IN THE INCOME TAX APPELLATE TRIBUNAL, 'C' BENCH MUMBAI

BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SMT RENU JAUHRI, ACCOUNTANT MEMBER

ITA No.4344/Mum/2023
(**Assessment Year :2015-16**)

Deputy Commissioner of Income Tax Air India Building Nariman Point Mumbai	Vs.	M/s. Pratibha Industries Ltd 1 B 56 and 57, Phoenix Paragon Plaza LBS Marg Kurla West Mumbai
PAN/GIR No.AAACP4709N		
(Appellant)	..	**(Respondent)**

Assessee by	None
Revenue by	Ms. Madhu Malati Ghosh
Date of Hearing	**08/05/2024**
Date of Pronouncement	**21/05/2024**

आदेश / O R D E R

PER AMIT SHUKLA (J.M):

The aforesaid appeal has been filed by the Revenue against order dated 25/09/2023 passed by CIT(A)-54, Mumbai for the quantum of assessment passed u/s.147 for the A.Y.2015-16.

2. The Revenue has raised following grounds:-

1 "On the facts and in the circumstances of the case, the Ld. CIT(A) erred in deleting the disallowance made u/s. 801A of the Income Tax Act, 1961 eventhough the assessee has not claimed deduction

u/s. 801A in response to the return filed u/s. 153A of the IT Act, 1961"

2 "On the facts and in the circumstances of the case, the Ld. CIT(A) erred in deleting the disallowance made u/s. 801A of the Income Tax Act, 1961 without appreciating the fact that the assessee is not eligible for deduction u/s. 80IA of the Act, since the assessee is merely a work contractor and not a developer, thereby failing to appreciate the fact that the assessee does not satisfy the condition stipulated in section 801A(4) of the IT Act, 1961."

3. None appeared on behalf of the respondent-assessee despite service of notice. Accordingly, appeal is being decided on the basis of material on record.

4. The brief facts are that in this case return of income was filed on 30/11/2015 declaring total income of Rs.'Nil' after claiming deduction u/s. 80IA of Rs.171,75,71,911/-. A search and seizure action u/s.132 was carried out in the case of the assessee company alongwith other cases of Pratibha group and assessment u/s.143(3) r.w.s. 153A was completed on 20/12/2018 determining the total income at Rs.178,04,93,500/-. Thereafter, on the basis of certain information pertaining to M/s. Pankaj Metal Centre Pvt. Ltd. was received by the ld. AO from DDIT (Investigation), Vadodara wherein it was found that M/s. Pankaj Metal Centre Pvt. Ltd. was merely an entry provider and were paper entity without any actual transaction of goods and material. Based on this information, that assessee has also undertaken bogus bills from M/s. Pankaj Metal Centre Pvt. Ltd, re-assessment proceedings u/s.147 was initiated and notice u/s. 148 was issued on 25/03/2021. In response to the said notice assessee filed return of income u/s.148 on 26/05/2021

declaring total income at Rs. 'Nil' after claiming deduction u/s.80IA amounting to Rs.227,96,96,106/-. The ld. AO after incorporating certain submissions of Shri Hiren H Shah, shareholder and Director of M/s.Pankaj Metal Centre Pvt. Ltd., he treated following purchases made from these parties as 'bogus':

Sales made to M/s Pankaj Metals (PAN AAIFP1763H)	Rs. 11,89,50,750/-
Purchase made from M/s Pankaj Metals (PAN AAIFP1763H)	Rs.192,29,20,487/-

5. Before the ld.AO assessee had made submissions which has been incorporated in the assessment order. However, the ld. AO rejected the explanation and held that bogus purchases are to be added. His relevant observation and finding reads as under:-

"5.9. In view of the discussion made in foregoing points, it is quite evident that M/s. Pankaj Metals are nothing but only paper entity The transactions are taking place only on paper and no actual transactions of the goods/material are happening in this business since neither it raises bills for transportation nor it has any godown. Therefore, it is concluded that the business transactions (sales and purchases) with M/s. Pankaj Metals (PAN: AAIFP1763H) are bogus in nature."

6. The ld. CIT(A) though confirmed the addition on merits and also the validity of reopening u/s.148, however, held that in the earlier years the ld. CIT(A) had allowed he deduction on enhanced the income / additions u/s.80IA including the decision

of the Tribunal in assessee's own case which was in line with the CBDT Circular No.37 of 2016 dated 02/11/2016. The relevant observation of Ld. CIT(A) reads as under:-

"10.2 The appellant on the other hand has argued that in the assessment order dated 20.12.2018 passed in its case for AY 2015-16 u/s 143(3) rws 153A of the Act, while the AO had denied the deduction u/s 801A, the Ld CIT(A) vide order dated 10.06.2021 had allowed the deduction u/s 801A of the Act to the assessee not only on the declared business income but also in respect of the additions made on proportionate basis. This was in line with the CBDT circular No 37/2016 dated 02.11.2016 and also in accordance with the order dated 19.12.2012 of the Hon'ble ITAT in its own case for AYs 2000-01 to 2005-06 (in ITA No 2197 to 2202/Mum/2008) and order dated 22.01.2014 for AYs 2006-07 to 2008-09 (in ITA No. 6749 to 6751/Mum/2012). The Hon'ble ITAT allowed the deduction u/s 801A to the assessee on the enhanced income in the ratio of eligible turnover to total turnover.

10.3 In this regard it is seen that while deciding the issue for AY 2011-12 my predecessor CIT(A) in his order dated 10.06 2021, has granted relief to the assessee by observing as under

10.3 I have (considered the arguments of the assessee and have gone through the orders of Ld CIT(A) for the year under consideration dated 28th March, 2016 (AY 2011-12) in this order the Ld. CIT(A) has dealt with issue as under

> *7.31 have considered the arguments of the assessee and have gone through the orders of ITAT for earlier years and CIT (A) order dt 17/4/2015 against order u/s 153A for AY 2006-07 In this order my predecessor has taken into consideration the contentions of AO that Hon'ble ITAT did not have the occasion to consider the amended position of law and held that the decision taken by ITAT was after duly considering all the relevant aspects and amendments to law and hence is binding on AO. It was held by CIT(A) that in the order of the ITAT reference to the order of Hyderabad bench in the case of GVPR Engineers Ltd, wherein Hyderabad bench has considered the explanation inserted in 2009 and thereafter held that the assessee is a*

developer and not a mere works contractor It was finally held that disallowance u/s 801A for the second time, on the same set of facts is not warranted. The relevant portion of CIT (A) order dt 17/4/2015 is reproduced hereunder for the sake of clarity

> *For the said reasons, the present AO has once again disallowed the claim of deduction under s. 801A in a sum of Rs. 12,09,49,382/- It clearly transpires that for the very same reasons, the present AO has also added back the claim though at the time of passing the present assessment order dated 22.03.2013, the order of the CIT(A) was very much in place. Subsequently, the Hon'ble ITAT as per its order dated 22.01 2014, has upheld the order of the CIT (A) allowing the claim of deduction under s. 801A to the appellant herein for the same assessment year In fact, the Tribunal in its order dated 19.12.2012 has considered the entire provisions including the Explanations inserted in 2007 and amended in 2009. In this context, the Tribunal has reproduced the relevant paragraph of the Hyderabad Bench of ITAT in the case of GVPR Engineers Ltd. vs. ITAT (in para 77 of the order) and thereafter (para 81) has held that the case of the appellant is similar to that of GVPR Engineers Ltd in the order of the Hyderabad Bench in the case of GVPR, the Tribunal has considered the Explanation inserted in 2009 to Sec. 801A(4), the jurisdictional Tribunal has subscribed to the view and later laid down by the Hyderabad Tribunal in GVPR Engineers Ltd Apparently no fresh facts had come in for consideration for the present AO to disturb the findings of the CIT(A) arising from the first round of proceedings as later upheld by the Hon'ble ITAT The AO has merely repeated the disallowance as already made by the predecessor AO in the first round of proceedings and that too on legal grounds without there being any new or fresh facts. In the absence of any fresh facts, the AO could not have disturbed the findings of the ITAT, that the appellant is eligible for the claim under s. 80IA, in the proceedings initiated by issue of notice under s. 153A. As held by the Hon'ble Jurisdictional High Court in the case of CIT vs. Murli Agro Products (2014) 49 taxman.com 172, the AO could not have disturbed a matter that has attained finality unless the materials gathered in the course of proceedings under s. 153A establish that the relief granted under the finalized*

assessment were contrary to the facts unearthed during the course of 153A proceedings In view of the matter position in law, it is held that the AD could not have denied the claim for deduction under s 80IA in the second round of proceedings. Based on the legal position as set forth above, the AO is directed to allow the claim under & BO/A for the captioned year. While giving this direction, I am aware that while deciding the matter for AY. 2005-06 had directed the AO to await the judgement of the Hon'ble High Court of Bombay in this issue, however, on second thoughts, this being the second round of proceedings before the AO and the matter having being already decided by the ITAT in favour of the appellant in the first round of proceedings against which the matter has travelled to the Hon'ble High Court, I am of the view that the disallowance made again a second time on the same set of facts is not sustainable and requires to be deleted.

7.4 In view of the above clear cut directions of my predecessor and as the facts and circumstances in the present appeal are the same as compared to the 153A assessment for 2006-07, I direct AO to delete the disallowance u/s 801A as far as the normal business income is concerned, in compliance of directions of Hon'ble ITAT The grounds No.6-8 relating to this issue are thus allowed

10.4. Thus, in view of the above order as passed by my predecessor 10.4 and without there being any change in the facts and circumstances direct the AO to allow the deduction under 80-IA, since the same was already allowed while deciding the appeal of the assessee against the assessment order passed u/s 153A of the Act at the time of search of 2011. Further, the fact that no deduction was claimed in the return filed under 153A was on account of the reason that assessee company had reduced its Work-in-Progress by an amount of Rs. 174, 15.21.747 and hence there was Nil or Negative business Income. The said reduction of Work-In-Progress has already been added back by the Assessing Officer and has been confirmed while disposing Ground No. 3 as raised by the appellant. By dismissal of Ground No. 3, assessee's income gets reinstated to what was finalized before the Search of 2017 and on the said amount, deduction

under 80-IA was already granted by the Ld CIT(A). Hence the same has to be allowed to the assessee company.

10.5 Ground no. 5 taken by the assessee stands allowed.

10.6 Coming to the ground No. 6 which deals with allowing deduction u/s 301A on the amounts so disclosed and further additions made during the course of search. For the year under consideration, the Ld. CIT(A) also had an occasion to deal with this issue which was decided as under

10.7 Thus, as can be seen from the above, for the same year my predecessor has already decided that assessee company shall not only be eligible to claim deduction u/s 801A for income disclosed during the search proceedings but also be eligible for deduction under 80-IA on additions made to business income during the search proceedings on account of bogus purchases/sub contracts in the second round of assessment, appellant company had disclosed an amount of Rs. 142683 in the return filed under 153A, and to that extent business Income was enhanced and following the precedent of Hon. Jurisdictional High Court in case M/s. Shelfi Developers in 25 taxmann com 173, that of Gujarat High Court in case of M/s Radhe Developers 329 ITR 1 and the decision of CIT(A) for the same year on the same issue, it is held that the assessee company is eligible for claiming deduction on the disclosure made in the return of income filed under 153A with respect to its eligible business income i.e. the enhancement in income on account of bogus purchases and bogus subcontract charge (eg the addition already been confirmed by dismissing the Ground No. 2 as raised by the appellant). The assessee shall be eligible for deduction under 80-IA on such addition made based on turnover of eligible and ineligible units. The AO is directed to verify the correctness of such computation provided by the assessee.

10.8 The ground no. 6 raised by the assessee is decided in line with above directions and is treated as having been allowed.

10.3.1 It is also seen that while deciding the issue for AY 2015-16 my predecessor CIT(A) in his order dated 10.06.2021 has again granted relief to the assessee by observing as under:

24. The appellant has raised following grounds of appeal vide Form No.35 filed on 22.01.2019.

"1. On the given facts, circumstances and judicial propositions Id. Assessing Officer has erred in framing the assessment in the absence of any incriminating material for the year under consideration, as the assessment was already completed before search action. Such addition in absence of any incriminating material is bad in law and liable to be deleted"

2. On the given facts, circumstances and judicial propositions, Id. Assessing Officer erred making an addition on account of difference in WIP amounting to Rs 2,27,96,40,742 even though the same was based on findings as per forensic audit conducted by consortium of bank. Such addition is bad in law and liable to be deleted/reduced

3. On the given facts, circumstances and judicial propositions, Id. Assessing Officer erred in denying deduction u/s 80-1A in the absence of incriminating material and the matter is covered by the order of tribunal and commissioner (Appeals) in assessee's own case, Such denial of deduction is bad in law and liable to be allowed.

4. Without prejudice to any above grounds of appeal Id Assessing Officer erred in not allowing the claim of deduction u/s. 80-1A in respect of the enhanced income, even though assessee satisfied all the conditions prescribed for claiming and deduction. Such denial of deduction is bad in law and liable to be allowed

5. On the given facts, circumstances and judicial pronouncements, Id. Assessing Officer erred in not granting the credit of TDS and advance tax and self assessment tax,

appellant prays that credit of TDS and Advance tax and Self assessment tax is to be allowed.

6. On the given facts, circumstances and judicial pronouncements, Id. Assessing Officer erred in levying the interest under section 234A, 234B and 234C and such levy of interest is bad in law and liable to be reduced

7. The appellant prays to add, amend and alter or delete all or any of the above mentioned grounds of appeal."

25. Ground no. 1 is similar to ground no 1 taken by the appellant in AY 2011-12 and is decided against the assessee of para no. 6 earl in light of the decision in AY 2011-12, the ground in decided against the appellant. Ground no. 2 is similar to ground no. 3 taken by the appellant in AY 2011-12 and is decided against the assessor of pare no 9 earlier In light of the decision in AY 2011-12, the ground is decided against the appellant Ground no 3 & 4 are similar to ground no. 5 & 6 taken by the appellant in AY 2011-12 and these grounds are decided in favour of the assessee at para no. 10 earlier. In light of reasons given at para 10, the grounds are decided favour of the assessee. Ground no 5 is similar to ground no. 7 token by the appellant in AY 2011-12 and since the ground is decided in partly favour of the assessee at para no. 11 earlier the ground is decided partly favour of the assessee. Ground no 6 is similar to ground no. 8 taken by the appellant in AY 2011-12 and these grounds are decided in against the assessee at para no. 12 earlier. In light of the decision in AY 2011-12. the ground is decided against the assossee and is dismissed

10.4 Thus, in view of the facts and circumstances of the case, I have no reason to deviate from the above order as passed by my predecessor CIT(A) and also without there being any change in the facts and circumstances. I, accordingly, direct the AO to allow the deduction under section 80-IA of the Act, since the same was already allowed in the appellate order dated 10.06 2021 by the Ld CIT(A) while deciding the appeal against the assessment order passed, u/s 153A of the Act for the relevant assessment year. It is also pertinent to point out that the AO has

also allowed the deduction u/s 801A in his order dated 02.08.2021 while giving effect to the order dated 10.06.2021 of the Ld CIT(A), Similarly, with respect to allowance of deduction under 80-1A of the Act on the additions made during the course of reassessment proceedings are concerned, it has been consistently held right from AY 2005-06 till AY 2015-16 by my predecessor CIT(A) that assessee is not only eligible for deduction on the business Income but also on the additions made during the course of assessment proceedings, since the said addition leads to increase in business income and thereby assessee shall be eligible to claim deduction under section 80-IA in the ratio of turnover of eligible and non-eligible sites during the year under consideration. It is seen that in the order passed by my predecessor for AY 2011-12 to AY 2015-16 is based on the order passed by his predecessor for AY 2008-09 to AY-2011-12 wherein on identical facts the deduction was allowed to the assessee company and his predecessor had followed the order of Hon'ble jurisdictional ITAT in assessee's own case for AY 2005-06 in ITA No. 2197-2202/Mum/2008. Thus, on the said issue the assessee has been consistently allowed the benefit of deduction under 80-1A in the ratio of Eligible and Non-Eligible sites. Accordingly, I also direct the AO to allow deduction u/s 801A to the assessee in respect of additions made to the business income in the ratio of turnover of eligible and non-eligible sites. Accordingly, the grounds of appeal are allowed.

7. Thus, here in this case addition has been confirmed by the ld. CIT(A) however, he has given relief by holding that all the additions / disallowances on account of purchases are related to business activity and therefore, deduction u/s.80IA would be allowed in line with the CBDT Circular No.37 of 2016. The ld. AO with regard to purchases made from one party has applied gross profit rate and with regard to other party has treated the entire transaction of purchase as 'bogus'. All these have lead to enhancement of business income only which otherwise is eligible for deduction u/s.80IA, because even ld. AO has also assessed

under the head 'business income'. Accordingly, in view of the CBDT Circular and the past precedents in case of the assessee, we do not find any infirmity in the order of the ld. CIT(A) and same is confirmed.

8. In the result, appeal of the Revenue is dismissed.

Order pronounced on 21st May, 2024.

Sd/-	**Sd/-**
(RENU JAUHRI)	**(AMIT SHUKLA)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Mumbai; Dated 21/05/2024
KARUNA, *sr.ps*

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai