

**IN THE INCOME TAX APPELLATE TRIBUNAL,
KOLKATA-GUWAHATI 'e-COURT', KOLKATA
[Virtual Court Hearing]**

**Before Dr. Manish Borad, Accountant Member
&
Shri Sonjoy Sarma, Judicial Member**

**I.T.A. No. 41/Gau/2022
Assessment Year: 2012-2013**

***Bhabani Roy,.....Appellant
C/o. Rajesh Roy,
B.K. Road, Palace Compound,
East Agartala-799001, Tripura
[PAN: AHMPRO715L]***

-Vs.-

***Income Tax Officer,.....Respondent
Ward-1, Agartala,
Aayakar Bhawan,
Mantribari Road,
Agartala-799001, Tripura***

Appearances by:

*Shri Debaprasad Majee, FCA, appeared on behalf of the
assessee*

*Shri Amit Kumar Pandey, JCIT, appeared on behalf of
the Revenue*

Date of concluding the hearing : May 16, 2023

Date of pronouncing the order : June 14, 2023

O R D E R

Per Dr. Manish Borad, Accountant Member:-

This appeal at the instance of assessee for assessment year 2012-13 is directed against the order of Id. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi dated 18.08.2022,

which is arising out of the order under section 143(3) of the Act on 30.03.2015 framed by ld. ITO, Ward-46(1), Kolkata.

2. The assessee has raised the following ground of appeal:-

“That the ld. CIT(A) erred in law and on fact in confirming the disallowance of Rs.15,62,285/- under chapter VIA (u/s. 80IE) of the Income Tax Act, 1961. The assessee is eligible for deduction under section 80IE of the Income Tax Act, 1961, special provisions in respect of certain undertakings in North Eastern States. The action of the ld. CIT(A) is illegal, unjustified, arbitrary and against the facts of the case. Ld. AO was not justified in passing assessment order in flagrant violation of principles of natural justice”.

3. At the outset, ld. Counsel for the assessee submitted that the ld. Assessing Officer denied the deduction under section 80IE of the Act solely for the reason that in the audit report given on Form No. 10CCB of the Act, the auditor has inadvertently mentioned the section 80IB(4) of the Act in place of section 80IE of the Act and for such mistake, the deduction was denied. Subsequently, when the assessee filed appeal before the ld. CIT(Appeals), the same was dismissed *ex-parte* for non-appearance on the given date of hearing. Therefore, prayer was made by the ld. Counsel for the assessee to restore the matter to the file of ld. CIT(Appeals) before whom the assessee can file the revised Form No. 10CCB in support of his claim of deduction under section 80IE of the Act.

4. On the other hand, ld. D.R. supported the order of lower authorities, but did not oppose the request of the assessee of restoring the matter to lower authorities.

5. We have heard the rival contentions and perused the relevant material placed before us. We notice that the assessee is an individual, who is engaged in the business of manufacturing of rubber. Return of income was filed by the assessee electronically on 29.09.2012 for A.Y. 2012-13 i.e. prior to the due date of filing of the return under section 139(1) of the Act disclosing total income of Rs.1,99,780/- and claimed deduction under Chapter VIA of the Act for Rs.16,14,045/-. During the course of assessment proceedings, ld. Assessing Officer observed that in Form No. 10CCB, i.e. the report given by the Chartered Accountant for the quantum of deduction claimed under Chapter VIA of the Act, under Column 7, section 80IB(4) was mentioned. The ld. Assessing Officer on going through the provision of section 80IB(4) of the Act noticed that under the said section, commercial production needs to be commenced during the period 1st April, 1993 to 31st March, 2004 and since the date of commercial project mentioned in the audit report is 01.10.2007 i.e. after 31st March, 2004, the assessee is not eligible to claim deduction under section 80IB of the Act.

6. Before us, Id. Counsel for the assessee has submitted that the assessee is eligible for deduction under section 80IE of the Act and all the relevant conditions required for claiming this deduction under section 80IE of the Act stands fulfilled by the assessee except for the audit report on Form 10CCB in which the auditor has inadvertently mentioned the section 80IB(4) of the Act in place of section 80IE of the Act. It was prayed by the Id. Counsel for the assessee that an opportunity be granted to the assessee so that the assessee can procure revised Form No. 10CCB and can file it before the lower authorities for claiming the said deduction.

7. We, therefore, under the given facts and circumstances, are of the view that since the assessee has filed the return of income before the due date under section 139(1) of the Act, claimed deduction under Chapter VIA of the Act and except the section of claiming deduction, no other error has been pointed out by the lower authorities in Form No. 10CCB, find it proper to restore the issue of the claim of deduction under section 80IE of the Act to the file of jurisdictional Id. Assessing Officer, in the interest of justice and fair play and direct him/her to pass a speaking order considering the submissions made by the assessee. Further, Id. Assessing Officer shall examine the veracity of the claim of assessee in the light of the revised Form No. 10CCB after providing reasonable opportunity of being heard to the assessee. The assessee is also directed to comply and furnish the revised audit report in Form No. 10CCB to the Id. Assessing Officer, who

shall decide the issue of eligibility of section 80IE of the Act in accordance with law.

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

Order pronounced in the open Court on 14th June, 2023.

Sd/-

(Sonjoy Sarma)
Judicial Member

Sd/-

(Manish Borad)
Accountant Member

Kolkata, the 14th day of June, 2023

*Copies to :(1) Bhabani Roy,
C/o. Rajesh Roy,
B.K. Road, Palace Compound,
East Agartala-799001, Tripura*

*(2) Income Tax Officer,
Ward-1, Agartala,
Aayakar Bhawan,
Mantribari Road, Agartala-799001, Tripura*

*(3) CIT(Appeals), National Faceless Appeal
Centre (NFAC), Delhi;*

(4) Commissioner of Income Tax- ;

(5) The Departmental Representative

(6) Guard File

TRUE COPY

By order

*Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata*

Laha/Sr. P.S.