

**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. 613/Asr/2017**  
Assessment Year: 2013-14

Asstt. Commissioner of  
Income Tax, Circle-1,  
Jammu

**(Appellant)**

**V.** M/s J. K. Mint Industries,  
SIDCO Industrial Company,  
Complex, Lane No. 04,  
Phase-1, Bari Brahamana  
Jammu

[PAN: AAIFJ 4923D]  
**(Respondent)**

Appellant by Sh. Ruches Sinha, Adv. &  
Sh. Anmol Batra, CA

Respondent by Smt. Rajinder Kaur, CIT-D.R.

Date of Hearing : 14.02.2023  
Date of Pronouncement : 14.03.2023

**ORDER**

**Per Dr. M. L. Meena, AM:**

The present appeal has been filed by the Revenue against the order of the Ld. Commissioner of Income Tax (Appeals), J&K, Jammu dated 29.06.2017 in respect of Assessment Year 2013-14.

2. The Revenue has raised the following grounds of appeal:

- “1. The Ld. CIT (A) has erred in allowing the appeal of the assessee on the ground that the assessee has fulfilled the conditions for claiming deduction u/s 80IB of the Act in the previous and subsequent assessment years failing to appreciate that for every assessment the conditions necessary for claiming deduction are to be fulfilled and in the instant case the assessee could not do so.*
- 2. The Ld. CIT (A) is in error in failing to appreciate that employment of 10 workers is a verifiable fact and that AO has examined the Manager and also obtained report of PF department from both of which it is clear that assessee did not have 10 workers during the year*
- 3. The Ld. CIT (A) is in error in accepting the case setup by the appellant which is against facts on records.*

***The appellant craves to amend or add any one or more grounds of appeal.”***

3. The assessee is manufacturing supplements for poultry feed. The case of earlier year was also under scrutiny. The assessee has declared sales at Rs. 13.59 crores and gross profit of Rs. 5.56 crores which is 41.62% of the total sales. After claiming expense in the profit and loss account, the net profit was declared at Rs. 5.56 crores which is 50.97% of the sales. After claiming 100% deduction u/s. 80IB of the Income tax Act, returned income of 'NIL' was filed. The assessee has paid tax of Rs. 1,06,09,326/- u/s. 115JC of the Income tax Act. During the assessment proceedings, in order to examine whether the conditions required u/s. 80IB

of the Income tax Act, have been fulfilled by the assessee, the AO recorded the statement of Shri Harit Sharma, Manager and In-charge of the concern M/s J. K. Mint Industries in response to the query that how many workers were looking after the work in the unit, stated that around 6 to 7 employees were working in the unit during the period under consideration.

3.1 The AO then issued a letter to the Addl. Commissioner, Provident Fund office, Jammu to know whether the assessee has been filing PF Returns and whether any inspection was carried out by the PF office in the case of the assessee. It was informed by the PF office that on two occasions the Inspections were carried out in the premises of the assessee and it was found out that 7 to 8 employees were working in the factory unit. The AO, therefore, held that the assessee was not fulfilling the mandatory conditions of keeping at least 10 workers to get the benefit u/s. 80IB of the Income Tax Act. It was also noticed by the AO that as per the form 10 CCBB submitted by the assessee it was found that in col. no. 18 no figures have been given about the number of employees engaged in the unit. The AO, therefore, disallowed the claim of deduction made by the assessee u/s. 80IB of the Income tax Act on the ground that it has not fulfilled the prescribed conditions under section 80IB of the Act.

4. Aggrieved by the Assessment Order, the assessee filed appeal before the CIT(A) who has granted relief by deleting the addition by observing as under:

**“5. Determination:**

*I have considered the facts of the case and submission made by the appellant stated as above.*

*During the appellate proceedings the appellant has stated that during the assessment year under consideration the appellant had employed more than 10 workers and as such he has fulfilled the conditions as mentioned in section 80IB(2)(iv) of the Income tax Act. In support of its claim the appellant has submitted the copy of attendance register for the month of April 2012 to March 2013, copy of payment of wages register for the month of April 2012 to March 2013 and the copy of "Ledger Account of wages and salary" to substantiate the payment made to the workers during April 2012 to March 2013. The appellant has also submitted that besides the above workers, the appellant has also employed some security workers from B.D. Security Pvt. Ltd. for the assessment year 2013-14 and these workers were not included in the number of workers the details of which for also been enclosed as Annexure -B to A-D and the submission. The copy of ledger account bills and details of workers employed from security agency is also enclosed as Annexure A-F.*

*The appellant has also enclosed the copy of income tax return, balance sheet, and profit and loss account along with Annexure, Audit Report and Form No. 10CCB of the Income tax Act for the assessment year 2013-14 i.e., the assessment year under consideration.*

*The appellant then placed the reliance on the decision of CIT Vs. CIT Vs. K.G. Yedyurappa & Co. 152 ITR 152 ( Kar ), CIT Vs. Prithviraj Bhoorchand [ 2005] 280ITR 94 ( Guj ) and CIT Vs. Jyoti Plastic Works ( P ) Ltd. 203 Taxman 546/16 Taxman.Com 172 (Bom.) where the term 'workers' used in section 80IB (iv) of the Income tax Act includes and mean 'casual' 'Permanent', 'temporary', all these three categories are counted to define workers under this section. Since under the provisions of section 80IB (iv) the 'worker' has not been defined the definition as suggested in the above judicial decisions should prevail.*

*The appellant has stated that the statement of Sh. Harit Sharma, Manager and the inspection report given by the Provident Fund Department cannot be relied upon as the appellant was not given the opportunity to cross examine Sh. Harit Sharma and finding of the PF Department does not ipso facto apply to the provisions of the Act. Reliance was placed by the appellant on the decision of K.T.M.S. Mohammed Vs. Union of India (1992) 197 ITR 196 (SC) wherein it has held that the provisions of PF Act and those of Income tax Act are set out in different background with different purposes. It was also submitted that the report of PF department nowhere states that the appellant was not employing ten workers for the purpose of claiming deduction u/s. 80IB; at the most it throws light on the number of workers present on that particular day when the said inspection was carried out by the PF Department. It was also submitted by the appellant that department had not conducted an independent enquiry to find out the actual numbers of workers.*

*The appellant has further claimed that in the immediate preceding year i.e., A.Y 2012-13 and immediate succeeding year i.e., A.Y 2014-15 the deduction u/s. 80IB was allowed by the Department and to apply the rule of consistency the Department should not change its stand. The appellant has then placed the reliance on the two decisions of the Hon'ble Supreme Court in the case of Radhasoami Satsang 193 ITR 321 and CIT Central vs. M/s. Excel Industries Ltd in support of its contentions.*

*I have considered the above submission and also the judicial decision on which the appellant has placed reliance upon. It is found that the issue of eligibility of the assessee to get deduction u/s 80IB of the Act was examined in detail in the immediately preceding assessment year 2012-13 and immediately succeeding assessment year 2014-15 and deduction was allowed after finding it that the assessee had fulfilled the conditions as required u/s. 80IB (2) (iv) of the Act. In the assessment year 2014-15 even the JCIT had issued directions u/s. 144A of the Income tax Act on the application filed by the assessee to allow the deduction as he had found out after necessary verification that the assessee had employed more than 10 workers.*

*Thus, I am in agreement with the contention of the appellant that the deduction u/s 80IB of the Act cannot be disallowed on the basis of inspection made by the PF Department on a particular day when 7 to 8 workers were found to be working in the company. Similarly, the statement of Shri Harit Sharma*

*cannot be made a basis for denial of deduction in the absence of opportunity not provided the assessee to cross examine him in view of the settled legal position.*

*On facts also, the AO had not pointed out any specific defect in the salary register, wages register attendance register and payment of wages register produced before him during the assessment proceedings which showed that more than 10 workers were working in the factory unit of the assessee.*

*I, therefore, hold that assessee was entitled to get deduction u/s. 80IB of the Act. It is pertinent to mention here that though, the return of income after claiming deduction u/s. 80IB was declared at 'NIL', yet the assessee had paid tax of Rs. 1,06,09,326/- u/s.115JC of the Income tax Act. Accordingly, the claim of deduction made by the assessee u/s. 80IB of the Act is allowed. In effect the appeal is allowed."*

5. The Ld. DR for the department submitted that the Ld. CIT (A) has erred in allowing the appeal of the assessee on the ground that the assessee has fulfilled the conditions for claiming deduction u/s 80IB of the Act in the previous and subsequent assessment years. He failed to appreciate that for every assessment, the conditions necessary for claiming deduction are to be fulfilled and in the instant case the assessee could not do so; that employment of 10 workers is a verifiable fact whereas AO has examined the Manager and also obtained report of PF department, which makes it clear that assessee did not have 10 workers during the year under consideration. He pleaded that the impugned order may be set aside and the assessment order be restored.

6. Per contra, the defendant Ld. counsel strongly supported the impugned order. He reiterated the submissions made before the Ld. CIT(A) as under:

**Submissions of the Appellant:**

1. *At the outset, it is submitted that during the assessment proceedings for the A.Y 2013-14, the case could not be presented in proper way as during that time, agitation on account of JAT reservation was going on in Haryana, and the erstwhile counsel belonged to Haryana and therefore could not frequently travel between Haryana and Jammu for representing the case. Hence the facts of the case were not presented in a proper manner before the then AO and for that matter the facts were also not appreciated by the then AO. **The issue under consideration has been examined during the assessment proceedings for the A.Y 2012-13 and also for the A.Y 2014-15 under scrutiny proceedings U/s 143(3) of the Act and the appellant has been granted deduction U/s 80IB of the Act.** The, the then AO has therefore carefully examined this issue and after examining the relevant details have duly granted the deduction U/s 80IB to the Appellant. This is a matter of record and the facts are undisputed. The copies of the said assessment order are enclosed as **Annexure-A** (Colly).*
2. *It is submitted that for the year under consideration the Appellant have employed more than ten workers and therefore the conditions stated U/s 80IB (iv) are duly satisfied. For substantiating the same, the Appellant is again enclosing the following documents:*
  - a) *Copy of the 'attendance registers' for the month of April 2012 to March 2013 as **Annexure-B** from page no. 5. to 16*
  - b) *Copy of 'payment of wages registers' for the month of April 2012 to March 2013, **Annexure-C** from page no. 17 to29*
  - c) *Copy of 'Ledger account of wages and salary' substantiating the payment of the workers for the month of April 2012 to March 2013 as **Annexure-D** from page no. 30 to31*

*From the perusal of the aforesaid it shall be clear that the actual numbers of workers employed by the Appellant is more than ten.*

Besides the aforesaid document the appellant is enclosing the copies of the ITR, Audit report and form no. 10CCB for the A.Y 2013-14. These are enclosed as **Annexure-E (Colly)** from page no. **32** to54

3. *WITHOUT PREJUDICE TO THE ABOVE*, it is further submitted that besides the above workers, the Appellant has also employed some security workers from M/s B.D Security Pvt. Ltd. for the A.Y 2013-14 and these are not included in the number of workers the details of which are enclosed from Annexure-B to Annexure-D (*supra*). The copy of ledger account, bills and details of workers employed from security agency is also enclosed as **Annexure-F (Colly)** from page no. **55** to85.

All the aforesaid document, except Annexure-C are already placed/produced before the AO, however the same is again enclosed for ready reference. The Annexure-C cannot be filed before the AO due to the JAT agitation going on in Haryana when the assessment order was passed.

4. It shall not be out of place to mention here that the term 'workers' used in section 80IB (iv) includes and mean 'casual'/ permanent' or 'temporary'. All the three categories should be counted under the definition of workers. *CIT Vs. K.G Yedyurappa & Co. 152 ITR 152 (Kar.)*. It is further held in the cases of *CIT Vs. Prithviraj Bhoorchand [2005] 280 ITR 94 (Guj)* and *CIT Vs. Jyoti Plastic Works (P) Ltd. 203 Taxman 546/16 Taxmann.com 172 (Bom)* that contract labourers must also be counter as 'workers' in terms of section 80IB (iv). The ratio decidendi of the same was that, since under the provisions of the 80 IB (iv) of the Act, the term 'workers' has not been defined, the same *inter alia* include casual, contractual and temporary workers also for the purpose of granting deduction U/s 80IB (iv).
5. For the sake of clarity it is one again clarified that in the case of the Appellant the actual numbers of workers (i.e. excluding any causal, contractual and temporary workers) for the year under consideration **was ten or other words not less than ten**. The Appellant has already furnished the necessary details in regard to the same before your goodself for the year under consideration.
6. The fact of the matter is that for the A. Y 2013-14, the Appellant has **employed ten or more persons** for the purpose of production the poultry feed and the same did not included any workers of the security guards etc. The same can be verified from the assessment records of the A.Y 2013-14. The Appellant has duly

supplied the list of the number of workers in the evidence of 'attendance register' and 'payment and wages register' etc.

7. The AO in the A.Y 2013-14 in coming to the conclusion that the Appellant has employed only eight persons, has placed reliance on two aspects, the first being the statement of Shri Harit Sharma (Manager) and the second the report of the PF department. In this regard it is submitted that the Appellant was not given an opportunity to cross examine Shri Harit Sharma and hence reliance cannot be placed on the same. The AO could not factually and fully place reliance on the report of the PF Department, any finding of the said Department does not ipso facto applies to the provisions of the Act. Reliance in this regard is also placed on the decision of K.T.M.S Mohammed vs Union of India (1992) 197 ITR 196 (SC), it may be submitted that the provisions of PF Act and those of Income Tax Act are set out in different background with different purposes. Without prejudice it is submitted that the report of the PF department nowhere states that the appellant was not employing ten workers for the purpose of claiming deduction U/s 80IB, at the most it throws light on the number of workers present **on that particular day** when the alleged inspection was carried out by the PF department. When the report is read with the attendance register of the appellant, it shall be clear that on that particular day the number of employees were less than ten, as some of them were absent or on leave. This fact was not considered by the AO while passing the assessment order.
8. It is also submitted that it is not the case of the AO that the Department has undertaken an independent enquiry to find out as to whether ten or more workers were working and have found that the actual numbers of workers were actually less than ten. The sole reliance on the report of PF department is not tenable.

The **alternative submission** of the Appellant is that in view of the case laws submitted before your honour the **security guards** which has been employed by the Appellant for the A.Y 2013-14 clearly falls under the meaning of workers as stated in section 80IB (iv). Thus viewed from any angle, the number of workers for the purpose of section 80IB (iv) were more than ten and hence the Appellant is entitled for deduction U/s 80IB.

9. **WITHOUT PREJUDICE TO THE ABOVE**, the appellant has been granted deduction U/s 80IB consistently for the A.Y 2012-13 and 2014-15, therefore applying the rule of consistency upheld by the Apex Court in the case of Radhasoami Satsang 193 ITR 321 the judicial discipline therefore demands the view already accepted should not be changed if there are no changes in facts. It

*is very important to note that the Hon'ble Supreme Court in its latest judgment in CIT Central vs. M/s. Excel Industries Limited delivered on 08.10.2013 has endorsed its own judgment in Radhasoami Satsang (supra) and it has held as follows:*

*"It appears from the record that in several assessment years, the Revenue accepted the order of the Tribunal in favour of the assessee and did not pursue the matter any further but in respect of some assessment years the matter was taken up in appeal before the Bombay High Court but without any success. That being so, the Revenue cannot be allowed to flip-flop on the issue and it ought let the matter rest rather than spend the tax payers money in pursuing litigation for the sake of it*

*The Appellant has tried to encompass the submissions which are applicable to facts of the case; however the Appellant craves leave to make specific submissions at the time of hearing in case of need.*

#### **PRAYER**

*In view of the above, it is submitted that the assessment order dated 03.3.2016 passed U/s 143(3) of the Act for the A.Y 2013-14 be set aside and the appeal of the Appellant be allowed as per the grounds of appeal"*

7. We have the heard rival contentions, perused the relevant material on record, impugned order, written submissions and case law cited before us. The Ld. DR objected to the assessee's claim of deduction u/s 80IB(iv) of the Act, even though in the previous and subsequent assessment years the said claim has been accepted by the department. The sole objection of the department has been that the employment of 10 workers was not verifiable before the AO who has examined the Manager and also obtained report of PF department that assessee did not have 10 workers during the year

under consideration. It is seen that the statement of Sh. Rohit Sharma, Manager was taken in isolation and the assessee has not been granted an opportunity to cross examine in rebuttal and hence, the evidentiary value of such statement without cross examination is in nullity in the eyes of law. Further, the report of PF department, did not make it clear that on which particular day there were 8 workers excluding watchman/ckaukidars for day and night and the frequency of such day on monthly basis, so as to understand the working strength/man power/workers employed in view of the requirement of the provisions of section 80IB(iv) of the Act. In our view, the Ld. CIT(A) was justified in approving the claim of the appellant assessee that there were 10 and more workers were employed during the year under consideration.

8. The Ld. Counsel argued that the inspection on one or two day in a financial year conducted by the PF Department, without any specific finding of the said Department does not ipso facto applies to the provisions of the Income Tax Act. Reliance in this regard was placed on the decision of "K.T.M.S Mohammed I/s Union of India", (1992) 197 ITR 196 (SC), where it is observed that the provisions of PF Act and those of Income Tax Act are set out in different background with different purposes. Without prejudice to

above, the report of the PF department nowhere states that the appellant was not employing ten workers for the purpose of claiming deduction U/s 80IB(iv), at the most it throws light on the number of workers present on that particular day when the alleged inspection was carried out by the PF department.

9. It is evident from the attendance register of the appellant, that on that particular day the number of employees were less than ten, as some of them were absent on account of leave etc. These facts have not been appreciated by the AO while passing the assessment order as it was not the case of the AO that the Department has undertaken an independent enquiry to find out as to whether ten or more workers were working and have found that the actual numbers of workers were actually less than ten. The sole reliance on the report of PF department is not tenable. Further, the AO had not pointed out any specific defect in the salary register, wages register attendance register and payment of wages register produced before him during the assessment proceedings to rebut the claim of the appellant assessee that 10 or more workers were working in the factory unit of the assessee. It is pertinent to mention that the issue under consideration has been examined during the assessment proceedings for

the A.Y 2012-13 (preceding year) and also for the A.Y 2014-15 (succeeding year) under scrutiny proceedings U/s 143(3) of the Act and the appellant has been granted deduction U/s 80IB(iv) of the Act. In the assessment proceeding for assessment year 2014-15, the department has accepted the claim of the assessee for deduction u/d 80IB(iv) of the Act with the direction of the JCIT under section 144A of the Act.

10. In view of the above, we are of the considered opinion that the matter is remanded to the AO on the limited issue whether, there were 10 or more workers employed in the factory unit of the assessee to qualify for claim of deduction u/s 80IB(iv) of the Act.

11. In the result, appeal of the assessee is allowed for statistical purposes.

*Order pronounced in the open court on 14.03.2023*

**Sd/-**  
**(Anikesh Banerjee)**  
**Judicial Member**

**Sd/-**  
**(Dr. M. L. Meena)**  
**Accountant Member**

*\*GP/Sr./P.S.\**

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