

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

**Before Shri Rajpal Yadav, Vice-President
&
Shri Rajesh Kumar, Accountant Member**

**I.T.A. No. 01/GAU/2022
Assessment Year: 2019-2020**

***York Print Pvt. Limited,.....Appellant
301, Orion Tower Christian Basti,
Guwahati-781005, Assam
[PAN: AAACY1547R]***

-Vs.-

***Assistant Commissioner of Income Tax,....Respondent
Circle Shillong,
Aayakar Bhawan, M.G. Road,
Shillong-793001, Meghalaya***

Appearances by:

*Shri Ramesh Goenka, Advocate, appeared on behalf of the
assessee*

*Shri Chandan Dutta, D.R., appeared on behalf of the
Revenue*

Date of concluding the hearing : August 30, 2023

Date of pronouncing the order : October 13, 2023

O R D E R

Per Rajpal Yadav, Vice-President (KZ):-

The assessee is in appeal before the Tribunal against the order of ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi dated 12th November, 2021 passed for A.Y. 2019-20.

2. In Grounds no. 1 to 3, the assessee has pleaded that ld. CIT(Appeals) has erred in confirming the disallowance of Rs.28,05,153/-, which was disallowed by the ld. Assessing Officer on the ground that employees' contribution was not paid within the due date provided in P.F. & ESI Acts. As far as the above dispute is concerned, the controversy has been silenced by the Hon'ble Supreme Court in the case of Checkmate Services (P) Limited -vs.- CIT reported in 143 taxmann.com 178.

3. The ld. Counsel for the assessee conceded that this ground deserves to be dismissed and the disallowance deserves to be confirmed. Therefore, these three grounds are dismissed.

4. In Grounds No. 4, 5 & 6, the assessee has pleaded that in case any disallowance is being made out of the business expenses claimed, then, it would result into enhancement of taxable income. The assessee is entitled for deduction under section 80IE. There is no dispute with regard to admissibility of this deduction. The only dispute is that in case, disallowance is being made, then the deduction to that extent be enhanced. For this purpose, the assessee relied upon the Board's Circular bearing No. 37/2016, which has been placed on pages no. 41 to 42 of the paper book.

5. The ld. D.R., on the other hand, was unable to controvert this proposition. He submitted that ld. CIT(Appeals) has recorded a finding that no such issue emerges out from the record.

6. Brief facts of the case are that the assessee has filed its return under section 139(1). This return was processed by CPC, Bengaluru under section 143(1) and intimation was given to the assessee on 30.06.2020. Dissatisfied with the adjustments made in this return, the assessee filed an appeal. The assessee took a plea for grant of deduction under section 80IE, but ld. CIT(Appeals) has rejected this claim on the ground that no such issue is emerging out from the record. Before us, the assessee submitted that ld. Assessing Officer himself has granted the deduction under section 80IE, therefore, the grant is not in dispute. The only dispute relates to quantification of the deduction. According to the assessee, the disallowance out of P.F & ESI would ultimately enhance the taxable income of the assessee and that enhanced income would further qualify for grant of deduction under section 80IE. It is pertinent to observe that since it is a computer processed assessment order, therefore, facts have not been noticed in details. At this stage, we deem it appropriate to reproduce the Board's Circular, which reads as under:-

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D/2
CIRCULAR NO. 37/2016

F.No.279/Misc./140/2015/ITJ
Government of India
Ministry of Finance,
Department of Revenue
Central Board of Direct Taxes

New Delhi, Dated 2nd November 2016

Subject: Chapter VI-A deduction on enhanced profits- Reg.

Chapter VI-A of the Income-tax Act, 1961 ("the Act"), provides for deductions in respect of certain incomes. In computing the profits and gains of a business activity, the Assessing Officer may make certain disallowances, such as disallowances pertaining to sections 32, 40(a)(ia), 40A(3), 43B etc., of the Act. At times disallowance out of specific expenditure claimed may also be made. The effect of such disallowances is an increase in the profits. Doubts have been raised as to whether such higher profits would also result in claim for a higher profit-linked deduction under Chapter VI-A.

2. The issue of the claim of higher deduction on the enhanced profits has been a contentious one. However, the courts have generally held that if the expenditure disallowed is related to the business activity against which the Chapter VI-A deduction has been claimed, the deduction needs to be allowed on the enhanced profits. Some illustrative cases upholding this view are as follows:

(i) If an expenditure incurred by assessee for the purpose of developing a housing project was not allowable on account of non-deduction of TDS under law, such disallowance would ultimately increase assessee's profits from business of developing housing project. The ultimate profits of assessee after adjusting disallowance under section 40(a)(ia) of the Act would qualify for deduction under section 80-IB of the Act. This view was taken by the courts in the following cases:

- Income-tax Officer - Ward 5(1) vs. Keval Construction, Tax Appeal No. 443 of 2012, December 10, 2012, Gujarat High Court.¹
- Commissioner of Income-tax-IV, Nagpur vs. Sunil Vishwambharnath Tiwari, IT Appeal No. 2 of 2011, September 11, 2015, Bombay High Court.²

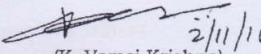
(ii) If deduction under section 40A(3) of the Act is not allowed, the same would have to be added to the profits of the undertaking on which the assessee would be entitled for deduction under section 80-IB of the Act. This view was taken by the court in the following case:

- Principal CIT, Kanpur vs. Surya Merchants Ltd., I.T. Appeal No. 248 of 2015, May 03, 2016, Allahabad High Court.³

The above views have attained finality as these judgments of the High Courts of Bombay, Gujarat and Allahabad have been accepted by the Department.

3. In view of the above, the Board has accepted the settled position that the disallowances made under sections 32, 40(a)(ia), 40A(3), 43B, etc. of the Act and other specific disallowances, related to the business activity against which the Chapter VI-A deduction has been claimed, result in enhancement of the profits of the eligible business, and that deduction under Chapter VI-A is admissible on the profits so enhanced by the disallowance.

4. Accordingly, henceforth, appeals may not be filed on this ground by officers of the Department and appeals already filed in Courts/ Tribunals may be withdrawn/ not pressed upon. The above may be brought to the notice of all concerned.


(K. Vamsi Krishna)
ACIT (OSD)(ITJ),
CBDT, New Delhi.

7. Following the above Circular, we remit the issue to the file of Id. Assessing Officer for redetermination of the deduction admissible under section 80IE of the Income Tax Act. It is further made clear that the deduction claimed and granted by the CPC, Bengaluru is not disturbed. The only issue, which is remitted to the Id. Assessing Officer is, whether P.F. & ESI claim disallowed to the assessee will further qualify for grant of deduction or not. In the garb of deciding this issue, the Id. Assessing Officer will not withdraw deduction under section 80IE, if any granted to the assessee on the basis of this order.

8. In view of the above, the appeal of the assessee is partly allowed.

Order pronounced in the open Court on October 13, 2023.

**Sd/-
(Rajesh Kumar)
Accountant Member**

**Sd/-
(Rajpal Yadav)
Vice-President(KZ)**

Kolkata, the 13th day of October, 2023

*Copies to :(1) York Print Pvt. Limited,
301, Orion Tower Christian Basti,
Guwahati-781005, Assam*

*(2) Assistant Commissioner of Income Tax,
Circle Shillong,
Aayakar Bhawan, M.G. Road,*

Shillong-793001, Meghalaya

*(3) Commissioner of Income Tax (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.