

| आयकर अपीलिय अधिकरण न्यायपीठ, गुवाहाटी।  
IN THE INCOME TAX APPELLATE TRIBUNAL  
"GUWAHATI" BENCH, GUWAHATI  
BEFORE SHRI RAJPAL YADAV, HON'BLE VICE PRESIDENT  
&  
DR. MANISH BORAD, HON'BLE ACCOUNTANT MEMBER

**I.T.A. No. 176/GTY/2019**  
**Assessment Year: 2013-14**

<b>Dy. Commissioner of Income-tax, Circle-4</b>	Vs	<b>M/s. Shiv Steel Industries</b> Block Dhanuka Complex S.J. Road Athgaon, Kamrup Guwahati - 781001 [PAN : ABEFS6132J]
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<b>अपीलार्थी/ (Appellant)</b>	<b>प्रत्यर्थी/ (Respondent)</b>
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Assessee by :	Shri Jay Prakash Gupta, FCA
Revenue by :	Shri P.S. Thuingaleng, ACIT, Sr. D/R & Shri Arun Bhowmick, JCIT, D/R

सुनवाई की तारीख/Date of Hearing : 23/08/2023  
घोषणा की तारीख /Date of Pronouncement: 24/08/2023

**आदेश/ORDER**

**PER DR. MANISH BORAD, ACCOUNTANT MEMBER :**

The present appeal is directed at the instance of the revenue against the order of the learned Commissioner of Income Tax (Appeals) Guwahati -2, (hereinafter the "Id. CIT(A)") dt. 28/02/2019, passed u/s 250 of the Income Tax Act, 1961 ("the Act'), for Assessment Year 2013-14.

2. Facts in brief are that the assessee is a partnership firm engaged in manufacturing of TMT bars. Income of Rs.20,58,660/- declared in the e-return filed on 29/09/2013. Case selected for scrutiny through CASS followed by validly serving notice u/s 143(2) and 142(1) of the Act. While computing the total income, the assessee claimed deduction u/s 80IE of the Act in respect of VAT remission at Rs. 1,99,13,704/-. The assessee filed Form 10CCB eligibility certificate, registration certificate from Inspector of Factories, Assam and other details.

However, the ld. Assessing Officer while going through the said claim observed that the said deduction is available only when an industrial undertaking or enterprise manufactures or produces any article or thins as specified in that section. Further the ld. Assessing Officer observed that VAT remissions is an incentive by the State Government exempting industrial unit from paying sales tax (re-imburement to the extent of 99% of the VAT paid). The ld. Assessing Officer also observed that the VAT remission made constitutes profit and loss account from business u/s 28 of the Act but it cannot be constituted as profit derived from industrial undertaking and accordingly deduction u/s 80IE of the Act was denied. Along with other minor additions/disallowances, income of assessed at Rs.2,90,78,739/-.

2.1. Aggrieved, assessee preferred appeal before the ld. CIT(A) and succeeded.

3. Now, the revenue is in appeal before the Tribunal and the sole issue raised in this appeal is against the finding of the ld. CIT(A) allowing the deduction u/s 80IE of the Act at Rs.1,99,13,704/- claimed by the assessee on account of VAT remission.

4. The ld. D/R vehemently argued supporting the order of the ld. Assessing Officer.

5. On the other hand, the ld. Counsel for the assessee apart from placing reliance on the detailed finding of the ld. CIT(A) relied on various decisions referred and relied therein and also referred to the decision of this Tribunal in the assessee's own case for Assessment Year 2010-11 in ITA No. 86/Gau/2014; Assessment Year 2010-11,

order dt. 22/05/2010. Further reference was made on the following decision wherein also VAT remission is held to be revenue receipt eligible for deduction u/s 80IC/80IE of the Act.

6. We have heard rival contentions and perused the material placed before us. We observe that the assessee is a manufacturer of TMT Bars. It started its production during FY 2006-07 and, therefore, Assessment Year 2013-14 is the 6<sup>th</sup> year and the assessee has been claiming deduction u/s 80IC/80IE of the Act. It is an admitted fact that the assessee has provided the auditor's certificate, eligibility certificate, registration certificate from Inspector of Factories, Assam and other details in support of the said claim that the assessee is a manufacturer and it is eligible for the said deduction. The Government of Assam, started a scheme as the Assam Industries (Tax Exemption) Scheme, 2009 and the exemption under the scheme is part of the package of incentives for setting up new industries in Assam under Industrial Policy of Assam, 2008. The object of the Industrial Policy of Assam, 2008 is to generate economic development by accelerating the process of industrialisation and to generate employment etc. As per this Scheme, assessee is eligible for exemption from payment of 99% of the amount of VAT/Sales tax payable in accordance with the tax returned and the balance 1% of the tax needs to be deposited into the Government account. In other words, out of the total VAT/Sales Tax collected by the assessee only 1% needs to be deposited in the Government treasury and the remaining is utilized by the assessee for its business. The Hon'ble Supreme Court in the case of *CIT v. Ponni*

*Sugars & Chemicals Ltd. [2008] 174 Taxman 87/306 ITR 392 held that “.....the character of the receipt in the hands of the assessee has to be determined with respect to the purpose for which the subsidy is given. In other words, in such cases, one has to apply the purpose test. The point of time at which the subsidy is paid is not relevant. The source is immaterial. The form of subsidy is immaterial....”* The Hon’ble Court further held that, “*If the object of the subsidy scheme was to enable the assessee to run the business more profitably then the receipt is on revenue account. On the other hand, if the object of the assistance under the subsidy scheme was to enable the assessee to set up a new unit or to expand the existing unit then the receipt of the subsidy was on capital account.*”

7. On going through the above ratio laid down by the Hon’ble Court, we understand that a subsidy can be treated as revenue only if it is received after commencement of the business. So far as the capital receipt is concerned, it can be received before the commercial production and even later depending on the nature of such receipt. Now, in the case before us, we notice that the assessee has received the VAT remission subsidy and 99% of the VAT/Sales Tax is not required to be paid by the assessee and directly linked to revenue. We notice that similar set of facts were also before the Tribunal in the assessee’s own case wherein also this Tribunal referred to the decision of *Meghalaya Mineral Products vs. ACIT (2015) 38 ITR (trib) 186 (Gauhati)* and decided the issue in favour of the assessee holding that it is eligible for deduction u/s 80IE of the Act.

8. Since the Id. D/R failed to controvert this contention of the Id. Counsel for the assessee by placing any binding precedent in its

favour, we thus, respectfully following the order of this Tribunal in the assessee's own case in ITA No. 86/Gau/2014, are inclined to hold that the Id. CIT(A) has rightly allowed the claim of the assessee u/s 80IE of the Act for the VAT remission subsidy. Accordingly, Ground Nos. (i), (ii) & (iii) raised by the revenue are dismissed. Ground No. (iv) is general in nature.

9. In the result, appeal of the revenue is dismissed.

**Order pronounced in the Court on 24<sup>th</sup> August, 2023.**

*Sd/-*

**(RAJPAL YADAV)  
VICE-PRESIDENT**

*Sd/-*

**(DR. MANISH BORAD)  
ACCOUNTANT MEMBER**

Kolkata, Dated 24/08/2023

*30/8/23*

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, गुवाहाटी /DR,ITAT, Guwahati,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,  
TRUE COPY

Assistant Registrar  
आयकर अपीलीय अधिकरण  
ITAT, Guwahati