

IN THE INCOME TAX APPELLATE TRIBUNAL  
"DB" BENCH, JODHPUR  
BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER &  
SHRI DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER  
ITA No. 297/JODH/2018  
(A.Y: 2013-14)

DCIT Circle, Pali., Jodhpur. Rajasthan.	Vs.	Shri Brij Bhushan Goyal, House No. 331, Sector 16A, Faridabad, Haryana.-121002
PAN/GIR No. : AAWPG8405D		
Appellant	..	Respondent

Assessee by :	Shri Amit Kothari, CA. AR
Revenue by :	Ms. Nidhi Nair, JCIT -DR

Date of Hearing	10.08.2023
Date of Pronouncement	14.08.2023

आदेश / O R D E R

**PER PAVAN KUMAR GADALE JM:**

The revenue has filed the appeal against the order of the Commissioner of Income Tax (Appeals) – I, Jodhpur passed u/s 143(3) and 250 of the Income Tax Act, 1961. The revenue has raised the following grounds of appeal:

*"Whether on the facts and in the circumstances of the case, the CIT (A) is justified in allowing the claim of deduction of Rs. 1,68,71,111/- u/s 80IC of the I.T. Act ignoring the report of the Tehsildar that Khasa No. 31M is not notified in the*

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*Notification No. 177/2004[SO 741][F.No. 142/47/2003-TPL] dated 28.06.2004 and the report produced later on by the assessee were not re-verified from the issuing authority before arriving at the conclusion. "*

*The appellant craves leave to add, amend or alter any or all the grounds of appeal on or before the date of appeal is finally heard for disposal.*

2. The brief facts of the case are that the assessee is engaged in the business of manufacture of mehendi powder, mehendi cones, and mehendi herbals. The assessee has filed the return of income for the A.Y 2013-14 on 19.09.2013 disclosing a total income of Rs. 62,21,680/-. Subsequently the case was selected for scrutiny under the CASS and notice u/s 143(2) and 142(1) of the Act along with the questionnaire was issued. In compliance, the Ld. AR of the assessee appeared from time to time and submitted the details and the case was discussed and the books of accounts were also examined. And the manufacturing unit is situated at E-9 IDA, Bhadrabad Haridwar Uttranchal and the Area is notified for deduction under section 80 IC of the Act. On perusal of the Financial statements, the Assessing Officer(AO) found that the assessee has claimed deduction u/s 80IC(2) of the Act of Rs. 1,68,71,111/- and the

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assessee has filed the detailed explanations on the claim. Whereas the A.O. dealt on the facts and information and relied on the communication report of the tehsildar dated 11-03-2016 and denied the claim of deduction U/sec80IC of the Act and computed the total income with other disallowances as under:

1	<i>Income from Business or profession</i>	1,67,81,949
2	<i>Income from other sources</i>	64,33,672
3	<i>Addition on account of depreciation claim</i>	35,151
4	<i>Addition on account of electricity expenses</i>	1,01,574
5	<i>Gross Total income</i>	2,33,52,346
6	<i>Deduction u/s 80C</i>	1,00,000
7	<i>Deduction u/s 80TTA</i>	1,000
8	<i>Deduction u/s 80D</i>	10,693
9	<i>Total (4+5+6)</i>	1,20,693
10	<i>Balance Income</i>	2,23,31,653
11	<i>Deduction claimed u/s 80IC</i>	1,68,71,111
12	<i>Disallowance u/s 80IC as discussed above in Para number 6</i>	1,68,71,111
13	<i>Total income</i>	2,32,31,653

Finally the AO has assessed the total income of Rs. 2,32,31,653/- and passed the order u/s 143(3) of the Act dated 29.03.2016.

3. Aggrieved by the order, the assessee has filed an appeal before the CIT(A), whereas the CIT(A)

considered the grounds of appeal, submissions of the assessee and findings of the AO and the information submitted in respect of deduction u/s 80IC of the Act. the CIT(A) considered the written submissions referred at Para 4.1 of the CIT(A) order and granted relief to the assessee in respect of deduction U/sec80IC of the Act and granted relief in the other grounds of appeal and partly allowed the assessee appeal. Aggrieved by the CIT(A)order, the revenue has filed an appeal before the Hon'ble Tribunal.

4. At the time of hearing the Ld. DR submitted that the CIT(A) has erred in granting deduction u/s 80IC of the Act ignoring the findings of the AO on the disputed issue and the Ld. DR relied on the order of the AO.

5. Contra, the Ld.AR submitted that the CIT(A) has considered the facts and information on the industrial manufacturing unit and allowed the deduction U/sec80IC of the Act. The Ld. AR substantiated the submissions with the paper book, judicial decisions and relied on the order of the CIT(A)..

6. We heard the rival submissions and perused the material on record. The sole crux of the disputed issue as envisaged by the Ld. DR that the CIT(A) has erred in allowing the deduction u/s 80IC of the Act overlooking the facts and the information before the lower authorities. The Ld. AR submitted that the CIT(A) considered the facts with respect to allow ability of claim and the final communication of the Tehsildar dated 28-03-2016 and granted the relief. We considered it appropriate to refer to the written submissions of the assessee and findings of the CIT(A) in allowing the claim observed at Para 4.1 & 4.2 of the order as under:

*4.1. The appellant has vehemently contested the disallowance of deduction of Rs.1,68,71,111/- claimed by him under Section 80IC of the Act. The written submissions of the appellant regarding this issue are reproduced as below:*

*"Ground of Appeal no. 13 covered u/s 801C Para no. 6 of the assessment order: During the Financial Year 2012-13, the assessee claimed deduction of Rs. 16871111/-ws 801C of the Income Tax Act, 1961. During the course of hearing, the assessee explained about the eligibility for the above said deduction. The Ld. ACIT has reproduced the submission of the assessee in his assessment order at Page No. 2-3. The assessee clarified that specified audit report for the purpose of claiming the deduction u/s 801C has been submitted in the prescribed format i.e. Form 3CCB and further submitted that the said industrial undertaking is engaged in the manufacture*

of the product which is not specified in schedule 13 of the Income Tax Act. The assessee explained that his industrial undertaking is located in notified industrial area (notification no. 177/2004 dated 28/06/2004) (enclosed herewith for your kind perusal Annexure no. 2). The undertaking of the assessee is situated at Khasra No. 31 of Jamalpur Khurd, Panchayat Jamalpur, tehsil and district Haridwar and this has been notified Khasra in the above notification at S. No. 7.

The Ld. ACIT has discussed this issue at Page no. 11 Para no. 6 of his assessment order and rejected the claim on the basis of the First Report of Tehsildar, Haridwar dated 11/03/2016 (enclosed herewith- As annexure no. 3). In this report, the concerned officer stated that the industrial undertaking of the assessee is situated at Khasra No. 31M. As per notification no. 177/2004 dated 28/06/2004, this Khasra no. 31M is not notified for the purpose of claiming deduction u/s 801C of the Income Tax Act, 1961.

On receipt of the above report of the Tehsildar, the Ld. ACIT has issued show cause notice number 1705 dated 23/03/2016 (enclosed herewith as annexure no. 4) and asked about the eligibility regarding claiming of the said deduction u/s 801C of the Income Tax Act, 1961 in view of the report of the Tehsildar, Haridwar dated 11/03/2016. After receipt of the above show cause notice along with the Tehsildar report dated 11/03/2016, the assessee has approached concerned Revenue Officer at Haridwar (copy of the letter is attached herewith - As annexure no. 5) and pointed out the mistake/error occurred in the Tehsildar's Report dated 11/03/2016 with reference to the wrong and incorrect mention of Khasra No. 31M instead of correct and true Khasra no. 31 as per notification.

The said authority on the basis of the application of the assessee, has re-enquired the facts as narrated in the Tehsildar's Report dated 11/03/2016 with reference to the

situation and location of the said industrial undertaking of the assessee.

After re-enquiry by the said revenue authority, correct report has been sent to the Ld. ACIT on 28/03/2016 (letter no. 2614/R C/2016) (which received in the office of the Ld. ACIT on 29/03/2016-Annexure no. 6) with reference to the situation and location of the assessee's industrial undertaking. In this report vide letter no. 2614/R C/2016 dated 28/03/2016, it has been very clearly mentioned and verified by the said authority that the industrial undertaking of M/s Babu Lal and Company, E- 9, Industrial Area, Baharabad Village Jamalpur Khurd Pargna Jwalapur Tehsil and District Haridwar is located in part area of Khasra No. 31.(notified khasra in the notification no. 177/2004 dated 28/06/2004 at S. No. 7.

It is to be submitted that the correct letter and report of the Revenue Officer (Tehsildar) dated 28/03/2016 has been examined by the Ld. ACIT, Pali. This can be verified from the letter itself. The Ld. ACIT has marked "Seen" and he has put his signature with date 29/03/2016.

The Assessment order was passed on 29/03/2016 (on the same date i.e. after receipt of the correct report regarding the Khasra No where the industrial undertaking of the assessee is located) but ignored vehemently and raised huge demand in the hand of the assessee.

It is further submitted that the Ld. ACIT has mentioned these contents in his assessment order at Page no. 12 very explicitly that "My office has also received letter number 2614 dated 28/03/2016 issued by the Tehsildar, Haridwar in office Dak"..... "Authentication of above referred letter is not possible at this stage as it is time barring matter..".

Respectfully submitted to your honour that the Ld. ACIT has accepted the Report dated 11/03/2016 without any verification and now he took the plea that the report dated 28/03/2016 could not be verified on account of paucity of

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*time. It is very surprising that he took double thought/ view and action with reference to the same fact (Tehsildar Report).*

*The Ld. ACIT should be taken into account the report dated 28/03/2016 and verify the fact with reference to the notification for the purpose of rightful claim of the assessee for entitlement of exemption u/s 801C of the Act.*

*Sir, we are enclosing herewith the copy of the original report of the Tehsildar, Haridwar dated 08/03/2010 (annexure no. 7) regarding the location and situation of the assessee's industrial undertaking. He certified that the instant factory is situated at Khasra No. 31 which is notified by the Central Government for the purpose of exemption u/s 801C of the Act.*

*Now, we request to your honour that the factual position about the situation and location of the industrial undertaking of the assessee is crystal clear from the report dated 28/03/2016 and further the same copy has been received on 12/04/2016 (after the assessment has been completed) and it is available with the record verification.*

*Further to submit that the Department has accepted this report for the purpose of allowing the deduction u/s 801C of the Income Tax Act, 1961 for the subsequent Assessment Year i.e. 2014-15 and also accepted u/s 148 rws 143(3) of the Income Tax Act, 1961 for the AY 2009-10. These facts can be verified from the Department Record. The relevant Para of the Assessment Order passed by the Ld. ACIT, Circle, Pali is reproduced below:*

*"The assessee is engaged in the manufacturing of Mehendi Powder, Mehendi cone and related herbal products of Mehendi. The manufacturing plant of the assessee is situated at E-9, Industrial Area, Bahadrabad, Haridwar, Uttarakhand. The Unit started its business in FY 2010-11. Since beginning, the assessee has been claiming deduction u/s 801C of the IT Act.*

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*The submission of the assessee with regard to claim of deduction w/s 801C has been considered. The submission of the assessee is found to be in order and hence acceptable." (Assessment Order related to AY 2014-15 is enclosed herewith as Annexure no. 8)*

*The same has been accepted for the Assessment Year 2009-10 vide order w/s 148 / 143(3) of the IT Act. In view of the correct position and the true fact as stated above and further the department has accepted the assessee's version, we request to your honour, kindly allow the claim of deduction u/s 801C of the Act amounted to Rs. 16871111/- which is available as per legal provisions and in view of the notification No.. 177/2004 dated , as claimed by the assessee. On the basis of these facts, kindly delete the addition of Rs. 16871111/- and allow this ground of appeal. Practically, it is not the issue now being the Department has accepted the assessee's claim on the basis of location and situation of the industrial undertaking.*

*It is utmost surprising that the Ld. ACIT himself was satisfied that the assessee is eligible to claim the deduction u/s 801C of the Income Tax Act, 1961, specially, after the receipt of the revised report of the Tehsildar, Haridwar dated 28/03/2016, but still not allowed and raised huge demand. It can be verified from his own wordings as written in the Para no. 1 at Page no. 12 of his order; reproduced here:*

*"If Assessee gets relief on the issue of the deduction claim u/s 801C of the I.T. Act 1961 in future than under mentioned proportionate deduction in Para number 7 & 8 shall be withdrawn from total deduction w/s 801C of the I. T. Act 1961." It is very clear that the Ld. ACIT can easily accept the claim of the assessee after the receipt of the revised report*

dated 28/03/2106 and can avoid the huge demand raised on account of this disallowance.

The following statistics regarding Sales, Gross Profit and Net Profit for preceding three years including current year, will reflect the true position of the trading and operating results: (in Rs)

Particulars	A.y 2013-4	A.Y 2012-13	A.Y 2011-12
Sales/Turnover	86251671	122951054	61625012
Gross profit	19031245	23453897	11836480
Gross Profit Ratio	21.94%	19.07%	19.20%
Net profit	16781949	20363147	10961855

The Ld. ACIT has accepted the above results without any intervention. (Para no. 2 at Page no4 of the Assessment Order)"

4.2. I have considered the assessment order, appellant's submissions and documents on record. I find that the disallowance of deduction under Section 801C of the Act was mainly based on the report of the Tehsildar that Khasra No.31M is not notified in the Notification No.177/2004[SO 741] [F. No.142/47/2003-TPL], dated 28.06.2004. Whereas the appellant has submitted necessary evidences that his unit is situated at Khasra No.31 and also submitted the document issued by the jurisdictional Tehsildar that Khasra No.31 is notified in the abovementioned notification dated 28.06.2004. I find that this fact has been accepted by the AO for the subsequent assessment year i.e. 2014-15 while specifically quoting "the manufacturing plant of the is situated at E-9, Industrial Area, Bahadrad, Haridwar, Uttarakhand. The unit started its business in the F.Y. 2010-11. Since, beginning, the assessee has been claiming deduction u/s 801C of the Act. The submission of the assessee in regard to the claim of deduction u/s 801C of the Act has been considered. The

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*submission of the assessee is found to be in order hence, acceptable." and on the basis of the same, has allowed the deduction claimed by the appellant under Section 801C of the Act for that year. In view of the above discussion, it is clear that the deduction of Rs.1,68,71,111/- under Section 80IC of the Act for the year under consideration was incorrectly disallowed by the AO, therefore, the same is hereby directed to be allowed. The appellant succeeds on this issue. The ground Nos.2 & 3 raised by the appellant regarding this issue stand allowed.*

*Since, the AO in his order at Page No. 12 has also stated that if the relief u/s 80IC of the Act is allowed in future then, deduction in para-7 & 8 of his order shall be withdrawn from total deduction. In this regard, the AO is directed to recompute accordingly as the ground of appellant with regard to relief u/s 801C of the Act has been allowed vide this order*

7. Further, the Ld. AR emphasized at page 21 of the paper book, referring to assessee's order U/sec143(3) of the Act for the A.Y 2014-15 where the AO has made an observation with respect to the claim that the manufacturing plant of the assessee is situated at Haridwar and started the business in the F.Y 2010-11 and the assessee has been claiming the deduction u/s 80IC of the Act. The AO after having verified the claim of deduction u/s 80IC of the Act has allowed the deduction. The Ld. AR has referred to the assessment order for A.Y 2016-17 at Page 24 and 25 of the paper book where the revenue has accepted the claim. Whereas the Ld. DR could not controvert the

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findings of the CIT(A) with any new cogent material or information on the disputed issue to take different view. We considered the facts, circumstances, submissions as discussed above are of the view that the CIT(A) has passed a reasoned and conclusive order. Accordingly we do not find any infirmity in the order of the CIT(A) and uphold the same and dismiss the grounds of appeal of the revenue.

8. In the result, the appeal filed by the revenue is dismissed.

Order pronounced in the open court on 14.08.2023.

Sd/-  
(DR DIPAK P RIPOTE)  
**ACCOUNTANT MEMBER**

Sd/-  
(PAVAN KUMAR GADALE)  
**JUDICIAL MEMBER**

Jodhpur Dated 14.08.2023

KRK, PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)
4. Concerned CIT
5. DR, ITAT, Jodhpur
6. Guard file.

आदेशानुसार/ BY ORDER,

*ITA No. 297/Jodh/2018*  
*Shri brij Bhushan Goyal*

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//True Copy//

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( Asst. Registrar)  
ITAT, Jodhpur