

आयकर अपीलीय अधिकरण, कोलकाता पीठ 'ए', कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH KOLKATA

श्री संजय गर्ग, न्यायिक सदस्य एवं श्री मनीष बोरड, लेखा सदस्य के समक्ष

Before Shri Sanjay Garg, Judicial Member and Dr. Manish Borad, Accountant Member

I.T.A No.512/Kol/2021
Assessment year: 2019-20

Harbauer (India) Pvt. Ltd.....Appellant

16 Acropolis Mall, 1858 7th Floor,
Rajdanga Main Road, Kasba,
Kolkata-700107.

[PAN: AABCH3424M]

vs.

ADIT, CPC.....Respondent

Appearances by:

Shri Anuj Musaddi, CA, appeared on behalf of the appellant.

Smt. Ranu Biswas, Addl. CIT-DR, appeared on behalf of the Respondent.

Date of concluding the hearing : January 23, 2023

Date of pronouncing the order : February 08, 2023

आदेश / ORDER

संजय गर्ग, न्यायिक सदस्य द्वारा / Per Sanjay Garg, Judicial Member:

The present appeal has been preferred by the assessee against the order dated 22.09.2021 of the National Faceless Appeal Centre [hereinafter referred to as the 'CIT(A)'] passed u/s 250 of the Income Tax Act (hereinafter referred to as the 'Act'). The assessee in this appeal has taken the following grounds of appeal:

“1(a). On the facts and in the circumstances of the case and in law, the Ld. CIT(Appeals) erred in upholding the additions/ disallowances made by the Learned ADIT-CPC in the order under section 143(1) of the Income Tax Act, 1961 ('Act').

1(b). On the facts and in the circumstances of the case and in law, the Ld. CIT(Appeals) erred in not providing opportunity of personal hearing/ video conferencing before upholding the additions/ 1(b) disallowances made by the Learned ADIT-CPC in the order under section

143(1) of the Income Tax Act, 1961 (Act), thereby violating the principles of natural justice.

2(a). On the facts and in the circumstances of the case and in law, the Ld. CIT(Appeals) grossly erred in upholding the disallowance made by the Ld. ADIT-CPC under section 80-IA of the Act of Rs.4,019,494 on the pretext that the appropriate schedules in the Income Tax Return was not filled properly without appreciating the facts that the Assessee has correctly filled all the details mentioned by the Ld. CIT(Appeals) in its revised return of income.

2(b) On the facts and in the circumstances of the case and in law, the Ld. CIT(Appeals) grossly erred in upholding the disallowance under section 80-IA of the Act merely on the basis of procedural error even after accepting the eligibility of the Assessee to claim deduction in its revised return of income.

3(a) On the facts and in the circumstances of the case and in law, the Ld. CIT(Appeals) has erred in upholding the addition of Rs.278,455 towards delay in deposit of employees contribution to 3(a) provident fund and ESI under section 143(1)(a)(iv) of the Act even though no addition to the income was allowed to be made under section 143(1)(a)(iv) of the Act.

3(b) On the facts and in the circumstances of the case and in law, the Ld. CIT(Appeals) has erred in adding the sum of Rs. 278,455 towards delay in deposit of employees contribution to provident 3(b) fund and ESI under section 143(1)(a)(ii) of the Act even though there was no incorrect claim made by the Appellant in its Return of Income which was apparent from records.

4(a) On the facts and in the circumstances of the case and in law, the Ld. CIT(Appeals) has erred in not following the judicial discipline and upholding the addition made by the learned ADIT-CPC for delay in deposit of employees contribution to provident fund and ESI even though the jurisdictional Hon'ble AT have held on the contrary in the case of Harendranath Biswas (ITA No.186/Kol/2021).

4(b) On the facts and in the circumstances of the case and in law, the Ld. CIT(Appeals) has erred in holding that the amendment made in the provisions of section 36(1)(va) of the Act vide Finance Act, 2021 is retrospective in nature.

5(a) On the facts and in the circumstances of the case, the Ld. CIT(A) erred in upholding the levy of excess interest under section 234B and 234C of the Act of Rs 72,940 and Rs 60,381 respectively.

5(b) On the facts and in the circumstances of the case, the Ld. CIT(Appeals) has erred in upholding the action of the learned ADIT-CPC in

levying interest under section 234C of the Act without appreciating the fact that interest under section 234C is required to be computed on the income as declared in the Return of Income and not on the income as computed in the intimation passed under section 143(1) of the Act.”

2. **Ground Nos.1(a) & 1(b)** are general in nature and does not require any specific adjudication.

3. **Ground Nos.2(a) & 2(b)** – Vide Ground Nos.2(a) & 2(b), the assessee has contested the action of the CIT(A) in upholding the disallowance made by the Id. ADIT-CPC in respect of deduction claimed 80IA of the Act of Rs.40,19,494/-.

4. At the outset, the Id. counsel for the assessee has invited our attention to the impugned CPC intimation to submit that the return of the assessee was processed u/s 143(1) of the Act. However, the claim of the assessee u/s 80IA has been denied on vague averments pointing out that “in Schedule VI-A under Part-C deduction in respect of certain incomes, in Sl No.2.e deduction is claimed under section 80IA/Form 10CCB or Form 10 CCB has not been e-filed within the due date”. The Id. counsel for the assessee has further invited our attention to the impugned order of the CIT(A) to submit that it was demonstrated before the CIT(A) that the assessee has duly made claim of 80IA in the return of income and of the corresponding schedule etc. were duly filled and further that Form 10CCB was duly e-filed along with return of income within the due date. That the Id. CIT(A) has rejected the appeal of the assessee only on the vague reason that the assessee might not have filled the columns of corresponding schedule u/s 80IA or might not have e-filed the Form 10CCB within the due date. He has only held that the filing of Form 10CCB only will not help the assessee, if the deduction has

not been claimed by properly filling up required schedule as discussed above.

5. However, it has not been pointed out by the CIT(A) as to what was the error in filling up the schedule etc. In fact, the reasons pointed out by the CPC as well as reasons given by the CIT(A) are vague and ambiguous. It is neither the case of the Assessing Officer nor of the CIT(A) that the assessee is not entitled to claim deduction u/s 80IA of the Act. The CPC has denied the claim only on the basis of vague and ambiguous reasons. It has been held time and again by the courts of law that the Income Tax Authorities must charge the legitimate taxes from the taxpayers. If an assessee is entitled to certain deductions under the provisions of the Income Tax Act, the same should not be disallowed, merely because of any bona fide mistake or error on the part of the taxpayer, rather, the Income Tax Authorities should assist the concerned assesseees in filing their correct returns of income. This is not the case of the Department that the assessee was not entitled to the deduction claimed u/s 80IA of the Act. Even the Hon'ble Apex Court in the case of "CIT vs. G. M. Knitting Industries (P) Ltd. & Others" Civil appeal No. 10782 of 2013 & 4048 of 2014 and in the case of "M/s Aks Alloys (P) Ltd. (Civil Appeal No. 10782 of 2013), vide a consolidated order has held that even though, necessary certificate in Form 10CCB along with the return of income has not been filed, but, if the same was filed before the final order of assessment, the assessee, even in such circumstances, would be entitled for claim of deduction u/s 80IB of the Act. The facts of the assessee's case are on much better footing. The assessee has duly filed the audit report before the due date of filing of the return of income which was very much part of the return of income as on the due date of filing of the return of income.

6. In view of this, the action of the lower authorities in denying the deduction u/s 80IA of the Act to the assessee cannot be held to be justified. The impugned order of the CIT(A) is set aside and the Assessing Officer is directed to allow the deduction claimed by the assessee u/s 80IA of the Act.

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

Kolkata, the 8th February, 2023.

Sd/-

[डॉक्टर मनीष बोरड /Dr. Manish Borad]

लेखा सदस्य /Accountant Member

Sd/-

[संजय गर्ग /Sanjay Garg]

न्यायिक सदस्य /Judicial Member

Dated: 08.02.2023.

RS

Copy of the order forwarded to:

1. Harbauer (India) Pvt. Ltd
2. ADIT, CPC
3. CIT(A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches