

IN THE INCOME TAX APPELLATE TRIBUNAL

"A" BENCH, MUMBAI

BEFORE SHRI NARENDRA KUMAR BILLAIYA, ACCOUNTANT MEMBER AND

SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA no.3119/Mum./2023
(Assessment Year : 2015-16)

ITA no.3120/Mum./2023
(Assessment Year : 2016-17)

Abhitech Energycon Ltd

A- 1020, Oberoi Garden Estates,
Farms Road, Chandivali,
Mumbai-400072
PAN – AABCA3856C

..... Appellant

v/s

ACIT, Central Circle-3(2)

Room No. 533, 5th Floor,
Aayakar Bhavan, Maharishi
Karve Road, Mumbai-400020

..... Respondent

Assessee by : Shri K Gopal
Ms Neha Paranjpe

Revenue by : Shri Manoj Kumar Sinha

Date of Hearing – 16/05/2024

Date of Order – 04/06/2024

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The present appeals have been filed by the assessee challenging the separate impugned orders of even date 06/07/2023 passed under section 250 of the Income Tax Act, 1961 ("*the Act*") by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, [*learned CIT(A)*"], which in turn arose from the intimation issued under section 143(1) of the Act, for the assessment years 2015-16 and 2016-17.

2. Since both appeals pertain to the same assessee involving a similar issue arising out of a similar factual matrix, therefore, as a matter of convenience, these appeals were heard together and are being decided by way of this consolidated order. With the consent of the parties, the assessee's appeal for the assessment year 2015-16 is taken up as a lead case. In both appeals, the assessee has raised similar grounds. For reference, the grounds raised by the assessee in the appeal for the assessment year 2015-16 are reproduced as under:-

"Legal grounds:

1. *The National Faceless Appeal Centre (hereinafter referred to as 'NFAC') is not justified in dismissing the appeal filed by the Appellant vide its order dated 06.07.2023 without appreciating the fact that the inadvertent delay in filing appeal was on account of pendency of rectification proceedings u/s 154 of the Income tax Act, 1961 (hereinafter referred to as 'Act') and the said period ought to have been excluded while computing the period of limitation u/s 249 of the Act. Thus, the said order is arbitrary, unlawful, and therefore, bad in law*

2. *The NFAC is not justified in passing the order dated 06.07.2023 without condoning the delay and in dismissing the appeal filed by the Appellant without appreciating the fact that the said delay was neither intentional nor deliberate, but rather inadvertent on account of alternate remedy sought by the Appellant by way of rectification request u/s 154 of the Act and pendency of rectification proceedings before the CPC. Thus, the said order is unlawful, and therefore, bad in law.*

3. *The action of the NFAC in passing the order dated 06.07.2023 dismissing the appeal filed by the Appellant without condoning the inadvertent delay in filing appeal is in total contravention to the law laid down by the Hon'ble Delhi High Court in the case of Agnity Technologies (P.) Ltd. v. CIT [2018] 97 taxmann.com 515 (Delhi). Thus, the said order is perverse, unlawful and therefore, bad in law.*

4. *The Central Processing Centre, Income Tax Department, Bengaluru (hereinafter referred to as 'CPC') erred in issuing the intimation dated 08.12.2017 u/s 143(1) of the Act making disallowance with respect to claim of deduction amounting to Rs.2,78,61,190/- u/s 80IC of the Act without appreciating the fact that the said adjustment or variation made is not permissible as per the provisions of section 143(1)(a) of the Act. Thus, the disallowance made is unlawful, illegal, and " therefore deserves to be deleted.*

5. *The NFAC erred in passing the order dated 06.07.2023 dismissing the appeal filed by the Appellant without considering the submissions dated 10.02.2023 filed before the NFAC in the present case. Thus, the said order is in contravention to the principles of natural justice and hence, deserves to be quashed and set aside.*

II On merits:

6. The NFAC is not justified in passing the Order dated 06.07.2023 u/s 250 of the Act dismissing the appeal filed by the Appellant without appreciating the facts and circumstances of the case and deciding the same on its merits. Thus, the said order passed arbitrary, unlawful, and therefore, deserves to be set aside.

7. The Ld. A.O. erred in disallowing deduction amounting to Rs. 2,78,61,190/- claimed u/s 80IC of the Act vide order dated 08.12.2017 passed u/s 143(1) of the Act without appreciating the fact that the Appellant has fulfilled all the requirements as enumerated in the provisions of section 80IC of the Act and hence, qualifies for deduction w/s 80IC of the Act. Thus, the disallowance made by the Ld. A.O. is not justified and therefore, deserves to be deleted."

3. The brief facts of the case are that for the assessment year 2015-16, the assessee filed its return of income on 28/09/2015 declaring a total income of Rs.9,28,70,633. The said return was invalidated by the Centralised Processing Centre, Bengaluru ("CPC") due to some errors. Thereafter, the assessee filed a revised return of income on 02/09/2016 which was also invalidated by CPC. The assessee again filed a revised return of income on 15/01/2017 and declared a total income of Rs.6,50,09,440 after claiming a deduction under section 80-IC of the Act of Rs.2,78,61,190. Vide intimation dated 08/12/2017 issued under section 143 (1) of the Act, the CPC processed the revised return of income filed by the assessee on 15/01/2017 and determining the total income at Rs.9,28,70,630 after disallowing the deduction claimed under section 80-IC of the Act. Since in the assessment year 2008-09, the Tribunal allowed the similar claim of the assessee under section 80-IC of the Act, therefore the assessee filed rectification applications under section 154 of the Act on multiple occasions, however, the same were rejected by the CPC. Ultimately, the assessee filed the appeal against the intimation issued under section 143(1) of the Act before the learned CIT(A) after a delay of 1128 days. The learned CIT(A), vide impugned order, rejected the request for condonation of delay in filing the appeal by the assessee and dismissed the appeal on the ground of delay. Being aggrieved, the assessee is in appeal before us.

4. During the hearing, the learned Authorised Representative ("learned AR") submitted that the assessee has been claiming deduction under section 80-IC of the Act since the assessment year 2008-09, wherein the said

deduction was denied in the assessment as well as by the First Appellate Authority. The learned AR further submitted that the coordinate bench of the Tribunal vide order dated 03/02/2016 passed in ITA No. 8721/Mum./2011 allowed the appeal filed by the assessee and directed the AO to allow deduction claimed under section 80-IC of the Act. The learned AR submitted that since the assessment year 2008-09, the assessee has been continuously granted the deduction claimed under section 80-IC of the Act, and only in the year under consideration, i.e. assessment years 2015-16 and 2016-17, the claim of the assessee was denied vide intimation issued under section 143(1) of the Act. The learned AR further drew our attention to the intimation issued under section 143(1) of the Act for the assessment year 2017-18, wherein a similar claim of deduction under section 80-IC of the Act was allowed to the assessee. The learned AR further submitted that since the issue has already been decided in favour of the assessee by the decisions of the Tribunal in preceding years, the assessee had filed multiple rectification applications, which were rejected by the CPC and accordingly resulted in the delay in filing the appeal before the learned CIT(A).

5. On the other hand, the learned Departmental Representative vehemently relied upon the impugned order and submitted that there was no reasonable cause for condoning the huge delay of 1128 days.

6. We have considered the submissions of both sides and perused the material available on record. In the present case, it is the plea of the assessee that since in the assessment year 2008-09, the AO as well as the learned CIT(A) had denied the claim of deduction under section 80-IC of the Act, therefore the assessee thought it prudent not to claim the aforesaid deduction in the year under consideration, as the same has resulted in a heavy burden of tax, interest, and penalty on the assessee. However, upon receipt of the decision of the coordinate bench of the Tribunal in assessee's own case for the assessment year 2008-09 cited supra, the assessee claimed deduction under section 80-IC of the Act while filing its second revised return of income. However, it is evident from the record that the said claim was rejected by the

CPC vide intimation issued under section 143(1) of the Act, while processing the aforesaid revised return of income filed by the assessee on 15/01/2017. In order to seek the rectification of the intimation issued by the CPC under section 143(1) of the Act, in view of the favourable decisions of the Tribunal in assessee's own case on a similar issue, the assessee filed a rectification application under section 154 of the Act on 03/02/2018. Since the said rectification application was rejected by the CPC, therefore the assessee again filed rectification applications on 06/12/2019 and 11/02/2020. However, the said rectification applications also met with the same fate. As no relief was received from the CPC, despite having decisions in its favour, the assessee filed an appeal against the intimation issued under section 143(1) of the Act before the learned CIT(A) after a delay of 1128 days. It is evident from Form No.35, point no. 15, that the assessee also requested for condonation of delay in filing its appeal on the aforesaid basis. However, the learned CIT(A), vide impugned order, dismissed the appeal filed by the assessee on the basis that there is no reasonable cause for condoning the delay in filing the appeal.

7. From the perusal of the paper book filed by the assessee, we find that not only in the assessment year 2008-09 but also in the assessment year 2009-10 the coordinate bench of the Tribunal vide order dated 13/01/2017 passed in ITA No.2797/Mum./2013 allowed the claim of deduction under section 80-IC of the Act. We further find that in the assessment year 2014-15, the learned CIT(A) allowed the claim of deduction under section 80-IC of the Act by following the decision of the Tribunal rendered in assessee's own case. From the intimation dated 18/01/2019 issued under section 143(1) for the immediately succeeding assessment year, i.e. 2017-18, forming part of the paper book from pages 28-33, we find that the claim of deduction under section 80-IC of the Act was allowed by the CPC. Thus, it is evident from the record that from the first year of the claim of deduction under section 80-IC, i.e. 2008-09, till the last year of the claim of deduction, i.e. 2017-18, the claim of the assessee has been allowed, except in the years under consideration before us. In view of the aforesaid facts, we find merit in the submission of the assessee that the assessee was hopeful of allowance of the claim of deduction

under section 80-IC of the Act by the CPC in the rectification proceedings and therefore had filed multiple rectification applications. We further find merit in the submission of the assessee that since it was following the alternative remedy under the Act, in view of the favourable decisions, its appeal before the learned CIT(A) against the intimation issued under section 143(1) of the Act was delayed. In view of the facts and circumstances of the present case, as noted above, we are of the considered view that the assessee has proved sufficient cause for not filing the appeal before the learned CIT(A) within the prescribed limitation period. Accordingly, we are of the view that the said delay should be condoned. Hence, we deem it appropriate to set aside the impugned order and restore the matter to the file of the learned CIT(A) for consideration on merits, as per law, after condoning the delay in filing the appeal by the assessee. We order accordingly. As a result, the grounds raised by the assessee for the assessment year 2015-16 are allowed for statistical purposes.

8. Since a similar issue has been raised in the appeal for the assessment year 2016-17, therefore, our aforesaid findings/conclusion shall apply *mutatis mutandis*. Accordingly, the impugned order passed by the learned CIT(A) is set aside and the matter is restored to the file of the learned CIT(A) for consideration on merits, as per law, after condoning the delay in filing the appeal by the assessee. As a result, the grounds raised by the assessee for the assessment year 2016-17 are allowed for statistical purposes.

9. In the result, appeals filed by the assessee for the assessment years 2015-16 and 2016-17 are allowed for statistical purposes.

Order pronounced in the open Court on 04/06/2024

Sd/-
NARENDRA KUMAR BILLAIYA
ACCOUNTANT MEMBER

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

MUMBAI, DATED: 04/06/2024

Vijay Pal Singh, (Sr. PS)

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The PCIT / CIT (Judicial);*
- (4) *The DR, ITAT, Mumbai; and*
- (5) *Guard file.*

True Copy

By Order

Assistant Registrar
ITAT, Mumbai