

**IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR.**

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER**

**I.T.A. No.508/Asr/2016
Assessment Year: 2008-09**

V.R.A. Cotton Mills. Pvt Ltd. Vill. Burjmohar Road Abohar. [PAN: AABCV3100A] (Appellant)	Vs.	Addl. CIT, Range-II, Bathinda. (Respondent)
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Appellant by	Sh. P. N. Arora, Adv.
Respondent by	Sh. S.M. Surendra Nath, Sr.DR

Date of Hearing	13.10.2022
Date of Pronouncement	18.10.2022

ORDER

Per:Anikesh Banerjee, JM:

The instant appeal of the assessee is directed against the order of the Id. Commissioner of Income Tax(Appeals),Bathinda, [in brevity the CIT(A)] bearing appeal No.1-SA/CIT(A)/BTI/13-14, date of order 27.07.2016, the order passed u/s

250 (6) of the Income Tax Act 1961, [in brevity the Act] for A.Y. 2008-09. The impugned order was emanated from the order of the Id. Addl. Commissioner of Income Tax, Range-II, Bathinda, (in brevity the AO) order passed u/s 143 (3) of the Act date of order 23.12.2010. The said appeal is recalled by the order of the Miscellaneous Application No. 46/Asr/2019 date of order 12.09.2022. The assessee took the following grounds after considering the order of the Miscellaneous Application:

“3. That the facts & in the circumstances of the case, Ld. Commissioner of Income Tax (Appeals), Bhatinda erred in not adjudicating the following grounds of appeals: -

(a) That the payments of Rs. 180817/- to M/s Gopi Chand Parma Nand Ahuja a handling agent, does not fall within the preview of sec. 194-C as payment by the agent was made to various individual persons/wagers each below Rs. 20000/-.

(b) That payment of taxi charges amounting to Rs. 34498/- to Nakul Travels, Rajkot through employees Sh. Rajesh Sachdeva & Gopal Rathi looking after export business in Gujrat, does not fall within the preview of sec. 194-C in view of CBDT Circular No. 715 dt. 08.08.1995 (answer to question No. 6 of the circular).

(c) That labour payments amounting to Rs. 74993/- made through employee Rakesh Kumar to various daily wagers does not fall within the preview of sec. 194-C each being below Rs. 20000/-.

(d) That payments amounting to Rs. 61820/- made to Kimti Lal Sharma, agent of the appellant, interalia includes payment made to India Railway for freight amounting to Rs. 34300/- (20080+ 14220/-), are outside the preview of sec. 194-C.

4. That on the facts & circumstances of the case Ld. Commissioner of Income Tax (Appeals), Bhatinda erred in overlooking the filing the two Form 26-A with Annexure "A" as follows: -

(a) Form No 26-A with Annexure "A" dt. 13.01.2015 duly signed by CA Sh. Ramesh Babber relating to payment of Rs. 180877/- to M/s Gopi Chand Parma Nand Ahuja, Fazilka.

(b) Form No. 26-A with Annexure "A" dt. 10.03.2015 duly signed by CA Sh. A. K. Mittal relating to payment of Rs. 176662/- to M/s Freightways International Forwarders, Ludhiana.

5. That on the facts & in the circumstances of the case, Ld. Commissioner of Income Tax (Appeals), Bhatinda erred in not confirming the computation of income derived from individual undertaking at Ra. 6541057/- after acceptance of duty draw

back receipt as income from trading activity embedded in cotton export account.

6. That the humble appellant prays for permission to add or amend any ground of appeal before disposal of the appeal.”

During appeal proceeding the ld. Counsel for the assessee had not pressed the ground no. 3 and 4. Only the ld. Counsel had challenged the ground no. 5. Ground no. 6 is general in nature.

2. The brief fact of the case is that the assessee has filed the appeal against the order of the ld. CIT(A) before the ITAT. The ITAT has passed the order of exparte bearing ITA No. 508/Asr/2016 dated 09.10.2019. Against the order, the assessee filed a miscellaneous application before the ITAT, Amritsar Bench, bearing No. 46/Asr/2019. The ITAT Amritsar Bench has accepted the petition and reheard the order for limited grounds of the assessee. The ground no. 3, 4 and 5 of the appeal of the assessee was not adjudicated by the ITAT, Amritsar Bench in the first appeal order, passed on dated 09/10/2019. The ld. Counsel for the assessee had withdrawn the ground no. 3 and 4. Only ground no. 5 is placed for adjudication. The issue is related to the deduction u/s 80 IB. The ld. AO rejected the claim of the 80IB of the

assessee. The Id. CIT(A) had considered the petition of the assessee remand back the matter before the Id. AO. The assessee had filed appeal by challenging the order of the Id. CIT(A) before the ITAT.

3. The Id. Counsel for the assessee filed the written submission and brief note and argued that the assessee is a exporter of cotton ginning and pressing, factory at village Burjmohar, Abohar. The assessee also an exporter and also the trader of the items and claimed deduction u/s 80IB. The Id. Counsel submitted the appeal order for assessment year 2009-10 bearing Appeal No. 478-IT/CIT(A)/BTI/2011-12, date of order 26.03.2015. As per the order, the deduction u/s 80IB was accepted by the revenue authorities. The Id. Counsel submitted a computation which is annexed in paper book **APB 38** related to claim of deduction 80IB.

<u>Computation of Eligible Income U/s 80-IB</u>			
Total Income As Per Statutory Chart			6541057.00
<u>Less Income Derived From Activities</u>			
<u>Other Than Industries</u>			
Cotton Export A/c	2972643.00		
Cotton Seed Trade	0.00		
Cotton Seed Cake	0.00	2972643.00	
Weight Bridge	213945.00		
Godown Rent	2750.00	216695.00	
		3189338.00	
Less Proportionate Expenses Attributable To Trade As Per Chart		3821567.00	0.00
Income Eligible For Deduction U/s 80-IB			6541057.00

4. As per the ld. counsel the eligible deduction u/s 80IB is 65,41,057/- and 30% of the claim is allowed i.e. worked out amount of Rs.19,62,016/-.

5. The ld. Sr. DR argued and relied on the order of the ld. CIT(A) in para 10 which is extracted as below:

“10. Another issue which deserves attention here is that the appellant seeks to negate the effect of exclusion of “other income” by claiming

deduction of proportionate expenses attributable to trade from the excluded “other income” to arrive at the eligible income for deduction. Though this issue has not been touched upon in the appellate order, it is held that it is material for arriving at the correct eligible income for deduction under section 80IB. The appellant’s “other income” including the Duty Draw Back which is embedded in the cotton export account are incidental to the industrial activity and not directly related to it. The appellant’s effort at reducing the “other income” by deducting proportionate expenses is only an artificial device to enhance the deduction, which is not envisaged in that section. This section only allows deduction of the specified percentage of the profits derived from the industrial undertaking. The AO is directed to re-compute the “other income” as per the observations aforesaid and then arrive at the “eligible income” for deduction. It is ordered accordingly.”

6. We heard the rival submission and considered the documents available in the record. The assessee submitted a calculation for both the assessment years 2008-09 and 2009-10 related to claim u/s 80IB, **APB page no. 3,5 and 7**. The only point raised by the Id. CIT(A) is calculated the other income, but no such other income was pointed out in the calculation of the assessee. The claim of the assessee related

to section 80IB is restricted by the revenue on determination of other income embedded in the profit of the assessee. Respectfully, we observed the direction of Hon'able Apex Court in the case of **Krishak Bharati Cooperative Ltd. v. Joint Commissioner of Income-tax** ,[2022] 142 taxmann.com 332 (SC). Held that the interest income is not part of deduction U/s 80IA. The ld. CIT(A) had rightly pointed out about the embedded duty drawback value in Export Turn Over which is not separately explained by the assessee in the submission. The claim of interest income & other income should be verified by the ld. AO during hearing. The assessee should get reasonable opportunity to submit the evidence during the hearing. Accordingly, the matter is setting aside to ld. AO consider the terms indicated above.

7. In the result, the appeal of the assessee bearing **ITA No. 508/Asr/2016** is allowed for statistical purpose.

Order pronounced in the open court on 18.10.2022

Sd/-

(Dr. M. L. Meena)
Accountant Member

Sd/-

(ANIKESH BANERJEE)
Judicial Member

AKV

Copy of the order forwarded to:

- (1) The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

True Copy
By Order