

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT

BEFORE SHRI PAWAN SINGH, JM & DR. A. L. SAINI, AM

आयकर अपील सं./ITA No.07/SRT/2023

(निर्धारणवर्ष / Assessment Years: (2019-20)

(Virtual Court Hearing)

Assistant Commissioner of Income-tax, Central Circle-2, Room No.505, 5 th Floor, Aayakar Bhawan, Majura Gate, Surat-395001	Vs.	M/s. Hi-Tech Sweet Water Technologies (P) Ltd., 4, Gopal Nagar, Nandeda Char Rasta, GIDC, Bardoli, Surat-394601
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AAACH 7432 C		
(अपीलार्थी /Appellant)		(प्रत्यर्थी /Respondent)

निर्धारिती की ओर से /Assessee by : Shri Kiran K. Shah, CA

राजस्व की ओर से/Revenue by : Shri Vinod Kumar, Sr- DR

सुनवाई की तारीख/ **Date of Hearing** : 21/03/2023

घोषणा की तारीख/**Date of Pronouncement** : 30/03/2023

आदेश / O R D E R

PER DR. A. L. SAINI, ACCOUNTANT MEMBER:

Captioned appeal filed by the Revenue, pertaining to Assessment Year (AY) 2019-20, is directed against the order passed by the learned Commissioner of Income-tax (Appeals)-4, Surat [Ld. CIT(A) for short] dated 15.09.2022.

2. Grounds of appeal raised by the Revenue are as follows:

“1)On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in directing the Assessing Officer that the AO has to verify whether the appellant has filed Form 10CCB on system before the date of processing of return u/s 143(1) of the Act. In case, the appellant has filed the said Form before the date of processing of return, the deduction so claimed u/s 80IA of the Act has to be allowed to the appellant despite that fact that as per the provisions of section 80IA(7) of the I.T. Act the prescribed date for filing of Form No.10CCB was 31/10/2019 and the assessee has filed the Form No.10CCB on 05/06/2020 beyond the specified date as per the provisions of section 80IA(7) of the I.T. Act.

2) Without prejudice to ground No.1, the Ld. CIT(A) has erred in giving direction by passing order u/s 154 of the Act to the AO de horse provisions of section 80IA(7) of the Act and despite there being no mistake apparent from record in the original order.

3) It is, therefore, prayed that the order of the Ld. CIT(A) may be set aside and that of the AO may be restored to the above extent.”

3. Brief facts *qua* the issue are that assessee is a Private Limited Company and engaged in the business of manufacturing and marketing of RO plants. The assessee filed its return of income declaring total income of Rs.3,86,33,790/-. The assessee has three eligible undertakings u/s 80IA of the Act which are providing water treatment facilities to various State Government Organisations. The assessee claimed deduction u/s 80IA of the Act of Rs.1,67,47,499/- and said deduction was allowed to assessee in the previous assessment years in assessment order passed u/s 143(3) of the Act. In the assessment year under consideration the assessee had not filed the prescribed Form No.10CCB as prescribed in the Income Tax Rules, 1962 alongwith return of income. As a consequence of the same, the Assessing Officer disallowed the said deduction vide order dated 14.06.2020.

4. Aggrieved by the order of the Assessing Officer, the assessee carried the matter in appeal before the Learned CIT(A) who has partly allowed the appeal of the assessee, observing as follows:-

“6. Ground No.1 is relating to disallowance of deduction u/s 80IA of the Act as the appellant did not file Form 10CCB alongwith the return of income. According to the AO, the deduction u/s 80IA was disallowed as the appellant failed to file the Form 10CCB alongwith the return as provided u/s 139 of the Act. During the appellate proceedings, the appellant submitted that the said Form 10CCB was filed on 05.06.2020 almost 9 days before the return was processed u/s 143(1) of the Act and hence, Form No.10CCB was available with the AO as on the date of processing of return. The appellant also submitted that the claim of deduction u/s 80IA of the Act was allowed to the appellant in all the previous scrutiny assessments u/s 143(3) of the Act and hence, the appellant is eligible for deduction u/s 80IA of the Act and the same cannot be disallowed merely because the Form 10CCB was not filed along with the Return of Income. The appellant places reliance on the decision of the jurisdictional high court in the case of Gujarat Oil and Allied Industries reported in 201 ITR 325.

6.1 I have gone through the order u/s 143(1) of the Act passed by the AO and the submissions of the AR of the appellant. I have also gone through the ratio of decision referred to above by the AR of the appellant reported in 201 ITR 325. The Hon'ble High Court in the said case have held that the provision about furnishing of auditor's report in Form No.10CCB alongwith the return is the procedural provision and directory in nature and it would suffice if such report is made available to the AO before the framing of the assessment, has to consider, apply his mind and decide on the issue. The said decision of the Hon'ble High Court is with referred to section 80J of the Act which is identical provision of section 80IA and hence, the ratio of the said decision squarely applies to the facts of the appellant's case. Various other high court have also taken a similar view like Delhi High Court in the case of CIT v. Contimeters Electric Pvt. Ltd. 317 ITR 249

(Del) and CIT vs. Web Commerce India Pvt. Ltd., 318 ITR 135 (Del), which was upheld by Hon'ble Supreme Court.

*6.2 In view of the above, the AO is directed to allow deduction u/s 80IA to the appellant after verification of Form 10CCB filed by the appellant. Ground No.1 is treated to have been **partly allowed.**”*

5. Subsequently, the Ld. CIT(A) passed the order u/s 154 of the Act dated 15.09.2022.

6. Aggrieved by the order of the ld. CIT(A), the Revenue is in appeal before us.

7. Before us Ld. Sr-DR for the Revenue submitted that assessee has not filed prescribed Form 10CCB within the time limit prescribed under the Act, therefore deduction u/s 80IA should not have been allowed to assessee. Apart from this, the Ld. CIT(A) does not have power to rectify the procedural mistake of not giving appeal effect. Apart from this, Ld.Sr-DR for the Revenue submitted that assessee has not fulfilled the condition mentioned in Section 80IA of the Act as the assessee did not file Form10CCB within the time limit prescribed under the Act therefore assessee is not eligible to get deduction u/s 80IA of the Act, and hence order passed by Assessing Officer may be affirmed.

8. On the other hand, Ld.Counsel for the assessee defended the order passed by the Ld. CIT(A) and submitted that the issue is already covered in favour of assessee by the order of the co-ordinate Bench of this Tribunal in assessee's own case in ITA No.230/SRT/2022 for A.Y 2019-20 order dated 30.01.2023, wherein the Co-ordinate Bench has held as follows:

“12. We note that learned CIT(A) had rectified his order u/s 154 of the Act wherein the learned CIT(A) categorically held that Assessing Officer was simply required to verify the date of filing of form no. 10CCB on portal and not the correctness of the claim u/s 80IA of the Act, as before him the only issue was whether the assessee is liable to get deduction u/s 80IA of the Act when the prescribed form 10CCB was filed after a due date but before the dated of assessment u/s 143(1) of the Act. Therefore, considering the findings of the Coordinate Bench of ITAT Surat in assessee's own case (supra), the assessee is entitled to claim deduction under section 80IA of the Act. As we have noted above that the claim of deduction u/s 80IA of the Act was allowed to the assessee in all the previous scrutiny assessments u/s 143(3) of the Act and hence, the assessee is eligible for deduction u/s 80IA of the Act and the same cannot be disallowed

merely because the form 10CCB was not filed along with the Return of Income. That being so, we decline to interfere with the order of ld CIT(A) in deleting the aforesaid additions. His order on this addition is, therefore, upheld and all the grounds of appeal of the Revenue are dismissed.”

9. We have heard both the parties and carefully gone through the submission put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the fact of the case including the findings of the ld CIT(A) and other materials brought on record. We find merit in the submission of Ld. Counsel for the assessee and observed that the issue is squarely covered in favour of assessee by the order of Co-ordinate Bench of this Tribunal in assessee’s own case (supra), wherein the Tribunal has dealt with the issue under consideration. There is no change of facts and law. Therefore, respectfully following the binding judgment of the Co-ordinate Bench of this Tribunal, we dismiss the appeal of Revenue. We order accordingly.

10. In the result, appeal filed by the Revenue is dismissed.

Order is pronounced on 30/03/2023 by placing result on notice board.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Sd/-
(Dr. A.L. SAINI)
ACCOUNTANT MEMBER

सुरत /Surat / दिनांक/ Date: 30/03/2023

Dkp Outsourcing Sr.P.S.

Copy of the Order forwarded to:

1. The Assessee
2. The Respondent
3. The CIT(A)
4. Pr.CIT
5. DR/AR, ITAT, Surat
6. Guard File

// True Copy //

By Order

Sr. Private Secretary/Private Secretary/
Assistant Registrar, ITAT, Surat