

INCOME TAX APPELLATE TRIBUNAL

DELHI BENCH "E": NEW DELHI

BEFORE

SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER

AND

MS. ASTHA CHANDRA, JUDICIAL MEMBER

ITA No. 8528/Del/2019

Asstt. Year: 2011-12

Asstt. Commissioner of Income Tax, Circle-7(2), New Delhi. (Appellant)	Vs.	Shri Manish Sabharwal, 1019, Sector-27B, Chandigarh-160019. PAN AFRPS9185G (Respondent)
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Assessee by:	Shri Deepak Suneja, CA
Department by :	Shri Anil Kumar Sharma, Sr. DR
Date of Hearing :	29.03.2023
Date of pronouncement :	19.04.2023

ORDER

PER ASTHA CHANDRA, JM

The appeal filed by the Revenue is directed against the order of the Ld. Commissioner of Income Tax (Appeals)-3, New Delhi ("**CIT(A)**") dated 26.08.2019 pertaining to the Assessment Year ("**AY**") 2011-12.

2. The only ground of appeal taken by the Revenue reads as under:-

"1. *On the facts and in circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition of Rs. 15,00,710/- u/s 80IC of the Income Tax Act, 1961.*"

3. The facts in brief are that for the AY 2011-12 the assessee individual e-filed his original return on 28.09.2011 declaring income of Rs. 26,04,895/-. It was processed under section 143(1) of the Income Tax Act, 1961 (**the "Act"**). Later on the case was selected for scrutiny and assessment was completed on 17.01.2014 on total income of Rs. 26,04,895/- allowing therein the assessee's claim of exemption of Rs. 15,00,710/- under section 80IC of the Act. The assessment was reopened under section 147 of the Act by recording the reason that the assessee has not maintained separate accounts for the purpose of calculating the profits of the units for which deduction under section 80IC of the Act was claimed and the assessee had not furnished Form 10CCB at the time of original assessment. Accordingly, notice under section 148 of the Act was issued in response to which the assessee filed return declaring total income of Rs. 26,04,895/- on 21.03.2018. During re-assessment proceedings, the assessee objected to the reopening of the assessment and even sought direction under section 144A of the Act from the Addl. CIT, Range-7, New Delhi which was received by the Ld. Assessing Officer (**"AO"**) on 30.11.2018. In para 7, the Ld. AO reproduced the relevant extract of the direction as under:-

"In this regard it is to be mentioned that an application has been filed by the authorized representative of Sh. Manish Sabharwal, PAN: AFRPS9185G for A.Y. 2011-12 requesting to issue direction u/s 144A of the IT Act.

On perusal of the application of the assessee and assessment record it is seen that in the schedule file with original balance sheet at page 48 to 54, capital, fixed assets, investment, inventory, sundry debtors, current liabilities, sales, purchases and all other relevant heads are bifurcated in three units i.e unit 1, 2 and 3 which shows that the assessee has maintained/furnished three separate accounts for the purpose of calculating the profits and deduction thereon. Hence, it cannot be said that the assessee has not maintained separate unit wise account for the purpose of calculating profits and deduction thereon. Further the assessee has claimed that mandatory certificate of 10CCB was submitted during original assessment proceeding also.

It is further noted that even during assessment proceedings u/s 147 the assessee has submitted the form 10CCB as Annexure 9 and 10 alongwith its letter dated 15-10-18 and audited unit wise final accounts as Annexure 11.

The Hon'ble Supreme court in CIT v G.M. Knitting Industries (P) Ltd. (2015(11) TMI 397- SUPREME COURT) dismissed the appeal of Revenue and confirmed the view taken by Madras High Court in case of CIT V. AKS Alloys (P.) Ltd. [2011 (12) TMI 39- MADRAS HIGH COURT] holding that "Even though necessary certificate in Form 10CCB along with return of income had not been filed but same was filed before final order of the assessment was made, the assessee was entitled to claim deduction under section 80-IB."

In view of the above judgment, you are directed to examine the facts of the case and if the facts are similar, allow deduction claimed u/s 801C if no other default is found and complete the assessment as per provisions of the law."

3.1 Vide letter dated 15.10.2018, the assessee submitted an affidavit stating therein that separate audited financial accounts of all the three units as well as certificate in Form 10CCB for the financial year (AY 2011-12) were filed before the Ld. AO during the course of original assessment proceedings.

3.2 Still the Ld. AO was not convinced. Rejecting the assessee's explanation and the affidavit filed by him, the Ld. AO disallowed the claim of assessee for deduction of Rs. 15,00,710/- under section 80IC of the Act and completed the re-assessment on total income of Rs. 41,05,605/- vide his order under section 143(3)/147 dated 12.12.2018.

4. Aggrieved, the assessee appealed before the Ld. CIT(A). During appellate proceedings the assessee made submissions which have been incorporated by the Ld. CIT(A) in para 4.1 of his appellate order. He recorded his observations and findings in para 4.3 of his order which is reproduced below:

"4.3 I have considered the facts of the case and the submission made by the AR. The appellant has raised various issues regarding the reopening of the assessment, non-disposal of the objections, non-compliance with the directions issued u/s 144A of the Act and also on the merits of the case. On perusal of the complete facts, it is observed that in the original assessment order, the AO has specifically mentioned about allowing deduction u/s 80IC of the Act and there is nothing on record to show that the earlier AO had not examined the issues related to the allowability of the deduction u/s 80IC of the Act. Moreover, during re-assessment proceedings also, the appellant furnished the relevant details. Even the Addl. CIT directed the AO u/s 144A of

the Act to allow the said deduction. It is to be observed that the directions issued u/s 144A of the Act are binding upon the AO and the AO has not brought any material or argument on record to differ with the directions issued u/s 144A of the Act. Even if the AO had difference of opinion with the Addl. CIT, still the directions issued u/s 144A of the Act, are binding on the AO. Keeping in view all these facts, I do not find any reason to sustain the addition and accordingly, the addition made by the AO is deleted and the grounds of appeal are allowed.”

5. The Revenue is aggrieved and is before the Tribunal on the ground that the Ld. CIT(A) has erred in deleting the addition of Rs. 15,00,710/- under section 80IC of the Act.

6. The Ld. DR relied on the order of the Ld. AO.

7. The Ld. AR supported the order of the Ld. CIT(A). He drew our attention to the written submission appearing at pages 1-6 which form part of the Paper Book filed by the assessee.

8. We have heard the Ld. Representative of the parties, considered their arguments and perused the records. It is not in dispute that the original assessment was framed after scrutiny under section 143(3) of the Act allowing the assessee's claim for deduction under section 80IC of the Act. However, the case was reopened for the reason that the assessee had not furnished Form 10CCB along with original return and income of three units had not been bifurcated. During re-assessment proceedings vide letter dated 03.09.2018 the assessee submitted that Form 10CCB was duly filed along with the return and income of three units have duly been bifurcated in the schedule filed with the original balance sheet. The assessee's case is that he has been allowed deduction under section 80IC in all the previous and subsequent years and the facts of the year under consideration are identical to all these years. The predecessor Ld. AO had allowed the impugned deduction only after verifying the facts from Form 10CCB. No material has been brought on record by the Revenue to controvert the above contentions of the assessee.

9. From the direction under section 144A of the Act issued by the Ld.

Addl. CIT Range-7 New Delhi, it is observed that he perused the assessment record and recorded the finding after seeing the material in the Schedule filed that heads are bifurcated in three units i.e. unit 1, 2 and 3 which shows that the assessee has maintained/furnished three separate accounts for the purpose of calculating the profits and deduction thereon. The Ld. Addl. CIT further noted that even during re-assessment proceedings the assessee submitted Form 10CCB alongwith letter dated 15.10.2018 and audited unit-wise final accounts. If that be so, the assessee's case is fully covered in favour of the assessee by the decision of the Hon'ble Supreme Court in CIT vs. G.M. Knitting Industries (P) Ltd. (2015) 376 ITR 456 (SC) as also by the decision of the Hon'ble Delhi High Court in CIT vs. Centimeters Electricals Pvt. Ltd. 317 ITR 249 (Delhi).

10. We, therefore, for the reasons set out above decline to interfere and finding no substance in the appeal of the Revenue reject the same.

11. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open court on 19th April, 2023.

sd/-

**(SHAMIM YAHYA)
ACCOUNTANT MEMBER**

sd/-

**(ASTHA CHANDRA)
JUDICIAL MEMBER**

Dated: 19/04/2023

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Copy forwarded to -

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	

Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	