

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'A': NEW DELHI**

BEFORE,

**SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
AND
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

ITA No.8255/Del/2018
(ASSESSMENT YEAR 2013-14)

ITA No.8256/Del/2018
(ASSESSMENT YEAR 2014-15)

ITA No.8257/Del/2018
(ASSESSMENT YEAR 2015-16)

ITA No.8258/Del/2018
(ASSESSMENT YEAR 2016-17)

Al-Dua Food Processing Pvt. Ltd. C/o Deepak Singh Advocate, 2 Court of Wards Compound Aligarh-202 001 PAN-AAGCA 0396J (Appellant)	Vs.	DCIT Central Circle Ghaziabad (Respondent)
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Appellant by	Mr. Deepak Singh, Advocate
Respondent by	Mr. P. Praveen Sidharth, CIT-DR

Date of Hearing	20/07/2023
Date of Pronouncement	27/07/2023

ORDER

PER YOGESH KUMAR U.S., JM:

These four appeals by Assessee are filed against the common order of Learned Commissioner of Income Tax (Appeals)-IV, Kanpur [“Ld. CIT(A)”, for

short], dated 30/10/2018 for Assessment Years 2013-14 to 2016-17 respectively. The common grounds have been raised in all these appeals except variance in figures.

“(1) (1) Because Ld. CIT(A) has erred in holding that A.O. while framing assessment u/s 155A read with Sec 143(3) of the IT Act 1561 (hereinafter referred to as the Act), can travel beyond the incriminating material found during search operation

(2) Because the Ld. CIT(A) has erred in confirming the addition of Rs 92,54,914 ignoring the principal that assessment consequent to search operation are confined to incriminating material found during the course of search.

(3) Because the Ld CIT(A) has erred in confirming the addition of Rs.92,94,914/- on account of alleged excess deduction claimed by the appellant us 80B of the Act.

(4) Because the Ld CIT(A) has erred in not considering that slaughtering income (Rs.44,70,000), interest on FOR (Rs 681639), net gain on sale of current investment (Rs 2681915), commission received (Rs.1267760) and refund from Sales Tax (Rs 1,93,600) for the purpose of computing deduction us 80 IB of the Act.

(5) Because the Ld CIT(A) has erred in confirming levying interest us 2348 of the Act.

(6) Because the Ld CIT(A) has erred in confirming levying interest u/s 234C of the Act.

(7) Because the order appealed against is contrary to the facts, law and principles of natural justice.

The appellant craves leave to add, delete, modify or substitute any or all the grounds of appeal at any appropriate time.

2. The brief facts of the case are that a search and seizure operation u/s 132 of the Act was conducted on 28.04.2015 at the premises of the assessee, Notice u/s 153A for AY 2013-14 to 2015-16 u/s 142(1) for AY. 2016-17 of the Act were issued. In their response, assessee filed its return of income showing

the income of Rs.5,93,19,600/-, Rs.13,17,16,950/-, Rs.16,62,88,690/- & Rs.11,61,39,080/- for AY 2013-14 to AY 2016-17 respectively. Later on notice u/s 143(2) & 142(1) were also issued and the AO completed the assessment by making disallowance of Rs.92,94,914/-. Rs.26, 27,397/-. Rs.24,33,634/- and Rs.46,293/- on account of deduction claimed u/s 80IB of the Act, for AY 2013-14 to AY 2016-17 respectively. Aggrieved by the addition, the assessee filed an appeal before the CIT (A), the Ld. CIT (A), dismissed the Appeal filed by the Assessee on 30-10-2018 by a common order, for the AY 2013-14 to 2016-17, which is order impugned in the above captioned Appeals.

ITA No.8255/Del/2018 (AY 2013-14)

3. In the present case a search and seizure operation conducted on 28.04.2015 at the present of the assessee, Assessment Order came to be passed u/s 154A r.w.s. 143(3) of the Act by making addition of Rs.92,94,914/- on the ground that the assessee has claimed excess deduction of Rs.92,94,914/- u/s 80IB of the Act (Chapter VII-A) which being disallowed. Both Ld. DR and Ld. AR submitted that no incriminating material found during the course of search and the none of the incriminating material is the basis for the said addition made by the Assessing Officer in the assessment order dated 13/12/2017 for AY 2013-14 which is being unabated. Therefore, submitted that the assessment order is liable to be quashed. Recording to the submissions of both the parties, the ground no. 1 of the assessee in Assessee's appeal ITA No.8255/Del/2018 is allowed and order passed by the Assessing Officer and the Ld. CIT(A) are set aside.

ITA No.8256/Del/2018

4. The AO made addition in the year under consideration of Rs.26,27,397/- by disallowing the deduction of Rs.26,27,397/- u/s 80IB of Chapter VI-A of the Act. As against the assessment order dated 13.12.2017 passed u/s 153A r.w.s. 143(3) of the Act, the assessee preferred appeal before the Ld. CIT(A), the Ld. CIT(A) confirmed the said addition. Aggrieved by the order of the Ld. CIT(A) the assessee preferred the present appeal on the grounds mentioned above.

5. The Ld. Counsel for the assessee submitted that the ground No.1 & 2 are not pressed and not made any submission on grounds No.1 & 2, accordingly, Ground No.1 & 2 of the assessee are dismissed. The Ld. Counsel for the assessee addressing of Ground No.3 & 4 submitted that the CIT(A) has erred in confirming the addition of Rs.26,27,397/- claimed by the assessee u/s 80IB without considering the miscellaneous income i.e. discount on Freight expenses as income derived from business of the assessee for the purpose by computing deduction u/s 80IB of the Act. The Ld. Counsel for the assessee has also filed a written submission and submitted that, the Freight is connected by the first degree with any business activities and is thus eligible for deduction u/s 80IB of the Act the Short and excess Rs. 17,930/- is part of the business and the Sundry balance written off Rs.18,500/- is also part of the business, thus, the assessee is also eligible for deduction u/s 80IB of the Act.

6. Per contra, the Ld. DR submitted that the assessee has not made any submission on merit regarding addition made by the AO u/s 80IB of the Act before the Ld. CIT(A), but filed additional evidence u/s 46A of the Act without explaining how the additional evidence could prove the justification of deduction u/s 80IB of the Act for the income which cannot be treated as income derived from, therefore, the Ld. CIT(A) rejected the application for production of additional evidence and dismissed the appeal filed by the assessee by confirming the disallowance made by the AO.

7. It is specific case of the assessee that, the Ld. CIT(A) has erred in not considering the miscellaneous income of Rs.26,27,397/- while calculating the eligible income for deduction u/s 80IB. The assessee has submitted copies of certain ledger accounts like slaughtering charges, account of gain of loss from forward contract, account of commission receipt, freight charges paid, account of JSB cargo and account of Refund from UP Sales Tax etc. but the addition evidence produced by the assessee has not been admitted by the Ld. CIT(A) on the ground that the same is outside the purview of conditions stipulated u/s 46A of the Act and further observed that the additional evidence would not in any way help the case of the assessee to substantiate the deduction u/s 80IB of the Act. It is the case of the assessee that the documents produced before the CIT(A) are very much part of the account books produced before the Assessing Officer which are part and partial of the assessment records. Considering the above facts and circumstances, we are of the considered

opinion that, the Ld. CIT(A) should have accepted the additional evidence and after verifying the documents produced by the assessee should have decided regarding eligibility or otherwise of the assessee regarding claim u/s 80IB of the Act, therefore, we deem it fit to remand the matter to the file of the Ld. CIT(A) with direction to admit the additional documents produced by the assessee and decide the matter afresh.

8. Accordingly, the appeal filed by the assessee is partly allowed for statistical purposes for de-novo consideration after admitting the additional evidence produced by the assessee.

9. In the result, the appeal of the assessee in ITA No.8256/Del/2018 is allowed for statistical purposes.

ITA No.8257/Del/2018 (AY 2015-16) and 8258/Del/20218 (AY 2016-17)

10. In the assessment year 2015-16 and 2016-17, the Assessing Officer made disallowance of Rs.24,33,634/- and Rs.46,293/- respectively on account of deduction claimed u/s 80IB of the Act. The said addition have been challenged before the CIT(A) and the assessee filed additional evidence in support of the claim of the assessee. The Ld. CIT(A) dismissed the appeal vide common order dated 30/10/2018 which is order impugned in the present appeals.

11. The Ld. Counsel for the assessee submitted that the ground No.1 & 2 are not pressed and not made any submission on ground No.1 & 2, accordingly, Ground No.1 & 2 of the assessee are dismissed. It is found that even in the years under consideration, the Ld. CIT(A) rejected the additional evidence produced by the assessee such as ledger accounts like slaughtering charges, account of gain of loss from forward contract, account of commission receipt, freight charges paid, account of JSB cargo and account of Refund from UP Sales Tax etc. The reasons assigned by the CIT(A) for not admitting the additional evidence are identical to that of assigned for the AY 2014-15, since, we have remanded the matter to the file of CIT(A) for de-novo rectification with a direction to admit the additional evidence filed by the assessee and by finding the parity, we remand the issue involved in the present appeal to the file of CIT(A) for de-novo verification after admitting the additional evidence filed by the assessee and decide the matter afresh in accordance with law.

12. In the result, the appeals in ITA No.8257/Del/2018 and 8258/Del/2018 filed by the assessee are partly allowed for statistical purpose.

Order pronounced in open Court on 27th July, 2023

Sd/-

(SHAMIM YAHYA)
ACCOUNTANT MEMBER
Dated: 27/07/2023
Pk/R.N, Sr ps

Sd/-

(YOGESH KUMAR U.S.)
JUDICIAL MEMBER

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI