

IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH KOLKATA

**BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER
AND SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No.215/Kol/2021
Assessment Year: 2012-13**

| | | |
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| Deputy Commissioner of Income - tax, Circle - 4(1), Kolkata. | Vs. | The Grob Tea Company Ltd. 86A, Topsia Road, Kolkata- 700046. (PAN: AABCT 3475 C) |
| (Appellant) | | (Respondent) |

Present for:

Appellant by : Shri P. P. Barman, Addl. CIT, Sr. DR

Respondent by : Shri Ramesh Kumar Patodia, Advocate

Date of Hearing : 07.06.2023

Date of Pronouncement : 14.06.2023

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This captioned appeal filed by the revenue is against the order of Ld. CIT(A)-7, Kolkata vide ITA No. 681/CIT(A)-7/Circle-4(2)/Kol/15-16 dated 03.09.2019 against assessment order of Ld. DCIT, Circle-4(2), Kolkata u/s. 143(3) of the Income-tax Act, 1961 (hereinafter referred to as the "Act"), dated 30.03.2015 for AY 2012-13.

2. There is a delay of 596 days in the present appeal for which petition for condonation of delay is placed on record. The impugned order of Ld. CIT(A) is dated 03.09.2019 which was received on 30.09.2019. By the time the procedure for getting the approval for filing the appeal was completed, pandemic of Covid-19 broke. The delay pertaining to period, prior as well as subsequent to Covid-19 is explained in the condonation petition. The appeal was filed on 13.07.2021. Thus, the period from March 2020 upto the date of filing of appeal is covered by the decision of Hon'ble Supreme Court. This

period has been excluded by the Hon'ble Supreme Court in the case of *suo moto* Writ Petition (C) No. 3 of 2020 dated 10.01.2022 by which the period from 15.03.2020 to 28.02.2022 has been directed to be excluded for the purpose of limitation. Vide this order a further period of 90 days has been granted for providing the limitation from 01.03.2022. Accordingly, we condone the delay and proceed to admit the appeal for hearing.

3. In the course of hearing, discrepancies were noted in the grounds of appeal raised by the revenue filed by way of an annexure to Form 36 vis-à-vis the grounds mentioned in the Form 36 itself. A direction was given to file revised Form 36 with correct grounds of appeal for which the revenue wants to contest before the Tribunal. Revised grounds of appeal along with Form 36 were furnished vide letter dated 01.03.2022. However, on its perusal, we note that the same discrepancies continue in Form 36 and the annexure to Form 36 for the grounds of appeal. The grounds of appeal mentioned in Form 36 in Row no. 10 are cryptic and appears to be unrelated to the assessment completed in the present case. The same are reproduced as under:

- “1. On the issue of written off depreciated investments.*
- 2. On the issue of amortization of premium paid on investments.*
- 3.&4. On the issue of disallowance u/s. 14A r.w.Rule 8D.*
- 5. On the issue of reserved created for unexpired risk.*
- 6. On the issue of addition of disallowance made u/s. 14A.*
- 7. On the issue of provision for bad debts.”*

3.1. Contrary to the above, grounds of appeal in the annexure to Form 36 relate to the assessment in the present case and are reproduced as under:

- “1. That on facts and circumstances of the case, Ld CIT(A) has erred in law and in facts in allowing the claim of the assessee u/s. 80IE even though the assessee did not furnish the necessary*

details before the Assessing Officer during assessment proceeding in support of the claim.

2. That on facts and circumstances of the case, Ld CIT(A) has erred in law and in facts in allowing the claim for depreciation even though the assessee failed to furnish necessary details before the Assessing Officer during assessment proceedings in support of the claim.

3. That the appellant craves for leave to add, delete, amend or modify any grounds before or at the time of appellate proceedings.”

3.2. Accordingly, we find it proper to adjudicate on the matter vis-à-vis the grounds of appeal taken in the annexure to Form 36 which is in respect of claim of assessee u/s. 80IE and depreciation in respect of plant and machinery pertaining to substantial expansion made by the assessee.

4. Brief facts of the case are that assessee is in the business of cultivation and manufacturing of tea in its Assam tea estates. Assessee filed its return of income on 26.09.2012, reporting total income of Rs.96,950/- after claiming deduction of Rs.1,39,93,926/- u/s. 80IE of the Act. The claim of deduction u/s. 80IE is in respect of substantial expansion of plant and machinery in its tea estates. Ld. AO in the course of assessment proceedings noted that assessee has failed to furnish Form 10CCB within the due time prescribed u/s. 80IA(7) of the Act. In order to verify the genuineness of the claim of substantial expansion, Ld. AO called for details along with relevant corroborative evidence in this respect. Ld. AO noted that assessee failed to furnish the said details except for furnishing of Form 10CCB, manually on 07.11.2014.

4.1. By affording another opportunity to the assessee, Ld. AO requisitioned to the assessee to furnish the following details:

- (i) Transportation documents, evidence of commissioning of plant and machinery claimed to be expanded, to substantiate claim of deduction u/s. 80IE.
- (ii) Books of account with supporting bills and vouchers to substantiate claim in the return.
- (iii) Details about foreign travel.

4.2. Since there was no compliance, Ld. AO completed the assessment and among other things, disallowed the claim made u/s. 80IE of the Act. Aggrieved, assessee went in appeal before the Ld. CIT(A). Before the Ld. CIT(A), it was asserted that assessee had furnished copies of bills for addition to fixed assets to substantiate the claim u/s. 80IE along with letter dated 10.03.2015. Ld. CIT(A) after considering the submissions made by the assessee allowed the claim, by observing as under:

“4.2. I have considered the submission of the AR of the appellant in the backdrop of the assessment order. The brief facts of the issue are that the claim of deduction u/s 80IE by the appellant was disallowed by the AO on the ground of non production of necessary supporting documentary evidences. On the other hand it is contended by the AR that all necessary documentary evidences were submitted before the AO as per records. I find that deductions claimed u/s 80IE is to be certified by a qualified CA in Form 10CCB. As per usual system in this regard, such form was ought to be in the possession of the AO since in the normal course of filing of return the same is mandatorily to be filed as per statutory norms. Be that as it may, I find that for the AY 2014-15, the AO had allowed the claim of the appellant u/s 80IE of the Act (copy of the order dated 29.12.2016 on record). The principles of Res Judicata are not applicable in tax proceedings but the Principles of Consistency has to be maintained when facts and circumstances remain unchanged. In view of this, the AO is directed to allow the claim of the appellant u/s 80IE.

4.3. With regard to depreciation matter, I find that the appellant is entitled to the claim as per material evidences on record

(supra). The AO is therefore directed to allow the depreciation as claimed. This ground is allowed.”

5. Aggrieved, revenue is now in appeal before the Tribunal.

6. Before us, Ld. Sr. DR has furnished a written submission in three pages along with annexure containing details about the documents placed in the assessment folder and a legible copy of the impugned assessment order. Ld. Sr. DR contended that assessee has failed to furnish the audit report prescribed under the Act. According to him, it is not an issue only in respect of non-furnishing of Form 10CCB but also a case where Ld. AO had asked for details and evidence for claiming of deduction u/s. 80IE towards substantial expansion carried out by the assessee of plant and machinery in its tea estates. Since nothing was forthcoming from the assessee in the course of assessment, the deduction claimed was disallowed.

6.1. Ld. Sr. DR has submitted a detailed report on the verification of the documents which are placed in the assessment folder by way of annexure “A” to the written submission and asserted that since the claim of deduction u/s. 80IE rested solely on the substantial expansion of plant and machineries, it had to be verified for its authenticity and because no such details were found to have been submitted by the assessee, the finding arrived at by the Ld. CIT(A) is not based on facts but only a presumption and, therefore, the addition made by the Ld. AO ought to be sustained.

6.2. Verification report furnished by the Ld. Sr. DR by way of Annexure "A" to the written submission is reproduced as under:

| ANNEXURE-A | | | | |
|------------|--|---------------|-------------|---|
| Sl. No. | Particulars | Page No. From | Page No. To | Remarks |
| 1 | Copy of the Financial Statements of the respondent for FY 2011-12, being AY 2012-13 | 1 | 31 | Verified and found to be in order. |
| 2. | Copy of the Acknowledgement of Income Tax Return | 32 | 32 | Verified and found to be in order. |
| 3. | Copy of Form 10CCB dt. 25.09.2012 filed before the Ld. A.O. on 07.11.2014 | 33 | 38 | Verified with manual 10CCB in assessment folder and found to be in order. |
| 4. | Copy of Tax Audit Report in Form No. 3CA-3CD dt. 25.09.2012 | 39 | 70 | Verified with manual 3CA-3CD in assessment folder and found to be in order. |
| 5. | Copy of Letter dt. 26.09.2013 in response to Notice u/s 143(2) of the Act | 71 | 71 | Verified and found to be in order. |
| 6. | Notice u/s 142(1) of the Act dt. 20.02.2015 | 72 | 72 | Verified and found to be in order. |
| 7. | Copy of Letter dt. 10.03.2015 in response to Notice u/s 142(1) | 73 | 75 | As per record, there is no such letter received by this office on 10.03.2015. It is also mentionable that there was no hearing on 10.03.2015 in relation to assessment proceedings u/s. 143(3) for the AY 2012-13, as suggested by the relevant order sheet. |
| 8. | Statement of Plant and Machinery for claiming Deduction u/s 80 IE for the year ended 31 st March, 2012, AY 2012-13, submitted before the Ld. A.O. on 10.03.2015 | 76 | 77 | No such statement is found to have received as per assessment record. |
| 10.** | Detail of Addition to Fixed Assets as on 31.03.2012, along with Invoices and Transportation Documents submitted before the Ld. A.O. on 10.03.2015 | 78 | 184 | As per assessment record, no such details are found to have submitted by the assessee. |
| 11. | Assessment Order dt. 24.03.2016, issued u/s.144 of the Act for the AY 2013-14 | 185 | 194 | Tallied with the assessment order u/s. 144/263 dated 24.03.2016 for the AY 2013-14 and found to be in order. |
| 12. | Assessment Order dt. 29.12.2016 issued u/s. 143(3) of the Act for the AY 2014-15 | 195 | 201 | Tallied with the assessment order u/s. 143(3) dated 29.12.2016 for the AY 2014-15 and found to be in order. |
| 13. | Intimation cum Rectification Order dt. 26.09.2017 issued u/s 154 of the Act for the AY 2015-16 | 202 | 207 | Intimation u/s. 143(1) for the A.Y. 2015-15 is not verifiable due to non-availability in ITBA system. |

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| 14. | Intimation dt. 09.06.2017 issued u/s 143(1) of the Act for the AY 2016-17 | 208 | 216 | Intimation u/s. 143(1) for the A.Y. 2016-17 is not verifiable due to non-availability in ITBA system. |
| 15. | Assessment Order dt. 09.12.2019 issued u/s. 143(3) of the Act for the AY 2017-18 | 217 | 223 | Order u/s. 143(3) dated 09.12.2019 for the A.Y. 2017-18 is verified and found to be in order. |
| 16. | Assessment Order dt. 04.02.2021 issued u/s.143(3) r.w.s. 143(3A) and 143(3B) of the Act for the AY 2018-19 | 224 | 231 | Order u/s. 143(3) dated 04.02.2021 for the A.Y. 2018-19 is verified and found to be in order. |
| 17. | Intimation dt. 13.07.2020 issued u/s 143(1) of the Act for the AY 2019-20 | 232 | 243 | Intimation u/s. 143(1) for the A.Y. 2019-20 is not verifiable due to non-availability in ITBA system. |
| 18. | Assessment Order dt. 22.09.2022 issued u/s.143(3) r.w.s. 144B of the Act for the AY 2020-21 | 244 | 247 | Order u/s. 143(3) dated 22.09.2022 for the A.Y. 2020-21 is tallied and found to be in order.. |

7. Per contra, Ld. Counsel for the assessee claimed that it had furnished Form 10CCB during the course of assessment, fact of which is noted in the impugned assessment order itself by the Ld. AO i.e. on 07.11.2014. Ld. Counsel referred to the paper book placed on record containing 247 pages, index of which is reproduced as under, for ease reference:

| Sl. No. | Particulars | Page No. From | Page No. To |
|---------|--|---------------|-------------|
| 1. | Copy of the Financial Statements of the respondent for FY 2011-12, being AY 2012-13 | 1 | 31 |
| 2. | Copy of the Acknowledgement of Income Tax Return | 32 | 32 |
| 3. | Copy of Form 10CCB dt. 25.09.2012 filed before the Ld. A.O. on 07.11.2014 | 33 | 38 |
| 4. | Copy of Tax Audit Report in Form No. 3CA-3CD dt. 25.09.2012 | 39 | 70 |
| 5. | Copy of Letter dt. 26.09.2013 in response to Notice u/s 143(2) of the Act | 71 | 71 |
| 6. | Notice u/s 142(1) of the Act dt. 20.02.2015 | 72 | 72 |
| 7. | Copy of Letter dt. 10.03.2015 in response to Notice u/s 142(1) | 73 | 75 |
| 8. | Statement of Plant and Machinery for claiming Deduction u/s 80 IE for the year ended 31 st March, 2012, AY 2012-13, submitted before the Ld. A.O. on 10.03.2015 | 76 | 77 |
| 10. | Detail of Addition to Fixed Assets as on 31.03.2012, along with Invoices and Transportation Documents submitted before the Ld. A.O. on 10.03.2015 | 78 | 184 |

| | | | |
|-----|--|-----|-----|
| 11. | Assessment Order dt. 24.03.2016, issued u/s 144 of the Act for the AY 2013-14 | 185 | 194 |
| 12. | Assessment Order dt. 29.12.2016 issued u/s 143(3) of the Act for the AY 2014-15 | 195 | 201 |
| 13. | Intimation cum Rectification Order dt. 26.09.2017 issued u/s 154 of the Act for the AY 2015-16 | 202 | 207 |
| 14. | Intimation dt. 09.06.2017 issued u/s 143(1) of the Act for the AY 2016-17 | 208 | 216 |
| 15. | Assessment Order dt. 09.12.2019 issued u/s 143(3) of the Act for the AY 2017-18 | 217 | 223 |
| 16. | Assessment Order dt. 04.02.2021 issued u/s 143(3) r.w.s. 143(3A) and 143(3B) of the Act for the AY 2018-19 | 224 | 231 |
| 17. | Intimation dt. 13.07.2020 issued u/s 143(1) of the Act for the AY 2019-20 | 232 | 243 |
| 18. | Assessment Order dt. 22.09.2022 issued u/s 143(3) r.w.s. 144B of the Act for the AY 2020-21 | 244 | 247 |

7.1. From the paper book, Ld. Counsel referred to the letter dated 10.03.2015 claimed to have been filed in the course of assessment proceedings in response to notice u/s. 142(1), placed at page 73. He also referred to the statement of plant and machinery which was submitted along with the said letter and the details of addition made to the fixed assets along with invoices and transportation documents which were also furnished with the same letter. Ld. Counsel also asserted that the claim of assessee has been allowed in the preceding as well as succeeding assessment years, details of which are placed in the paper book. According to him, except for AY 2013-14, in all other years, claim of assessee u/s. 80IE of the Act has been allowed.

8. We have heard the rival contentions and perused the material available on record and have given our thoughtful consideration to the issue before us. On the aspect of furnishing of Form 10CCB, Ld. AO has noted that assessee furnished the same in the course of assessment proceeding

i.e. on 07.11.2014. It is also noted that in the subsequent years except for AY 2013-14, claim of the assessee has been allowed. However, on perusal of the intimations issued u/s. 143(1) and orders of assessment completed u/s. 143(3) in the subsequent years, we find that there is no specific observation or finding in respect of claim of deduction u/s. 80IE of the Act. It is only in the assessment order for AY 2020-21, dated 29.09.2022, reference is made in respect of deduction claimed for industrial undertaking u/s. 80IE. However, from its reading, it is not discernible if this issue has been examined in detail, as Ld. AO required in the impugned assessment year before us.

8.1. Considering the overall factual matrix and the submissions made by both the parties, more particularly, in reference to the verification report furnished by Ld. Sr. DR vide Annexure "A" to his written submissions and the index of the paper book containing documents claimed to have been furnished in the course of assessment proceedings, we find it proper to remit the matter back to the file of Ld. CIT(A) for fresh adjudication, according to law, after taking into consideration the material available on record. We also direct that appropriate enquiries and examination be made in respect of claim of substantial expansion to plant and machinery of the tea estates of the assessee for the claim of deduction made u/s. 80IE of the Act. Needless to say that assessee be given reasonable opportunity of being heard to furnish any further details or documents to substantiate its claim. Further, Ld. CIT(A), if required, may call for remand

report from the Ld. AO and accordingly, consider the claim of the assessee.

8.2. While remanding the matter back to the file of the Ld. CIT(A), we would make it very clear that we have not expressed any views on the merits of the case so as to limit the appeal procedure. The observations made hereinabove by us in remanding the matter back to the file of the Ld. CIT(A) will not impair or injure the case of the revenue nor will it cause any prejudice to the defence/explanation of the assessee on the merits of the case. Accordingly, in terms of the above, the appeal of the revenue is allowed for statistical purposes.

9. In the result, appeal of the revenue is allowed for statistical purposes.

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

Sd/-

(Sanjay Garg)
Judicial Member

Sd/-

(Girish Agrawal)
Accountant Member

Dated: 14th June, 2023

JD, Sr. P.S.

Copy to:

1. The Appellant:
 2. The Respondent:
 3. CIT(A)-7, Kolkata
 4. CIT, Kolkata
 5. DR, ITAT, Kolkata Bench, Kolkata
- //True Copy//

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata