

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE
BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

ITA No.194/Ind/2022
Assessment Year: 2017-18

ACIT Central-1 Indore	बनम/ Vs.	M/s. Ramdev Sugars Pvt. Ltd. 25, Nasia Road, Near Bus Stand, Indore
(Appellant / Revenue)		(Respondent / Assessee)
PAN: AABCR 8097 G		
Revenue by	Shri Ashish Porwal, Sr. DR	
Assessee by	Shri Deepak Mantri, AR	
Date of Hearing	28.02.2023	
Date of Pronouncement	28.03.2023	

आदेश / O R D E R

Per B.M. Biyani, A.M.:

Feeling aggrieved by appeal-order dated 02.05.2022 passed by learned Commissioner of Income-Tax (Appeals)-3, Bhopal [**Ld. CIT(A)**], which in turn arises out of assessment-order dated 18.12.2019 passed by learned ACIT/DCIT, Circle-4(1), Indore [**Ld. AO**] u/s 143(3) of Income-tax Act, 1961 [**the Act**] for Assessment-Year [**AY**] 2017-18, the Revenue has filed this appeal on following grounds:

“1. Whether on the fact and in the circumstances of the case and in law, the Ld. CIT(A) has erred in allowing the claim of assessee u/s 80IA(4)(iv) of Act ignoring the fact that the conditions under sub-clauses 80IA(4)(iv)(a), 80IA(4)(iv)(b) & 80IA(4)(iv)(c) are not fulfilled by the assessee.

2. Whether on the fact and in the circumstances of the case and in law, the Ld. CIT(A) has erred in holding that sub-clauses of section 80IA(4)(iv)(a), (b) & (c) are independent of each other, whereas, a plain reading of above referred section in IT Act makes it amply clear that all the conditions under sub-clauses of section 80IA(4)(iv) (a), (b) & (c) are to be fulfilled by assessee to be eligible for deduction.”

2. Heard the learned Representatives of both sides at length and case-records perused.

3. Briefly stated the facts are such that the assessee-company is engaged in the manufacture of sugar, molasses and generation of power. It filed return of income of the relevant assessment-year on 31.10.2017 declaring a total income of Rs. 11,62,10,200/- after claiming deduction u/s 80-IA(4)(iv) of Rs. 1,70,59,301/- in relation to the business of “generation of power”. The case was subjected to scrutiny and the Ld. AO completed assessment u/s 143(3) wherein the assessee’s claim of deduction u/s 80-IA(4)(iv) was denied. Aggrieved, the assessee filed first appeal and succeeded. Now, the revenue has come in this appeal before us assailing the order of first appellate authority.

4. Ld. DR, drawing our attention to the assessment-order, submitted that the Ld. AO has observed that the assessee is engaged in several businesses like the business of manufacture of sugar, power generation, trading of sugar and gain, but not in the “eligible business” of “generation or generation and distribution of power, transmission or distribution by laying a network of new transmission or distribution lines” as stipulated in section 80-IA(4)(iv). Therefore, he had disallowed deduction. Ld. DR supported the assessment-order and requested to uphold the disallowance.

5. Per contra, Ld. AR submitted that the assessee-company is in fact engaged in the business of “generation of power” which is captively consumed. He submitted that in order to be eligible for deduction, engagement in “generation of power” is sufficient and it is not necessary to undertake all activities such as “generation or generation and distribution of

power, transmission or distribution by laying a network of new transmission or distribution lines” together. Drawing our attention to the order of first-appeal, Ld. AR demonstrated that the Ld. CIT(A) has given a careful consideration to the facts of case in the light of provision of section 80-IA(4)(iv) and made a right conclusion that the assessee is engaged in the business of “generation of power” and therefore eligible for deduction.

6. Then, the Ld. AR submitted that the assessee has been claiming this deduction consistently in past and the same stood allowed by authorities after due examination. To demonstrate this, the Ld. AR carried us to Page No. 72 to 90 of the Paper-Book where a copy of the assessment-order in assessee’s own case for AY 2013-14 is filed. Drawing our attention to Para No. 1 to 3 of the same, Ld. AR pointed out that in AY 2013-14, same deduction was allowed to assessee in scrutiny assessment u/s 143(3) and subsequently the case was again re-opened u/s 148 to re-examine the eligibility of deduction. Thereafter, during re-opened assessment, the Assessing Officer re-examined the claim of assessee meticulously and did not find anything adverse. The relevant paragraphs extracted from the order are as under:

“5.2 The reply of the assessee was duly considered and it has been observed that:

1. The assessee has replied and clarified the conditions prescribed in section 80IA vis-à-vis claim of deduction as under:

1. The Company has claimed deduction u/s 80IA of Rs.78,36,085/-

2. The deduction has been claimed u/s 80IA(4)(iv) for generation of power.

3. The company produce power by using biodegradable waste ie bagaas. In fact this is also encouraged by United Nations and Govt of India as it helps in decreasing power generation by thermal power unit thus overall reduction in pollution and earth warming.

4. The audited balance Sheet of power division which a separate undertaking was already submitted.

5. Section 80IA (4) allows deduction of 100% to Profit and gain derived by undertaking or an enterprises from any business referred to in sub-section (4). Sub-section 4(iv) applies to undertaking which is setup for the generation or generation and distribution of power it begins to generate power at any time during the period beginning on the 01/04/1993 and ending on 31/03/2017.

6. The assessee's power undertaking is generating power and accordingly deduction as above under section 80IA of the IT Act has been claimed. The deduction is allowed to power generating undertakings. It is allowable to all captive power generating companies.

7. The assessee has got its scrutiny assessment done for last many years and the deduction u/s 80IA has been regularly allowed.

The reply of the assessee is duly considered and after verification found acceptable as the assessee has engaged in business of manufacturing of sugar. Further, to fulfill the requirement of electricity it has also produced the power for its own electricity requirements from thermal power units.

1. Further, the assessee has replied and clarify the requirements to justify the eligibility the claim u/s 80IA deduction:

2. It has a power generating undertaking, separate accounts are maintained.

3. it has started producing of power during the eligible years.

4. It is not formed by splitting up or reconstruction of a business already in existence.

5. it is not formed by the transfer of machinery or plant previously used for anypurpose.

6. Form 10 CCB duly submitted:

The reply of the assessee is duly considered and after verification found acceptable as the assessee maintains separate books of accounts of its power generating unit, which have been produced during the course of assessment proceedings and have been examined on test check basis.

3.5 The section 80IA(4)(iv) states that:

(a) is set up in any part of India for the generation or generation and distribution of power if it begins to generate power at any time during the period beginning on the 1st day of April, 1993 and ending on the 31st day of March, 2017;

(b) starts transmission or distribution by laying a network of new transmission or distribution lines at any time during the period beginning on the 1st day of April, 1999 and ending on the 31st day of March, 2017:

Provided that the deduction under this section to an undertaking under sub-clause (b) shall be allowed only in relation to the profits derived from laying of such network of new lines for transmission or distribution;

(c) undertakes substantial renovation and modernisation of the existing network of transmission or distribution lines at any time during the period beginning on the 1st day of April, 2004 and ending on the 31st day of March, 2017.

Explanation. For the purposes of this sub-clause, "substantial renovation and modernisation" means an increase in the plant and machinery in the network of transmission or distribution lines by at least fifty per cent of the book value of such plant and machinery as on the 1st day of April, 2004;

On going through the reply of the assessee and the provisions of section 80IA(4)(iv) of the Income Tax Act, 1961, it is found established that the assessee has eligible for claiming the deduction u/s 80IA(4)(iv) of the Income Tax Act, 1961. Therefore, deduction claim u/s 80IA(4)(iv) of the Income Tax Act, 1961 of Rs.78,36,085/- is allowed to the assessee and no adverse view is taken on issue for AY 2013-14.

7. Ld. AR submitted that the assessee is pursuing the same activity and there is no change. Therefore, in view of past history of preceding assessment-years, the assessee has rightly claimed deduction in current year as well and the Ld. CIT(A) has rightly allowed the same; hence the action of Ld. CIT(A) must be upheld.

8. We have considered rival submission of both sides and perused the orders of lower authorities as well as the documents placed in the Paper-Book in the light of applicable provisions of section 80-IA(4)(iv). After a careful consideration, we find that the assessee has been engaged in the same activity of "generation of power" in past as well as in current year and the deduction claimed by assessee is not a new deduction; in fact the assessee has claimed in earlier years and the authorities have allowed. The assessment-order u/s 143(3) as well as 147 of AY 2013-14 clearly accepts the assessee's eligibility of deduction. Ld. DR could not rebut these points placed by Ld. AR before us. We further observe that the Ld. CIT(A) has mindfully considered the claim of assessee and allowed the same. Therefore,

we do not find any infirmity in the deduction claimed by assessee and for that matter, in the order passed by Ld. CIT(A). Being so, we approve the order of Ld. CIT(A) whereby he has allowed deduction. The grounds raised by Revenue are dismissed.

9. Resultantly, this appeal of Revenue is dismissed.

Order pronounced as per Rule 34 of I.T.A.T. Rules, 1963 on 28/03/2023.

Order pronounced in the open court on/...../2023.

Sd/-

(VIJAY PAL RAO)
JUDICIAL MEMBER

Sd/-

(B.M. BIYANI)
ACCOUNTANT MEMBER

Indore

दिनांक /Dated : 28.03.2023

Patel/Sr. PS

*Copies to: (1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File*

By order

*Sr. Private Secretary
Income Tax Appellate Tribunal
Indore Bench, Indore*

1.	Date of taking dictation	21.3.23
2.	Date of typing & draft order placed before the Dictating Member	21.3.23
3.	Date on which the approved draft comes to the Sr. P.S./P.S.	21.3.23
4.	Date on which the approved draft is placed before other Member	
5.	Date on which the fair order is placed before the Dictating Member for pronouncement	
6.	Date on which the file goes to the Bench Clerk	
7.	Date on which the file goes to the Head Clerk	
8.	Date on which the file goes to the Assistant Registrar for signature on the order	
9.	Date of dispatch of the Order	