

आयकर अपीलीय अधिकरण, कोलकाता पीठ 'बी', कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH KOLKATA

श्री संजय गर्ग, न्यायिक सदस्य एवं श्री गिरीश अग्रवाल, लेखा सदस्य के समक्ष
Before Shri Sanjay Garg, Judicial Member and Shri Girish Agrawal, Accountant Member

I.T.A. No.500/Kol/2020
Assessment Year: 2008-09

M/s Salarpuria Properties Pvt. LtdAppellant
C/o M/s Salarpuria Jajodia & Co.,
3rd Floor, 7, Chittaranjan Avenue,
Kolkata-700072.
[PAN: AAGCS8492P]

vs.

DCIT,Circle-1(1), Kolkata..... Respondent

Appearances by:

Shri S. Jhalaria, FCA, appeared on behalf of the appellant.

Shri Abhijit Kundu, CIT-DR, appeared on behalf of the Respondent.

Date of concluding the hearing : 17.10.2023

Date of pronouncing the order : 17.10.2023

आदेश / ORDER

संजय गर्ग, न्यायिक सदस्य द्वारा / Per Sanjay Garg, Judicial Member:

The present appeal has been preferred by the assessee against the order dated 20.03.2018 of the Commissioner of Income Tax(Appeals)-5, Kolkata [hereinafter referred to as 'CIT(A)'] passed u/s 250 of the Income Tax Act (hereinafter referred to as the 'Act').

2. The appeal is time barred by 852 days. A separate application for condonation of delay has been filed wherein it has been mentioned that though the impugned order was passed by the CIT(A) on 20.03.2018 but the copy of the same was never physically served upon the assessee. The order seemed to have been served through e-mail, however, the e-mail of the company, due to some inadvertence, was not opened by the staff of the company during the relevant period and therefore, the assessee company/its directors were not aware of the

passing of the impugned order by the CIT(A). The copy of the order was received by the directors on 09.09.2020 only and immediately the directors contacted the tax consultant and after preparation, the present appeal was filed on 16.09.2020. It has, therefore, been prayed that the delay was not intentional but due to the aforesaid circumstances. The aforesaid application has been corroborated with the affidavit of Ms. Neha Roongta, Accounts Manager of the assessee company. Considering the aforesaid submissions, the delay in filing the present appeal by the assessee is hereby condoned.

3. The assessee in this appeal has taken the following grounds of appeal:

"1. For that in view of the facts and in the circumstances the AO was wholly unjustified in not allowing deduction / exemption for Rs. 3,15,24,824/- u/s 801A (4)(iii) in respect of the project, "Salarpuria Touchstone" and in view of the facts and in the circumstances and in view of the details having made available to the AO and the Ld. CIT(A), the Ld. CIT(A) is wholly unjustified in confirming the said action of the AO and in view of the facts and in the circumstances and the project being fully exempt u/s 80IA(4)(iii) it may kindly be held accordingly and the AO may kindly be directed accordingly.

2. For that in view of the facts and in the circumstances the AO was wholly unjustified in allowing credit for TDS of Rs. 5,53,39,517/- only as against the claim of the appellant for Rs. 5,57,39,427/- even in spite of all the details in this regard having been made available and even in spite of the fact that the original TDS certificates for the balance amount of Rs. 3,80,910/- also was duly made available to the AO on 3rd February, 2010 itself and even in spite of the fact that all the details were made available to the Ld. CIT(A) also, the Ld. CIT(A) should I have directed the AO to allow credit for the balance said sum of Rs. 3,80,910/- instead of referring the matter back to him and in view of the facts and in the circumstances the AO may kindly be directed accordingly.

3. For that in view of the facts and circumstances the Ld. CIT(A) should have directed the AO to allow the interest u/s 244A on further refund

available to your petitioner and in view of the facts and circumstances the AO may kindly be directed accordingly

4 That the appellant craves leave to add, alter, amend, amplify or modify any or all of the above grounds of appeal at or before the time of hearing of the appeal.”

3. **Ground no. 1-** At the outset, the ld. Counsel for the assessee has submitted that the issue raised vide Ground no.1, as reproduced above, relating to the exemption claimed u/s 80IA(4)(iii) is squarely covered against the assessee by the order of the Tribunal dated 10.05.2022 in the own cases of the assessee passed in ITA no. 2094/Kol/2017 for A.Y. 2010-11 and further order dated 17.05.2022 passed in the in ITA no. 2492/Kol/2019 for A.Y. 2011-12. The relevant part of the said order dated 10.05.2022 is reproduced as under.

“3.3. We have heard the rival parties and perused the material on record. The undisputed facts are that the assessee has set up four industrial parks in respect of which the deductions u/s 80IA and 80IB of the Act have been claimed as per details given (supra). Needless to mention that the assessee is entitled to claim deduction u/s 80IA & IB of the Act provided the Industrial Park is notified by the Central Govt under Industrial Park Scheme, 2008. The assessee has furnished the notifications issued by CBDT in respect of all the projects except “Salarpuria Touchstone” in respect of which the assessee has claimed deduction u/s 80IA to the tune of Rs. 6,81,07,687/-. According to the assessee, the competent authority has not notified the Industrial Park despite assessing having applied for the approval of the project and thereafter moving several communications to the competent authority following up and requesting for the notification of the said Industrial Park. We note that the assessee has also filed a writ petition before the Hon’ble Karnataka High Court seeking the direction to CBDT/competent authority to bring out a notification in respect of Salarpuria Touchstone and the Hon’ble Karnataka High Court was also pleased to give certain directions to competent authority in respect of above Industrial Park however again due to the failure of competent authority to follow the directions of Hon’ble Karnataka High Court, another writ petition was filed by the assessee before the Hon’ble Karnataka High Court seeking necessary directions to the competent authority which is pending for

adjudication. Undisputedly till date the project has not been notified by the competent authority which was a pre-condition for grant of deduction u/s 80IA (4) of the Act. Under these circumstances, we are of the view that the deduction u/s 80IA(4) of the Act of Rs. 6,81,07,687/- in respect of Salarpuria Touchstone park cannot be allowed. However, in case the Hon'ble High Court decides the issue favorably and the project is notified in future by the competent authority , then the assessee may approach the AO for grant of relief/deduction 80IA(4) of the Act and the AO will be bound to amend the order accordingly. Subject to above observations, this issue is decided against the assessee. Accordingly, ground nos. 1 & 2 are dismissed with the above observations.”

The above observations/directions given by the Tribunal relating to the same issue mutatis mutandis apply on the case of the assessee on this issue for the year under consideration also. Ground no.1 of the appeal is treated as dismissed.

4. **Grounds No. 2 to 4** are not pressed, hence these grounds are dismissed.
5. Subject to the observations made above, the appeal of the assessee stands dismissed.

Kolkata, the 17th October, 2023.

Sd/-

[गिरीश अग्रवाल /Girish Agrawal]
लेखा सदस्य/Accountant Member

Sd/-

[संजय गर्ग /Sanjay Garg]
न्यायिक सदस्य/Judicial Member

Dated: 17.10.2023.

RS

Copy of the order forwarded to:

1. M/s Salarpuria Properties Pvt. Ltd
2. DCIT,Circle-1(1), Kolkata
- 3.CIT (A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches