (P) Ltd Vs CIT ITA No. 117 of 2015*** and Allahabad High Court judgment in ***CIT Vs Shivam Motors (P) Ltd ITA No. 88 of 2014.***

As is evident, ground No.7 is related with computation of deduction u/s. 80-IC whereas ground No.8 is related with disallowance u/s. 14A of the Act.

2. So far as disallowance u/s 14A is concerned, it is admitted position that the assessee has not earned any exempt income during the year and therefore, no such disallowance could have been made by revenue considering the decision of Hon'ble High Court of Madras in **Redington (India) Ltd. V/s Addl. CIT (77 Taxmann.com 257).** Similar view has been expressed by the bench in revenue's appeal in para-10 of ITA No.2395/Chny/2017 order dated 11.10.2018. Therefore,

we delete the disallowance u/s 14A as sustained in the impugned order. This ground stand allowed.

G.No.8: Computation of deduction u/s 80-IC

3.1 Facts qua ground no.7 are that the assessee claimed deduction u/s 80-IC for Rs.115.45 Lacs. However, the claim was revised to Rs.1012.13 Lacs in the revised return of income. It transpired that the assessee had an eligible unit at Uttarakhand which commenced its operations on 20.04.2009. Accordingly, the initial year of assessment to claim deduction, as per statutory provisions, would be AY 2010-11. In AYs 2010-11 & 2011-12, the assessee suffered loss in this unit which was set-off from other business income. The assessee claimed deduction u/s 80-IC in this year which is third year of claiming this deduction.

3.2 The Ld. AO observed that if the loss of earlier two years as incurred by the eligible unit at Uttarakhand was notionally brought forward and adjusted, the assessee will be eligible for deduction u/s. 80-IC of the Act to the extent of Rs.115.45 Lacs only. Accordingly, the assessee was show-caused.

3.3 The assessee submitted that the loss incurred by the industrial undertaking in earlier years should not be reduced in arriving at the profits eligible for the deduction u/s. 80-IC in this year since the said loss has already been set-off against the income of the other undertakings of the assessee in the earlier years. Reliance was placed on the decision of **Hon'ble Madras High Court in the case of Velayadhaswamy Spinning Mills P. Ltd. vs. ACIT [2012] 340 ITR 477 (Mad)** rendered in the context of Sec.80-IA. The assessee also submitted that as per Section 80-IC(7), the provisions contained in sub-

section 5 and sub-section 7 to 12 of Sec. 80-IA would apply to eligible undertaking claiming deduction u/s 80-IC.

3.4 However, rejecting the same, Ld. AO opined that the profits and gains of an eligible business would be determined in such a manner that for the assessment year immediately succeeding the initial assessment year and any subsequent assessment years, the eligible business were the only source of income of the assessee during the previous year relevant to assessment year for which the determination is to be made. In the present case, the assessee has adjusted the previous year losses of eligible undertaking against the income from other businesses in earlier years which fall within the eligible period. However, the profit from the eligible undertaking is again claimed as deduction without setting-off notionally brought forward losses. Therefore, the assessee cannot avail a double benefit by adjusting the loss from the eligible business against the income of taxable business and further, when there is a profit from the eligible business, the same is also adjusted against the profit of the taxable business. The decision of Hon'ble Madras High Court was stated to be in further challenge. Accordingly, deduction u/s. 80-IC of the Act was restricted to the extent of Rs. 115.45 Lacs. Aggrieved, the assessee preferred further appeal before Ld. CIT(A) and assailed the action of Ld. AO.

3.5 The Ld. CIT(A), distinguishing the provisions of Sec.80-IA and Sec.80-IC, dismissed the grounds raised by the assessee as under:

> 4.10.3 The facts of the case, the findings of the AO and the submissions of the appellant have been considered with diligence. While moving the appeal, the appellant relied on the decision of the hon'ble Madras High Court in the case of **Velayudhaswamy Spinning Mills P Ltd. Vs. ACIT (2012) 340 ITR 477 (Mad).** The ratio of the case has been duly considered. While adjudicating the issue, the hon'ble High Court held *"that the loss in the year earlier to the initial assessment year already absorbed against the profit of other business cannot be notionally*

brought forward and set off against the profits of the eligible business, as no such mandate is provided in section 801A(5)".

During the course of the appellate proceedings, the AR submitted that his claim be considered as per the ruling of the hon'ble Supreme Court's decision in the case of **Velayudhaswamy Spinning Mills P Ltd. Vs. ACIT (2012) 340 ITR 477(Mad).** The Apex Court, in their order dated 5.9.2016, affirmed the view that loss in the earlier to the initial assessment year already absorbed against the profits of the eligible business cannot be notionally brought forward and set off against the profits of the eligible business, as no such mandate is provided in section 80IA(5).

In the instant case, the appellant filed the original return on 30.11.2012 in which a claim of Rs.1,15,45,243/- was made u/s 80IC of the Act. Subsequently, in its revised return, the appellant claimed deduction of Rs.10,12,13,326 u/s 80IC. The appellant's claims for judicial relief are predicated on the judicial pronouncements which pertain to sec. 80IA. This claim made u/s 80IC has to be considered vis-a-vis the provisions of sec.80IC as well as 80IA. As per sec.80IC(7), the provisions stated in sub section (5) and sub sections (7) to (12) of section 80IA shall apply to the eligible undertaking under this section. The AO rightly held that profits and gains of an eligible business shall be determined such that for the assessment year, immediately succeeding the initial assessment year and any subsequent assessment year, the eligible business were the only source of income of the assessee during the previous year relevant to assessment year for which the determination was to be made.

The admissibility of the claim for deduction u/s 80IC is however, distinct as compared with that of section 80IA. When a claim is made u/s 80IA, the assessee has the right to exercise his option regarding the reckoning of the initial year of the eligible business for claiming deduction under that section:

"80IA(2) The deductions specified in sub-section(l) may, at the option of the assessee, be claimed by him for any ten consecutive assessment years out of fifteen years beginning from the year in which the undertaking or the enterprise develops and begins to operate any infrastructure facility..."

This option, which is granted to the assessee u/s 80IA(2) of the Act is not available to the assessee u/s 80IC. As per Section 80IC(3), the deduction permissible for eligible undertakings is "one hundred percent of such profits and gains for ten assessment years commencing with the initial assessment year". Thus, the year of commencement of eligible business is also the initial year for claiming deduction u/s 80IC. In the instant case, as stated by the AO, the initial year of assessment from which deduction / u/s 80IC was claimed was assessment year 2010-11. This was due to the / fact that the unit at Uttarakhand had commenced its operations on 20.04.2009. The appellant is thus entitled to claim deduction u/s 80IC for ten assessment years with effect from Asst Year 2010-11.

During the Asst Year 2010-11 and 2011-12, the appellant had reported losses from the Uttarakhand business unit. These losses have thus to be carried forward and set off against the profits of the eligible unit for the A.Y.2012-13. The residual amount can only be claimed as deduction u/s 80IC of the Act for the Asst Year

2012-13 as they fall within the contours of the 10 year period commencing from Asst Year 2010-11. The judicial pronouncements relied upon by the appellant have dwelt upon the claims made by the appellants u/s 80IA of the Act and not u/s 80IC. Furthermore, the losses claimed in those cases pertain to the period "earlier to the initial assessment year" as stated in the order of the Supreme Court in the case of Velayudhaswamy Spinning Mills P Ltd cited supra. In the appellant's case, the losses claimed pertain to the period that has commenced on the date of the initial year in which deduction u/s 80IC was claimed. Hence, these losses have to be carried forward and set off against the profits of the eligible business for Asst Year 2012-13. The AO has rightly concluded that the enhanced claim of the appellant on deduction u/s 80IC was not admissible and it was accordingly restricted to Rs.l,15,45,243/-. This ground is **dismissed.**

Upon careful consideration, it could be gathered out Ld. CIT(A) has brought about very fine distinction in the provisions of Sec.80-IA and Sec.80-IC. Unlike the provisions of Sec.80-IA, the provisions of Sec.80-IC do not provide any option to the assessee to choose 'initial assessment year'. Therefore, it was held that losses as adjusted in earlier years, which fall within the eligible period, are to be notionally brought forward and adjusted against the profits of the eligible undertaking. The case laws as cited by the assessee were noted to be in the context of Sec.80-IA and hence the same would not apply. Aggrieved, the assessee is in further appeal before us.

Our findings and Adjudication

4. The undisputed position that emerges before us are that the assessee has a unit which is eligible for deduction u/s 80-IC. This unit has commenced its operations on 20.04.2009. Accordingly, the initial year of assessment to claim deduction, as per statutory provisions, would be AY 2010-11. In AYs 2010-11 & 2011-12, the assessee has suffered losses in this unit which has been set-off from other business income and accordingly, the business income in earlier years has been reduced to that extent. This is the third year of claiming deduction u/s 80-IC and the assessee has earned profits in this year from the eligible

unit. In this year, the assessee seeks deduction of profits earned by this unit without adjusting the notionally brought forward losses of this unit as incurred in first and second year wherein these losses stand adjusted from other business income. For the same, the assessee has relied on the decision of Hon'ble Madras High Court in the case of **Velayadhaswamy Spinning Mills P. Ltd. vs. ACIT [2012] 340 ITR 477 (Mad)** rendered in the context of Sec.80-IA.

5. On the other hand, Ld. AO has applied the provisions of Sec. 80-IA(7) and opined that the profits and gains of an eligible business would be determined in such a manner that for the assessment year immediately succeeding the initial assessment year and any subsequent assessment years, the eligible business were the only source of income of the assessee during the previous year relevant to assessment year for which the determination is to be made. The assessee cannot avail double benefit by adjusting the loss from the eligible business against the income of taxable business and further, when there is a profit from the eligible business, the deduction is claimed on profits earned by the unit without adjusting those losses which stood adjusted in earlier years.

6. The Ld. CIT(A) brought about very fine distinction between the provisions of Sec.80-IA and 80-IC and inter-alia, observed that unlike the provisions of Sec.80-IA, the provisions of Sec.80-IC do not provide any option to the assessee to choose 'initial assessment year'. Therefore, the losses as adjusted in earlier years, which fall within the eligible period, are to be notionally brought forward and adjusted against the profits of the eligible undertaking. The case laws as cited by the assessee were noted to be in the context of Sec.80-IA and the

same were held to be not applicable. The claim made u/s 80-IC has to be considered vis-a-vis the provisions of sec.80-IC as well as 80-IA. As per Sec.80-IC(7), the provisions stated in sub-section (5) and sub-sections (7) to (12) of section 80-IA shall apply to the eligible undertaking under this section. Therefore, Ld. AO was correct in adjusting the notionally brought forward losses. It was also held that when a claim was made u/s 80-IA, the assessee has a right to exercise his option regarding the reckoning of the initial year of the eligible business for claiming deduction u/s 80-IA(2). However, this option would not be available to the assessee u/s 80-IC. As per Section 80IC(3), the deduction permissible for eligible undertakings is "one hundred percent of such profits and gains for ten assessment years commencing with the initial assessment year". Thus, the year of commencement of eligible business is also the initial year for claiming deduction u/s 80-IC, which in the present case would be AY 2010-11. The position that 'initial assessment year', in the present case, would be AY 2010-11, is an undisputed position before us.

7. The term 'initial assessment year' as defined in Sec. 80-IC(8)(v) of the Act means the assessment year relevant to the previous year in which the undertaking or the enterprise begins to manufacture or produce articles or things, or commence operation or completes substantial expansion. Thus, it quite clear that 'initial assessment year' would be an assessment year relevant to the previous year in which the undertaking or the enterprise begins to manufacture or produce articles or things or commences operations or completes substantial expansion. The provisions of Sec.80-IC(3) provide for such deduction for ten / five assessment years commencing with the initial assessment

year. Thus, so far as the construction of 'initial assessment year' is concerned, the assessee has not been provided with any liberty to opt for any year as the 'initial assessment year'. The same run contrary to the option provided to the assessee u/s 80-IA (2) where an option is vested with the assessee to claim deduction under the said statutory provision for any ten consecutive assessment years out of fifteen years beginning from the year in which the undertaking or the enterprise undertake specified activities. On combined reading of Sec.80-IC(3) read with Section 80-IC(8)(v), it could be thus be seen that the assessee is obligated to claim deduction starting from 'initial assessment year' notwithstanding the fact whether the assessee has earned profits or losses in that year. The statutory period would start to run from 'initial assessment year' without any option to the assessee.

8. In such a case, the provisions of Sec.80-IA(5) would apply to the case of the assessee which mandate the assessee to compute the income of the eligible business as if such eligible business was the only source of income for the assessee during the previous year relevant to initial assessment year and to every subsequent assessment years up to and including the assessment year for which the determination is to be made. These provisions would apply exactly to a situation which is before us. Accordingly, Ld. CIT(A), in our considered opinion, has clinched the issue in correct perspective which would not require any interference on our part.

9. The Ld. AR has asserted that the decision of Hon'ble Madras High Court in the case of **Velayadhaswamy Spinning Mills P. Ltd. vs. ACIT [2012] 340 ITR 477 (Mad)** would apply. Firstly, this decision

has been rendered in the context of Sec.80-IA which is not pari-materia to Sec.80-IC so far as the construction of 'initial assessment year' is concerned. Secondly, the factual matrix in this case law is different. The ratio of the decision, as rightly noted by Ld. CIT(A), was that the losses in the year earlier to 'initial assessment year' already absorbed against the profit of other business cannot be notionally brought forward and set off against the profits of the eligible business, as no such mandate is provided in section 80-IA(5). The same is not the case here since the losses of eligible units have been adjusted by the assessee in the 'initial assessment year' as well as in subsequent assessment year. Rather the observations made by Hon'ble Court in Para-18 of this decision clearly supports our view wherein it was held as under: -

> 18. From a reading of the above, it is clear that the eligible business were the only source of income, during the previous year relevant to the initial assessment year and every subsequent assessment years. When the assessee exercises the option, the only losses of the years beginning from initial assessment year alone are to be brought forward and no losses of earlier years which were already set off against the income of the assessee. Looking forward to a period of ten years from the initial assessment is contemplated. It does not allow the Revenue to look backward and find out if there is any loss of earlier years and bring forward notionally even though the same were set off against other income of the assessee and the set off against the current income of the eligible business. Once the set off is taken place in earlier year against the other income of the assessee, the Revenue cannot rework the set off amount and bring it notionally. A fiction created in sub-section does not contemplates to bring set off amount notionally. The fiction is created only for the limited purpose and the same cannot be extended beyond the purpose for which it is created.
>
> (Emphasized by us)

Therefore, the aforesaid decision, in our considered opinion, does not apply to the case before us rather the same only supports the conclusion drawn by us.

10. Considering the aforesaid legal position, the adjudication as made by Ld. CIT(A), in the impugned order, could not be faulted with. The corresponding ground raised by the assessee stand dismissed.

11. Additional Ground of Appeal

11.1 The assessee has filed additional ground on 07-03-2022. In these grounds, the assessee seeks deduction in respect of export benefits. It has been submitted that the assessee has received certain subsidies from government which would not be capital receipt and therefore, the same is not taxable. The assessee also seeks deduction of face value of DEPB license while computing the gains arising from sale of DEPB license. We find that all these are claim are altogether new claims which could not be admitted at this stage of proceedings. These claims are factual matters, the necessary facts which are not available either in the return of income or in the orders of lower authorities. Further, the appeal of the assessee has already been disposed-off by the Tribunal on 11.10.2018 and the appeal has been placed before us for limited purpose of adjudication of ground nos. 7 & 8. Once the appeal has been disposed-off, the Tribunal becomes *functus-officio* to delve into the appeal any further except to the extent as provided in law.

11.2 Proceeding further, the claim of the assessee is also not be admitted keeping in view the decision of Hon'ble Supreme Court in the case of **CIT V/s Sun Engineering Private Ltd. (198 ITR 297)** wherein it was held that the proceedings u/s 147 are for the benefit of the revenue and not for the benefit of an assessee and are aimed at

garnering the 'escaped income' of an assessee. These proceedings could not be allowed to be converted as 'revisional' or 'review' proceedings at the instance of the assessee, thereby making the machinery unworkable. Therefore, in such proceedings u/s 147, AO could bring to charge items of income which had escaped assessment other than or in addition to that item or items which have led to the issuance of notice under section 148 and where reassessment is made under section 147 in respect of income which has escaped tax, the AO's jurisdiction is confined to only such income which has escaped tax or has been under-assessed and does not extend to revising, reopening or reconsidering the whole assessment or permitting the assessee to reagitate questions which had been decided in the original assessment proceedings. It is only the under-assessment which is set aside and not the entire assessment when reassessment proceedings are initiated. The AO cannot make an order of reassessment inconsistent with the original order of assessment in respect of matters which are not the subject matter of proceedings under section 147. An assessee cannot resist validly initiated reassessment proceedings under this section merely by showing that other income which had been assessed originally was at too high a figure except in cases under section 152(2). The words 'such income' in section 147 clearly refer to the income which is chargeable to tax but has 'escaped assessment' and the AO's jurisdiction under the section is confined only to such income which has escaped assessment. It does not extend to reconsidering generally the concluded earlier assessment. Claims which have been disallowed in the original assessment proceeding cannot be permitted to be reagitated on the assessment

being reopened for bringing to tax certain income which had escaped assessment because the controversy on reassessment is confined to matters which are relevant only in respect of the income which had not been brought to tax during the course of the original assessment. A matter not agitated in the concluded original assessment proceedings also cannot be permitted to be agitated in the reassessment proceedings unless relatable to the item sought to be taxed as 'escaped income'. Indeed, in the reassessment proceedings for bringing to tax items which had escaped assessment, it would be open to an assessee to put forward claims for deduction of any expenditure in respect of that income or the non-taxability of the items at all. Keeping in view the object and purpose of the proceedings under section 147 which are for the benefit of the revenue and not an assessee, an assessee cannot be permitted to convert the reassessment proceedings as his appeal or revision, in disguise, and seek relief in respect of items earlier rejected or claim relief in respect of items not claimed in the original assessment proceedings, unless relatable to 'escaped income', and reagitate the concluded matters. Even in cases where the claims of the assessee during the course of reassessment proceedings related to the escaped assessment are accepted, still the allowance of such claims has to be limited to the extent to which they reduce the income to that originally assessed. The income for purposes of 'reassessment' cannot be reduced beyond the income originally assessed.

11.3 For the reasons stated above, the additional grounds stand dismissed as ‘non-admitted’.

Conclusion

12. Ground No. 8 stand allowed whereas Ground No.7 stand dismissed. The additional ground stand dismissed as non-admitted. The appeal stands partly allowed.

Order pronounced on 07th September, 2022.

Sd/-	**Sd/-**
(SONJOY SARMA)	**(MANOJ KUMAR AGGARWAL)**
न्याय□यिक सदस्य /JUDICIAL MEMBER	**लेख□सदस्य / ACCOUNTANT MEMBER**

चेन्नई / Chennai; दिनांक / Dated : 07-09-2022
EDN/-

आदेश की प्रतिलिपि □ ग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/Appellant 2. प्रत्यर्थी/Respondent 3. आयकर आयुक्त (अपील)/CIT(A) 4. आयकर आयुक्त/CIT 5. विभागीय प्रतिनिधि/DR 6. गार्ड फाईल/GF