

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ
**IN THE INCOME TAX APPELLATE TRIBUNAL,
" D " BENCH, AHMEDABAD**

**BEFORE Ms SUCHITRA KAMBLE, JUDICIAL MEMBER
And
SHRI WASEEM AHMED, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No. 708/AHD/2023

निर्धारण वर्ष/Asstt. Year: 2014-2015

Chirpal Industries Limited, Chirpal House, Shivranjani Cross Road, Satellite, Ahmedabad-380015. PAN: AAACC8513B	Vs.	D.C.I.T, Circle-1(1)(2), Ahmedabad.
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(Applicant)		(Respondent)
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Assessee by :	Shri Biren Shah, AR
Revenue by :	Shri Ankit Jain, Sr.DR

सुनवाई की तारीख/**Date of Hearing** : **06/03/2024**

घोषणा की तारीख /**Date of Pronouncement**: **02/04/2024**

आदेश/ORDER

PER WASEEM AHMED, ACCOUNTANT MEMBER:

The captioned appeal has been filed at the instance of the Assessee against the order of the Learned Commissioner of Income Tax (Appeals)-12, Ahmedabad, arising in the matter of assessment order passed under s. 143 r.w.s. 147 of the Income Tax Act, 1961 (here-in-after referred to as "the Act") relevant to the Assessment Year 2014-15.

2. The assessee has raised the following grounds of appeal:

1. The Ld.CIT(Appeals)-12, Ahmedabad has erred in law and on facts in confirming the disallowance of depreciation of Rs.79,24,946/- made in the Assessment Order passed u/s.143(3) r.w.s 147 of the I.T Act having effect of reducing the claim of deduction made u/s.80IA of the Act to the extent.

2. Ld.CIT(A) has erred in law and on facts in confirming the validity of the reassessment proceedings u/s.148 of the Act which was initiated based on no new set of facts and was merely in form of review of Assessment Order earlier passed u/s.143(3) of the Act in respect of the year under consideration.

2.1 All relevant details pertaining to the claim of deduction 80IA of the Act had duly been brought on record by appellant during the original assessment proceeding.

3. Ld.CIT(A), has erred in law and on facts in not appreciating the fact that the appellant, in the return of income filed for the year under consideration, had duly given effect to the adjustment required for the depreciation of Rs.79,24,946/- and therefore, no further adjustment was required.

4. The appellant craves leave to add, alter, amend or withdraw any of the grounds of appeal on before of the final hearing of appeal.

2.1 The assessee has also raised the additional grounds of appeal which are reproduced as under:

1. In law and in the facts of the appellant's case, Ld.Assessing Officer may be directed to reduce the total income of the assessee by Rs.3,96,42,334/- received by assessee as interest subsidy under Technology Upgradation Fund Scheme (TUFS) since these receipts qualify in the nature of capital receipt.

2. In law and in the facts of the appellant's case, Ld.Assessing Officer may be directed to reduce the book profit computed u/s.116JB by Rs.3,96,42,334/- received by assessee as interest subsidy under Technology Upgradation Fund Scheme (TUFS) since these receipts qualify in the nature of capital receipt.

3. The appellant craves leave to add to amend or to raise any further grounds of appeal as case may arise.

3. The only grievance of the assessee is that the learned CIT-A erred in confirming the order of the AO by sustaining the addition of the depreciation of ₹ 79,24,946.00 claimed under the provisions of The Companies Act.

4. Briefly stated facts are that the assessee has claimed the deduction under section 80-IA of the Act amounting to ₹ 3,96,92,887.00 which was computed after the reduction of the depreciation of ₹ 79,24,946.00 claimed under the provisions of The Companies Act. As per the AO, the assessee was to add back such the

depreciation in the computation of income and thereafter the assessee should have claimed the depreciation as deduction as per the provisions of the Income Tax Act relating to the power division. But the assessee has not done so. According to the AO such depreciation was to be disallowed and added to the total income of the assessee as the assessee was denied the deduction claimed by it under section 80 IA of the Act in the assessment framed under section 143(3) of the Act. Thus, the AO disallowed the same and added to the total income of the assessee.

5. Aggrieved assessee preferred an appeal to the learned CIT-A and contended that the ITAT has allowed the claim of the assessee for the deduction under section 80 IA of the Act. Accordingly, the assessee should have been allowed higher amount of deduction as per the calculation of the AO. The assessee further furnished the amount of deduction eligible under section 80-IA of the Act in the manner as detailed below:

In the case of appellant actual deduction u/s.80IA should be as under:

<i>Particulars</i>	<i>Amount</i>
<i>Profit as per Profit & Loss A/C of Power Plant Profit & Loss A/C</i>	<i>39692887/-</i>
<i>Add: Depreciation claimed as per Companies Act</i>	<i>7924946/-</i>
<i>Less: Depreciation allowable as per Income Tax Act</i>	<i>386800/-</i>
<i>Deduction allowable as per Section 80IA</i>	<i>47231033/-</i>

2.4 *It is further submits that the same deduction of Rs.4,72,31,033/- as per above claimed by the appellant in the statement of total income on a different way, but ultimate amount of deduction is same as per above formula. Deduction claimed by the appellant in the statement of total income as under:*

<i>Particulars</i>	<i>Amount</i>
<i>Profit after add or less as per STI</i>	
<i>Add: Depreciation allowable as per Income tax</i>	<i>(+) 386800/-</i>
<i>Less: Depreciation claimed in P & L as per companies Act</i>	<i>(-) 7924946/-</i>
<i>Less: Deduction claimed u/s.80IA</i>	<i>(-)39692887/-</i>
<i>Ultimate Deduction as per section 80IA</i>	<i>(-)47231033/-</i>

Copy of statement of total income highlighting the above amount is enclosing here with for your ready reference and record.

6. However, the learned CIT-A allowed the ground of appeal of the assessee in part by observing as under:

7. Main ground of appeal is regarding disallowances of depreciation of Rs.79,24,946/-. The fact is, as narrated above that the appellant has wrongly deducted depreciation of Rs.79,24,946/- as against amount allowable under the Act of Rs 3,86,800/- (CVL Boiler, Stem Turbine, etc Rs 141/- + Rs 3,86,659/-). This action of the AO is as per law and the objection of the appellant is dismissed irrespective of the fact that Hon'ble ITAT has allowed the claim of section 801A to the appellant in appeal against the non-granting of the deduction in the original assessment u/s 143(3). The provision of depreciation allowance as per the Income tax Act is specific and prevails over the requirement as per the Companies Act while computing the income. The Ground of appeal is Partly Allowed.

7. Being aggrieved by the order of the learned CIT-A, the assessee is in appeal before us.

8. The Id. AR before us filed a paper book running from pages 1 to 152 and contended that the ITAT once has already allowed claim of the assessee for the deduction under section 80-IA of the Act and therefore if any disallowance is made, which eventually result in the greater profit, then the higher amount of profit should be allowed as deduction under section 80-IA of the Act to the assessee.

9. On the other hand, the Id. DR before us vehemently supported the order of the authorities below.

10. We have heard the rival contentions of both the parties and perused the materials available on record. From the preceding discussion, we note that the AO in the assessment framed under section 143(3) of the Act has disallowed the deduction claimed by the assessee under section 80-IA of the Act. Furthermore, the AO also found that the assessee has worked out the amount of deduction claimed under section 80-IA of the Act after reducing the amount of depreciation of ₹ 79,24,946.00 as per the provisions of The Companies Act. According to the AO, such depreciation claimed under The Companies Act is not allowable

deduction and therefore the same was disallowed and added to the total income of the assessee. The Id. CITA also upheld the finding of the AO subject to the depreciation calculated under the provisions of the Income Tax Act.

10.1 Before we go into the issue whether the amount of the depreciation in dispute is eligible for deduction while calculating the income of an undertaking eligible for deduction under section 80 IA of the Act, it is important to note that the disallowance made by the AO for the deduction claimed by the assessee under section 80-IA of the Act in the assessment proceedings carried out under section 143(3) of the Act has been allowed by the ITAT in ITA No. 2582/AHD/2017. The copy of the order of the ITAT is placed on pages 126 to 134 of the paper book. Thus, we are of the view that once the deduction has been allowed under section 80-IA of the Act, even any disallowance is made relating to the eligible undertaking, is not going to extend any benefit to the Revenue in the given facts and circumstances. It is for the reason that the assessee shall be entitled for claiming deduction under section 80 IA of the Act of the higher amount. Thus, even we assume but without admitting that the disallowance has to be made on account of the depreciation in dispute, which will eventually result greater profit of the eligible undertaking which will be allowed as deduction under section 80 IA of the Act. Accordingly, we set-aside the finding of the Id. CIT-A and direct the AO to delete the addition made by him. Hence ground of appeal of the assessee is allowed.

Now coming to the additional ground of appeal raised by the assessee.

11. The only interconnected issue raised by the assessee in the additional grounds of appeal is that the total income and the book profit of the assessee should be reduced by the sum of ₹ 3,96,42,334.00 representing the interest subsidy received under Technology Upgradation Fund Scheme being capital receipt not chargeable to tax.

12. At the outset, the learned counsel for the assessee before us submitted that this Tribunal in the case of DCIT versus M/s Jindal worldwide limited in ITA No. 1843/AHD/2016 involving identical issue has admitted additional ground of appeal and set aside the issue to the file of the AO for fresh adjudication as per the provisions of law. Accordingly, the Id. AR before us contended that such finding of the ITAT in the case cited above is also applicable in the instant set of facts. Therefore, the Id. AR submitted that similar direction can also be issued by the ITAT in the case on hand.

13. On the other hand, the Id. DR before us opposed to admit the additional ground of appeal raised by the assessee in the light of the ratio of the judgment of Hon'ble Supreme Court in the case of *CIT v. Sun Engineering Works (P.) Ltd.* [1992] 198 ITR 297 (SC)

14. We have heard the rival contentions of both the parties and perused the materials available on record. At the outset, we note that the issue raised by the assessee in the additional ground of appeal is identical to the issue in the case of M/s Jindal worldwide limited cited above where in the ITAT has observed as under:

11. We shall now turn to the additional ground raised by the assessee in its cross objection which reads as under:

"On the facts and the circumstances of the case and in law, the interest subsidy of Rs.2,16,45,161 received by the assessee under Technology Upgradation Fund Scheme (TUFS) for Textile and Jute industries during the above assessment year should be treated as capital receipt."

11.1 The additional ground has been admitted to adjudicate the legal issue in the light of the available view taken by the co-ordinate bench in DCIT vs. M/s. Adani Gas Ltd. ITA Nos. 775/Ahd/2014 & Ors. order dated 17.10.2018. The relevant operative para of the order of the co-ordinate bench is reproduced hereunder:

"21.4 A legal issue also cropped up in the course of hearing as to whether additional ground could be raised in a cross objection filed by the assessee under s.253(4) of the Act. On being enquired on this aspect of the matter, it was submitted on behalf of the assessee that there is no perceptible distinction between the position of law qua cross objection in the matter of filing additional ground. It was submitted that a cross objection has all the

trappings of a regular appeal more so in the light of language employed under s.253(4) of the Act.

21.5 We find ourselves in agreement with the propositions made on behalf of the assessee that in a cross objection, there is no bar to raise legal issues for the first time before ITAT. A cross objection is like an appeal. It has all the trappings of an appeal. It is filed in the form of memorandum and it is required to be disposed in same manner as an appeal. Even where the appeal is withdrawn or dismissed for default, cross objection may nevertheless be heard and determined. Cross objection is nothing but an appeal, a cross appeal at that. This apart, raising of additional ground would only enable the authority concern to correctly assess the tax liability of the assessee. Similar view has been expressed by the co-ordinate bench in the case of ITO vs. Jasjit Singh (Del) in cross objection Nos. 138 to 142/Del/2014 interim order dated 23.09.2014. We thus do not see any impediment in entertaining the additional grounds. The relevant facts are available on record.

21.6 In so far as the merits of the claim made in additional ground is concerned, we observe that where the AO has readjusted the quantum of depreciation in the subsequent assessment year, the assessee is within its legitimate rights to be granted depreciation in AY 2009-10 as per the figures worked by the AO himself. We do not see any perceptible reason for not admitting such claim of the assessee. We also find bonafides in the plea of the assessee for raising new claim on account of depreciation by way of additional ground at this belated stage. The order for the AY 2012-13 was passed on 29.03.2015. By virtue of this order, the assessee came to know about the revision in the claim of depreciation concerning AY 2012-13. By that time, the order of the CIT(A) dated 13.12.2013 was already passed. Therefore, the assessee was incapacitated to put forward such new claim towards depreciation on goodwill amounting to Rs.5,57,63,315/- for which relevant facts are duly available on record in the light of the decision of Hon'ble Supreme court in the case of Goetze (India) Ltd. vs. CIT [2006] 284 ITR 323 (SC) & NTPC vs. CIT 229 ITR 383 (SC).

22. In the result, additional ground raised by the assessee is allowed."

11.2 Having admitted the additional ground for adjudication as noted above we now turn to the relevant facts touching the issue. As pointed out on behalf of the assessee, a Technology Upgradation Fund Scheme (TUFFS) was introduced in 1999 to catalyze investments in textile industries. The purpose of scheme under which the subsidy was given was stated to be to sustain and prove the competitiveness and for long term viability of textile industry. The concerned ministry of textile adopted TUFFS scheme envisaging technology upgradation of the industry as per the scheme. The object of the scheme was to enhance sustainable growth in value chain for overall growth of textile industry. Pursuant to TUFFS, certain subsidy benefits by way of interest on reimbursement of loans taken from authorized agencies for investment in plant and machinery for spinning units and other machineries in textile industry was availed by textile sector.

11.3 In this background, it was contended on behalf of the assessee that the assessee herein as obtained subsidy by way of reimbursement of interest under the scheme. The assessee has treated the aforesaid interest reimbursement subsidy mistakenly as revenue receipt in the P&L account and disclosed the same by way of net off from interest expenses. The taxable income was thus stated to be overstated to this extent. It was contended that the character of such subsidy in the hands of recipient assessee is capital in nature having regard to the purpose for which the subsidy was given i.e. acceleration of development of textile industry.

11.4 Reference was made to the notes forming part of the financial account detailing the interest subsidy aggregating to Rs.2,16,45,161/- as reduced from the interest costs. Our attention was also adverted to Notes to the Financial Statement wherein suitable disclosure was made towards claim of interest subsidy.

11.5 In the circumstances, it is the case of the assessee that where such subsidy is intended and bestowed not with the object of running the business but with a solemn object of attracting industrial investment or expansion, such interest subsidy is in the nature of capital receipt and therefore cannot be reduced from the interest costs. It is thus contended that such capital receipt is not chargeable to tax in the relevant AY 2012-13 in question being a capital receipt.

12. We find that the issue is squarely covered in favour of the assessee by the decision of the Hon'ble Supreme Court in CIT vs. Chaphalkar Brothers Pune [2017] 88 taxmann.com 178 (SC); CIT vs. Meghalaya Steels Ltd. [2016] 67 taxmann.com 158 (SC) and CIT vs. Sham Lal Bansal [2011] 11 taxmann.com 369 (P&H). In the light of aforesaid judgments, we find merit in the plea of the assessee that having regard to the object and purposes of the scheme, the interest subsidy is required to be treated as capital receipt of non-taxable nature having regard to the propositions laid down in the judicial proceedings noted above.

13. The aforesaid view is also fortified by the legislature in view of amendment as per sub clause (xviii) to Section 2(24) of the IT Act as inserted by the Finance Act, 2015 which reads as under:

"[(xviii) assistance in the form of a subsidy or grant or cash incentive or duty drawback or waiver or concession or reimbursement (by whatever name called) by the Central Government or a State Government or any authority or body or agency in cash or kind to the assessee [other than,—

(a) the subsidy or grant or reimbursement which is taken into account for determination of the actual cost of the asset in accordance with the provisions of Explanation 10 to clause (1) of section 43; or

(b)

A claim on behalf of the assessee, as a corollary to said amendment, such a capital receipt may become chargeable to tax which is otherwise a capital receipt w.e.f. 01.04.2016. The aforesaid amendment has thus come into force w.e.f. AY 2016-17 which reinforces the impression of such capital receipt being out of tax net for the assessment year in question.

14. Thus, on first principles, we find ourselves in total agreement with the contentions on behalf of the assessee for non chargeability of such capital receipts regardless of its treatment in books as revenue receipts. We are however conscious in same vain that the issue has been raised for the first time before the Tribunal. The Revenue authorities had no occasion to look into the relevant facts. We accordingly consider it expedient to restore the issue to the file of the AO for verification of relevant factual aspects towards quantum of receipt of interest subsidy and relevant documentation in this regard, if so considered necessary in the opinion of the AO. The AO shall accordingly grant relief to the assessee in accordance with law in the light of our observations and shall exclude the subsidy from the ambit of taxation on being satisfied about the factual correctness on quantum of such subsidy.

15. In the result, the additional ground raised by the assessee in its cross objection is allowed for statistical purposes.

14.1 As the issue raised before us is identical to issue discussed above, therefore respectfully following the order of the coordinate bench discussed above, we admit the additional ground of appeal of the assessee and set aside the issue to the file of the AO for fresh adjudication as per the provisions of law and in the light of the order of the tribunal in the case of M/s Jindal worldwide limited discussed above. Hence the ground of appeal of the assessee is allowed for the statistical purposes.

14.2 Before parting, it is important to note that the appeal before us emanates from the order passed under section 143(3) read with section 147 of the Act. Therefore, a question strikes to our mind whether the assessee can seek relief by way of additional claimed raised in the additional ground of appeal in the income escaping proceedings. In this regard, we note that there was identical issue before the Hon'ble Karnataka High Court raised in the case of Karnataka State Co-

operative Apex Bank Limited Vs. DCIT reported in 130 taxmann.com 114 wherein it was held as under:

11. In the instant case, admittedly, there is no original assessment order in the case of the assessee and it was only an intimation under section 143(1) of the Act, which cannot be treated to be an order in view of decision of the Supreme Court in Rajesh Jhaveri (supra). Therefore, the question of reassessment of the income of the assessee by the Assessing Officer does not arise. In the proceeding under section 148 of the Act, it was the first assessment and the same could have been done considering all the claims of the assessee. Therefore, the decision rendered by the Supreme Court in Sun Engineering Works (P.) Ltd. had no application to the fact situation of the case. Even assuming for the sake of argument that if an intimation under section 143(1) of the Act is considered to be an order of assessment, in the subsequent reassessment proceeding, the original assessment proceeding get effaced and the Assessing Officer was required to consider the proceeding de novo and to consider the claim of the assessee.

14.3 The above judgment was rendered by the Hon'ble Karnataka High Court after considering the decisions of the Hon'ble Supreme Court in the case of *CIT v. Sun Engineering Works (P.) Ltd.* [1992] 198 ITR 297 (SC), *V. Jaganmohan Rao v. CIT and Excess Profit Tax*, [1970] 75 ITR 373 (SC), *ITO v. Mewalal Dwarka Prasad*, [1989] 176 ITR 529/43 Taxman 40 (SC), *'ITO v. K.L. Srihari (HUF)* [2001] 118 Taxman 890/250 ITR 193 (SC), and *'Asstt. CIT v. Rajesh Jhaveri Stock Brokers (P.) Ltd.'* [2007] 291 ITR 500/161 Taxman 316 (SC) and reached a conclusion that even assuming for the sake of argument that if an intimation under section 143(1) of the Act is considered to be an order of assessment, in the subsequent reassessment proceedings, the original assessment proceedings gets effaced and the Assessing Officer was required to consider the proceedings *de novo* and to consider the claim of the assessee.

14.4 It is also to be noted that the above judgment was challenged before the Hon'ble Supreme Court which has been admitted by the Hon'ble Supreme Court reported in 138 taxmann.com 23. However, we note that no stay on the operation of Hon'ble Karnataka High Court has been granted. Thus, respectfully following the judgment of Hon'ble Karnataka High Court, we set aside the issue raised by the assessee in the additional ground of appeal for fresh adjudication as per the provisions of law. Hence, the additional ground of appeal of the assessee is allowed for the statistical purposes.

15. In the result, the appeal of the assessee is partly allowed for the statistical purposes.

Order pronounced in the Court on 02/04/2024 at Ahmedabad.

**Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

**Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER**

(True Copy)

Ahmedabad; Dated
Manish

02/04/2024