IN THE INCOME TAX APPELLATE TRIBUNAL,
GUWAHATI BENCH, GUWAHATI
(VIRTUAL HEARING AT KOLKATA)

BEFORE SHRI RAJPAL YADAV, HON'BLE VICE PRESIDENT
AND SHRI GIRISH AGRAWAL, HON'BLE ACCOUNTANT MEMBER

ITA No.25/GTY/2020
Assessment Year: 2015-16

Mahesh Chachan Kayal Market, Fancy Bazar, Guwahati-781001. **PAN: AFXPC 3051 R**	Vs.	Pr. CIT, Guwahati - 2
(Appellant)		(Respondent)

Present for:
Appellant by : Shri Jay Prakash Gupta, FCA
Respondent by : Shri N.T. Sherpa, JCIT

Date of Hearing : 03.04.2023
Date of Pronouncement : 27.04.2023

O R D E R

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal by the assessee is directed against the order passed by the learned Commissioner of Income Tax (Appeals) – Guwahati-2, (hereinafter the 'ld. CIT(A)' dated 30.08.2019 for Assessment Year 2015-16 against the order passed u/s 143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') by ITO, Ward-4(2), Guwahati, dated 05.04.2017.

2. Grounds raised by the assesee is on challenging the treatment of VAT remission as not eligible for deduction u/s 80IE of the Act by invoking the provisions of revision u/s 263 of the Act.

3. Brief facts of the case are that assessee is engaged in the business of manufacturing of instant food, baby food, cheese ball, puff rings etc. Assessee started its manufacturing activities in an industrial undertaking with effect from November, 2013 relevant to assessment year 2014-15. Return of income was filed on 29.09.2015 reporting total

income of Rs. 5,65,320/-. Case of the assessee was selected for scrutiny through CASS for which statutory notices were issued u/s 143(2) and 142(1), all of which were duly complied with. In the course of assessment, ld. AO vide notice u/s 142(1) dated 10.02.2017 required the assessee to furnishing, inter alia, copy of Form 10CCB and details of statutory liabilities along with proof of payments. Assessee made its written submission, complying with the said notice. While computing the assessed income, ld. AO allowed deduction u/s 80IE claimed by the assessee of Rs. 13,88,272/-. The assessment was completed u/s 143(3) of the Act at Rs. 7,33,280/-, that is at the returned income.

3.1. Subsequently, ld. PCIT, Guwahati-2 noted that income shown by the assessee from the eligible business includes income from other sources, amounting to Rs. 21,59,935/- which according to him does not qualify for the purpose of deduction u/s 80IE. Ld. PCIT noted that a deduction of Rs. 13,88,272 was allowed u/s 80IE towards VAT Remission which is not derived from the manufacturing activities and hence not eligible for the deduction, Accordingly a show cause notice was issued u/s 263 of the Act invoking the revisionary proceeding. Assessee made its submission before the ld. PCIT and stated that income from other sources comprises of the following:

"(a) VAT Remission –	Rs. 21,28,022/-
(b) Interest on fixed deposit –	Rs. 26,661/-
(c) Discount and rebates -	Rs. 5,253/-"

4. In respect of VAT Remission it was submitted that it is directly linked to manufacture of goods and therefore, qualifies for deduction u/s 80IE of the Act. Assessee relied on the decision of Co-ordinate Bench of Guwahati, ITAT in the case of Meghalaya Mineral Products vs ACIT (2015) 38 ITR (Trib.) 186 (Guwahati) which has dealt with the issue of allowability of VAT remission for deduction u/s 80IE. Assessee

also explained about the interest on fixed deposit which was earned against FDR placed as security for cash credit loan taken from bank and was used for funding for manufacturing activity. Also, in respect of discount and rebates, it was submitted that these were received from its suppliers for purchases made by the assessee, used in the manufacturing process.

4.1. On considering the submissions made by the assessee, ld. PCIT accepted that interest on FD and discounts and rebates on purchases are directly linked to manufacturing activity. In respect of VAT remission, he did not agree on this issue and set aside the assessment order u/s 263 of the Act with the direction to the ld. AO to complete the assessment in view of this observation.

5. Aggrieved, assessee is in appeal before the Tribunal.

6. Before us, ld. Counsel for the assessee reiterated the submissions made before the ld. AO in the assessment proceedings as well as before the ld. PCIT in the revisionary proceeding which are not repeated for the sake of brevity as already noted above. Before delving into the issue, we apprise ourselves with the provisions of section 80IE of the Act which is reproduced as under:

> **"80-IE.** (1) Where the gross total income of an assessee includes any profits and gains derived by an undertaking, to which this section applies, from any business referred to in sub-section (2), there shall be allowed, in computing the total income of the assessee, a deduction of an amount equal to hundred per cent of the profits and gains derived from such business for ten consecutive assessment years commencing with the initial assessment year.
> (2) This section applies to any undertaking which has, during the period beginning on the 1st day of April, 2007 and ending before the 1st day of April, 2017, begun or begins, in any of the North-Eastern States,—
> (*i*) to manufacture or produce any eligible article or thing;
> (*ii*) to undertake substantial expansion to manufacture or produce any eligible article or thing;

(*iii*) to carry on any eligible business.

(3) This section applies to any undertaking which fulfils all the following conditions, namely :—

(*i*) it is not formed by splitting up, or the reconstruction, of a business already in existence :

Provided that this condition shall not apply in respect of an undertaking which is formed as a result of the re-establishment, reconstruction or revival by the assessee of the business of any such undertaking as referred to in section 33B, in the circumstances and within the period specified in the said section;

(*ii*) it is not formed by the transfer to a new business of machinery or plant previously used for any purpose.

Explanation.—The provisions of *Explanations 1* and *2* to sub-section (3) of section 80-IA shall apply for the purposes of clause (*ii*) of this sub-section as they apply for the purposes of clause (*ii*) of that sub-section.

(4) Notwithstanding anything contained in any other provision of this Act, in computing the total income of the assessee, no deduction shall be allowed under any other section contained in Chapter VIA or in section 10A or section 10AA or section 10B or section 10BA, in relation to the profits and gains of the undertaking.

(5) Notwithstanding anything contained in this Act, no deduction shall be allowed to any undertaking under this section, where the total period of deduction inclusive of the period of deduction under this section, or under section 80-IC or under the second proviso to sub-section (4) of section 80-IB or under section 10C, as the case may be, exceeds ten assessment years.

(6) The provisions contained in sub-section (5) and sub-sections (7) to (12) of section 80-IA shall, so far as may be, apply to the eligible undertaking under this section.

(7) For the purposes of this section,—

(*i*) "initial assessment year" means the assessment year relevant to the previous year in which the undertaking begins to manufacture or produce articles or things, or completes substantial expansion;

(*ii*) "North-Eastern States" means the States of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim and Tripura;

(*iii*) "substantial expansion" means increase in the investment in the plant and machinery by at least twenty-five per cent of the book value of plant and machinery (before taking depreciation in any year), as on the first day of the previous

year in which the substantial expansion is undertaken;

(*iv*) "eligible article or thing" means the article or thing other than the following :—

(*a*) goods falling under Chapter 24 of the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), which pertains to tobacco and manufactured tobacco substitutes;

(*b*) pan masala as covered under Chapter 21 of the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986);

(*c*) plastic carry bags of less than 20 microns as specified by the Ministry of Environment and Forests *vide* Notification No. S.O. 705(E), dated the 2nd September, 1999 and S.O. 698(E), dated the 17th June, 2003; and

(*d*) goods falling under Chapter 27 of the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), produced by petroleum oil or gas refineries;

(*v*) "eligible business" means the business of,—

(*a*) hotel (not below two star category);

(*b*) adventure and leisure sports including ropeways;

(*c*) providing medical and health services in the nature of nursing home with a minimum capacity of 25 beds;

(*d*) running an old-age home;

(*e*) operating vocational training institute for hotel management, catering and food craft, entrepreneurship development, nursing and para-medical, civil aviation related training, fashion designing and industrial training;

(*f*) running information technology related training centre;

(*g*) manufacturing of information technology hardware; and

(*h*) bio-technology.]

6.1. From the reading of the above section, it is noted in the context of present case that eligible assessee is entitled to claim deduction in respect of profits and gains derived by an undertaking in computing the

total income of the assessee which is equal to 100% of the profits and gains derived from such business. The deduction is available to any undertaking in any of the North-Eastern States who manufactures or produces any eligible article or thing. The list of eligible article or thing is provided by way of a negative list in sub-section (7) clause (iv). In the present case before us, assessee is having an industrial undertaking at Lalungaon, Lokhra, Beltola, Guwahati (Assam) which is one of the North-Eastern State.

6.2. Further, assessee is into the business of manufacture of the instant food items as stated above which are eligible article or thing. We also take note of the submissions made by the assessee before the ld. AO in respect of deduction claimed u/s 80IE when ld. AO required the assessee to furnish copy of Form 10CCB. Also, before the ld. PCIT, assessee made his submission explaining that VAT Remission is directly linked to manufacture of goods and qualifies for deduction u/s 80IE. Ld. PCIT had initially invoked the revisionary proceedings by issuing a show cause notice in respect of three issues, out of which he dropped the two by accepting the submissions made by the assessee. Revisionary order was passed by the ld. PCIT u/s 263 only in respect of treatment of VAT Remission while allowing the deduction u/s 80IE of the Act.

6.3. Ld. Counsel for the assessee has referred to the decision of Co-ordinate Bench of ITAT, Guwahati in the case of Meghalaya Mineral Products vs ACIT (supra). We have perused the said order wherein issue relating to VAT Remission and Central Excise Duty refund were dealt with, holding that this has a direct nexus with the manufacturing business of the assessee and hence were eligible for deduction u/s 80IB /80IC of the Act. Relevant extracts from the said order are reproduced for case of reference:

"7.....The issue relating to value added tax/CST remission had also been decided by this Tribunal in favour of the assessee in I. T. Appeal No. 43 of 2009 in the case of ACIT v. G.L. Coke (P.) Ltd. vide order dated April 5, 2010. This Tribunal has already decided the issue in the case of Plast India Enterprises (supra) vide order dated April 5, 2010. In this decision, the hon'ble Tribunal held that the amount of transport subsidy, power subsidy, interest subsidy and insurance subsidy would go to reduce the corresponding expenditure incurred under those heads and resultant profit would be the profits and gains of the business of the industrial undertaking eligible for deduction under section 80-IC of the Income-tax Act. The Tribunal also took the view that all these subsidies were interlinked, interlaced and had a direct nexus with the manufacturing activities of the assessee which are inseparable from the related expenditure incurred by the assessee. So far as the, central excise duty refund and value added tax remission are concerned, the hon'ble Tribunal took the view that this has a direct nexus with the manufacturing business of the assessee and hence were eligible for deduction under section 80-IB/80-IC of the Income-tax Act. It was pointed out that the Revenue in most of the cases before the hon'ble Gauhati High Court vide its order dated September 16, 2010, passed in the case of CIT v. Meghalaya *Steels Ltd. [2011] 332 ITR 91/201 Taxman 135 (Mag.)/12 taxmann.com 451 (Mag.) held that the transport subsidy did not have any direct nexus with the profits and gains derived by the assessee from its industrial activity but so far the central excise duly refund is concerned, it was held that it had a direct nexus with the manufacturing activity of the assessee.*

....

10. Respectfully following the decision of the hon'ble jurisdictional High Court, we allow the appeals of the assessee and direct the Assessing Officer to allow the deduction, to the assessee under section 80-IC treating all the aforesaid subsidies received to be part of the business profit and gains from the industrial undertaking in accordance with law. Thus, the grounds taken by the assessee are allowed. So far the appeals filed by the Revenue are concerned, we noted that both issues involved in the appeals in both assessment years filed by the Revenue are covered by the decision of this Tribunal in favour of the assessee dated March 19, 2010 and April 5, 2010, through which we have gone into. The issue relating to the central excise duty refund is duly covered by the decision of this Tribunal in the case of Meghalaya Steels Ltd. (supra) while the

decision on the issue of value added tax/ sales tax remission is duly covered by the following decisions :

S. No.	*I.T.A. No.*	*Date of order*	*Issue*	*Name of the assessee*
i.	*46/Gau/2009*	*19-03-2010*	*Central excise refund*	*Meghalaya Steels Ltd.*
ii.	*202/Gau/2008*	*19-03-2010*	*Central excise refund*	*Satyam Ispat Ltd.*
iii.	*50/Gau/2009*	*05-04-2010*	*Central excise refund and VAT remission*	*Plast India Enterprises Pvt. Ltd.*
iv.	*43/Gau/2009*	*05-04-2010*	*VAT remission*	*G.L. Coke Pvt. Ltd.*
v.	*58/Gau/2009*	*05-04-2010*	*VAT remission*	*JBB Lime Industry*

6.4. Further, we note that while dealing with the issue in hand, the Co-ordinate Bench of ITAT, Guwahati had referred to and placed reliance on the decision of Hon'ble Jurisdictional High Court of Guwahati in the case of CIT vs Meghalaya Steels Ltd. (2011) 333 ITR 91. The decision of Hon'ble Jurisdictional High Court of Guwahati in Meghalaya Steels Ltd. (supra) was approved by the Hon'ble Supreme Court in its judgment reported in CIT vs Meghalaya Steels Ltd. (2016) 67 taxmann.com 158 (SC).

6.5. Hon'ble Supreme Court held in para 28 that assistance by way of subsidies, received or receivable will be income chargeable to tax under the head profits and gains of business or profession. Hon'ble Court, further, noted that since the subsidies which go to reimbursed of cost in the production of goods of a particular business would have to be included under the head profits and gains of business or profession and not under the head income from other sources. The relevant extracts from the said judgment in para 28 is reproduced as under:

"Para 28. Assistance by way of subsidies which are reimbursed on the incurring of costs relatable to a business, do not fall under the head "income from other sources", which is a residuary head of income that can be availed only if income does not fall under any of the other four heads of income. Section 28(iiib) specifically states that income from cash assistance, by whatever name called, received or receivable by any person against exports under any

scheme of the Government of India, will be income chargeable to income tax under the head "profits and gains of business or profession". If cash assistance received or receivable against exports schemes are included as being income under the head "profits and gains of business or profession", it is obvious that subsidies which go to reimbursement of cost in the production of goods of a particular business would also have to be included under the head "profits and gains of business or profession", and not under the head "income from other sources".”

7. Considering the above, we note that present issue is in respect of revisionary proceedings initiated by the ld. PCIT and passing an order u/s 263 of the Act. It is well settled law that while invoking the provision of section 263, both the conditions that the order must be erroneous and prejudicial to the interest of revenue needs to be satisfied.

8. We find that the issue in the present case relating to allowability of claim of deduction u/s 80IE of the Act is covered by the judicial precedent referred above. Accordingly, in respect of issue raised by the ld. PCIT in respect of VAT Remission in the revisionary proceedings, no action u/s 263 of the Act is justifiable which in our considered view cannot be sustained by respectfully following the decision of the Hon’ble Supreme Court as well as Hon’ble Jurisdictional High Court referred above. We, therefore, quash the impugned order u/s 263 of the Act and allow the grounds raised by the assessee.

9. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 27.04.2023.

Sd/-	**Sd/-**
(RAJPAL YADAV)	**(GIRISH AGRAWAL)**
VICE-PRESIDENT	**ACCOUNTANT MEMBER**

Kolkata, Dated: 27.04.2023.
Biswajit, Sr. P.S.

Copy to:

1. The Appellant: Siba Prasad Baruah.
2. The Respondent: ACIT, Circle-1, Guwahati.
3. The CIT,
4. The CIT (A)
5. The DR

//True Copy//

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata