

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "F", MUMBAI**

BEFORE SHRI.NARENDER KUMAR CHOUDHRY (JUDICIAL MEMBER)  
AND  
SHRI S. RIFAUR RAHMAN (ACCOUNTANT MEMBER)

I.T.A. No.2401/Mum/2023  
(Assessment year: 2013-14)

Viral Industries A-1, New Chandrodaya Co-op Hsg, Rajawadi S.O., Mumbai <b>PAN : AAFFV1645R</b>	Vs	ITO 27(3)(5), Vashi Station Complex, Tower No.6, 3 <sup>rd</sup> & 4 <sup>th</sup> Floor, Vashi, Navi Mumbai-400 703
<b>APPLICANT</b>		<b>RESPONDENT</b>

Present for the Assessee	Sh. B V Jaweri, Ld. AR
Present for the Department	Sh. Ujjawal Kumar Chavan , Ld. Sr. DR

Date of hearing	18/01/2024
Date of pronouncement	31/01/2024

**ORDER**

**Per N.K. Choudhry (JM):**

This appeal has been preferred by the Assessee, against the order dated 29/05/2023 impugned herein passed by the National Faceless Appeal Centre, Delhi ( in short 'NFAC') / Ld. Commissioner of

Income-tax (in short, 'Ld. Commissioner') under section 250 of the Income-tax Act, 1961 (in short, 'the Act') for the A.Y. 2013-14.

**2.** The Assessee, by filing its return of income for the assessment year under consideration on 29/09/2013, claimed the deduction of Rs.1,22,02,032/- under Chapter VIA of the Act and declared its income at Rs. "Nil". The said return was processed under section 143(1) of the Act. Subsequently, the case of the Assessee was selected under CASS and resultantly, the statutory notices were issued for examining the claim of the Assessee qua deduction under section 80IB(4) of the Act.

**2.1** The Assessee by filing a letter dated 7<sup>th</sup> September, 2015 claimed that the Assessee's undertaking is a newly set up undertaking and all the plant and machineries acquired by the undertaking / Assessee was not previously used for any purpose. The Assessee during the year under consideration was engaged in manufacturing or production of articles or things, and located in industrially backward area specified in the Eighth Schedule and therefore, entitled for the benefit under section 80IB of the Act.

**2.2** The Assessing Officer by analyzing and perusing the provisions of section 80IB observed that it is apparent that legislature has stipulated the initial assessment year for claiming the deduction under the section. The Assessee, if started the production on or before 31<sup>st</sup> March, 2012, than only would be entitled for deduction under the aforesaid provisions. Therefore, the Assessing Officer in order to

verify "as to whether the Assessee has started production on or before 31/12/2012 or not", issued the notice vide order sheet entry dated 08/01/2016 and asked the Assessee to furnish following details:-

- i. The original copy of bids of purchase of machinery during the year ( F.Y 2011 -12 and also produce the original copy of octroi / toll tax receipt made / paid for the transportation of such machinery to Jammu.
- ii. Documentary proof for installation of machinery purchased during F.Y. 2011-12
- iii. Excise record for RG-1, RG-23 for F.Y. 2011-12 and F.Y. 2012-13.
- iv. Electricity connection proof with all the electricity bills starting from starting month
- v. Original bills of sales /purchase made during F.Y. 2011-12 . Bills of power consumption during F.Y. 2011-12."

**3.** The Assessee, in response to the said queries, vide letter dated 14<sup>th</sup> January, 2016 made its submission and filed the following documents:-

"4.1.4.1. The Assessee vide its letter dated 14/01/2016 had made its submission . It was submitted -  
In the course of last hearing held on 8 January you honour desired certain information / details to prove that we had start our manufacturing in the year ended 31<sup>st</sup> March 2012. We submit the following for you consideration –

- Point no. 1- Copy of sales invoices and original for verification.
- Point No, 2.- Copy of Excise records and original for verification

Point No. 3.- Copy of Electricity 1st Installation.  
 Point No. 4.- Copy of DG set installation Certificate.  
 Point No. 5.- Copy of Bill of Entry of machinery”

**4.** The Assessing Officer by pursuing the details submitted by the Assessee and noticing that during the assessment year under consideration, the Assessee had not shown any purchase of any machinery, again show caused the Assessee to furnish the details of purchases of machineries put to use during the financial year 2011-12.

**4.1** The Assessee, in response, furnished the details of machinery.

**4.2** On examination of the details, it was noticed by the Assessing Officer that the Assessee had purchased the machinery from financial year 2005-06 to financial year 2007-08 and has also furnished the photocopies of the same and the machines forming part of block of plant & machinery in the financial year 2011-12. Further, the Assessee had shown the opening WDV of the block of plant & machinery at Rs.23,13,147. As per the mandate of the provisions of section 80IB, the Assessee was supposed to start the production on or before 31<sup>st</sup> March, 2012 and, therefore, the Assessee was again asked to specifically to produce the details.

**4.3** The Assessee, in order to substantiate its claim qua starting of production on or before 31<sup>st</sup> March, 2012, produced the following details:-

Name of the items	Date	Quantity	Amount	Name of the purchaser / customers
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Plain All tube	31/3/2012	600	4800	M/s Shankar Brazing Works, Mumbai
Plain Tin Container	31/3/2012	326	3912	M/s Shankar Brazing Works, Mumbai
Air Fresher	31/3/2012	192	4992	M/s Meghastar Impex, Jammu
Air Frewshner	31/3/2012	24	624	Shree Ganesh, Mumbai

**5.** The Assessing Officer analyzed the data provided by the Assessee and in order to verify the claim quasselling of products to 3 parties, conducted enquiry by sending notices under section 133(6) of the Act. M/s Meghastar Impex, Jammu has not furnished any details of purchases from the Assessee during the financial year 2011-12 and, therefore, it was construed by the Assessing Officer that Assessee has not sold out any finished goods to this concern during financial year 2011-12 and therefore, it would rather be incorrect on the part of the Assessee to say that it had produced the finished goods during the financial year 2011-12 and sold out the same to the aforesaid customer. With regard to the sales to Shree Ganesh Siddhi Vinayak, Prabhadevi, Mumbai, the Assessee failed to provide the postal address of the so-called customer, therefore, the Assessee's claim in this regard was also not accepted by the Assessing Officer. Further, M/s Shankar Brazing Works, Mumbai, vide letter dated 12/01/2016 seller categorically admitted that no transaction of purchase was carried out with the Assessee.

In the aforesaid circumstances, the Assessing Officer ultimately held that Assessee had not commenced production activity in the financial year 2011-12 in order to avail the deduction under section 80IB of the Act and, therefore, not fulfilled the condition by not commencing the production activity on or before 31/03/2012. Consequently, the Assessing Officer disallowed the Assessee's claim of deduction of Rs.1,22,02,032/- under section 80IB of the Act.

6. The Assessee being aggrieved challenged the aforesaid disallowance/ addition before the Ld. Commissioner, who, more or less on the same footing as done by the AO and also observing "that the Assessee in statement of facts as mentioned in Form no 35 **himself appears to have agreed that no manufacturing activity was commenced till AY 2012-13**", affirmed the action of the Assessing Officer for not granting the deduction under section 80IB of the Act. For brevity and clarity, conclusion drawn by the Ld. Commissioner is reproduced below:

**"5. Decision**

*5.1 I have perused the impugned order of assessment carefully. The AO, in para 4 of his order, has meticulously recorded as to why the assessee cannot be said to have started its production in a period relevant to AY 2012-13. The view of AO that initial year of production for the assessee is assessment year 2013-14 also finds support of the Auditors who at item sr. No. 9 of form 10CCB.*

*5.2 In the present proceedings despite the numerous opportunities given to the assessee, the assessee has not cared to make any submission or arguments in support of its grounds of appeal, therefore, the arguments contained in the grounds of appeal is found*

*to be bald and without any documentary support. Further, as per item sr. No. 12 of form 35 the assessee does not propose to rely on any document or evidence which was not produce before the AO.*

*5.3 On going through the order of assessment it is observed that the AO have not only carefully examined the documents produced before him but has also confronted the assessee before arriving at the decision as to why the assessee did not start manufacturing in period relevant to AY 2012-13 and as a consequence why the assessee was in eligible for deduction u/s 80IB.*

*5.4 it is also worth mentioning that assessee, from the statement of facts made in this appeal, himself appears to have agreed that no manufacturing activity was commenced till AY 2012-13. I have highlighted the averment made by the assessee in the statement of fact submitted by him which is extracted at para 2(10) and (11) above. For sake of easy perusal the said averment has also been highlighted by the undersigned.*

*5.5 On the basis of the above discussion I arrive at the same conclusion as thatof the AO and hold that the assessee, in facts and circumstances of the case and in law is not eligible for deduction u/s 80IB.*

*5.6 Ground no. 1 to 9 relate to denial of deduction u/s 80IB, which is decided against the assessee. Ground no. 10 appears to have been casually made by the assessee, as the AO have confronted the assessee on numerous occasions before coming to the conclusion that the assessee is not eligible for deduction under section 80IB. Ground no. 11 is a prayer, therefore, need not be separately adjudicated. Ground no. 12 is not to be decided in the facts of present list.”*

**7.** The Assessee being aggrieved is in appeal before us.

**8.** Heard the parties and perused the material available on record. Though the parties before us argued extensively on merit, however, we observe that before the Ld. Commissioner the Assessee inspite of sending various notices for the dates of hearing on 19/01/2021,

19/10/2022, 16/12/2022, 11/05/2023 and 25/05/2023, made no compliance by not responding to the notices sent by the Ld. Commissioner. Even otherwise, as per impugned order on 01/11/2022 communication window for the Assessee was enabled a facility by which the Assessee would have filed its response, but the Assessee made no compliance. Therefore, in the absence of the documents and the submissions of the Assessee, the Ld. Commissioner was constrained to decide the appeal filed by the Assessee on the basis of the material available on record. As the Assessee failed to file the relevant reply and / or documents in order to substantiate its claim before the Ld. Commissioner which resulted into denial of deduction under section 80IB of the Act and dismissal of the appeal. And it is also not the case of the Assessee that it has filed any submission / reply and documents before the Ld. Commissioner. Even on being asked by us for non-appearance and non-filing the reply/documents before the Ld. Commissioner, the Assessee failed to substantiate any plausible reason, except submitting that the Assessee has not received notices of hearing issued by the Ld. Commissioner. In the absence of any supportive documents qua non-appearance and non-filing of reply/documents, we are not convinced by the said claim of the Assessee, as the Ld. Commissioner not only issued 5 notices for affording the opportunity to the Assessee, but in fact, also opened the window on 01/11/2012 for enabling the Assessee to file its response. But still the Assessee failed to avail the said opportunities and, therefore, the Assessee is not entitled for any leniency on its delay and

latches. As the impugned order which is under challenge before us infact ex-parte and not based on the documents/submissions of the Assessee as observed above by us ; hence, we are not delving into evidences / documents / merits of the case as well as, relied upon by the parties.

However, considering the peculiar facts and circumstances of the case, as in the absence of the reply and documents of the Assessee, the Ld. Commissioner failed to examine the issue pertaining to rejection of claim under section 80IB of the Act thoroughly and in its right perspective and, therefore, for the just decision of the case and for the ends of substantial justice, we are inclined to afford an opportunity to the Assessee to substantiate its claim before the Ld. Commissioner by filing relevant submissions and proper evidences . Consequently, the case is remanded to the file of the Ld. Commissioner for decision afresh, suffice to say, by affording reasonable opportunity of being heard to the Assessee.

The Assessee is also directed to appear if necessitates by the Ld. Commissioner and to file the reply and relevant evidences and/or documents which would be needed for proper adjudication of the issue involved. On subsequent default, the Assessee shall not be entitled for any leniency.

In the aforesaid terms, the case is remanded to the file of the Ld. Commissioner accordingly.

9. In the result, appeal filed by the Assessee stands allowed for statistical purpose.

**Order pronounced in the open Court on 31/01/2024.**

**Sd/-**

**sd/-**

<b>(S.RIFAUH RAHMAN)</b>	<b>(NARENDER KUMAR CHOUDHRY)</b>
<b>ACCOUNTANT MEMBER</b>	<b>JUDICIAL MEMBER</b>

Pavanan

**प्रतिलिपि अग्रेषित Copy of the Order forwarded to :**

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,  
Mumbai
6. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

Asstt. Registrar / Senior Private  
Secretary

**ITAT, Mumbai**