

**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**NAGPUR BENCH, NAGPUR**

**BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND**  
**SHRI K.M. ROY, ACCOUNTANT, MEMBER**

**ITA no.30/Nag./2018**  
(Assessment Year : 2012-13)

Dy. Commissioner of Income Tax  
Circle-1, Nagpur ..... Appellant

v/s

Smt. Anju Ajay Saraf  
Prop: M/s. Rajlakshmi Minerals  
Flat no.C-2, Yogeshwar Ganga Apartment ..... Respondent  
Ramdaspath, Nagpur 440 012  
PAN - AETPS5421E

**C.O. no.3/Nag./2018**  
(Arising out of ITA no.30/Nag./2018)  
(Assessment Year : 2012-13)

Smt. Anju Ajay Saraf  
Prop: M/s. Rajlakshmi Minerals  
Flat no.C-2, Yogeshwar Ganga Apartment ..... Cross Objector  
Ramdaspath, Nagpur 440 012  
PAN - AETPS5421E  
(Original Respondent)

v/s

Dy. Commissioner of Income Tax  
Circle-1, Nagpur ..... Respondent  
(Original Appellant)

**ITA no.32/Nag./2020**  
(Assessment Year : 2014-15)

Asstt. Commissioner of Income Tax  
Circle-1, Nagpur

..... Appellant

v/s

Smt. Anju Ajay Saraf  
Prop: M/s. Rajlakshmi Minerals  
Flat no.C-2, Yogeshwar Ganga Apartment  
Ramdaspath, Nagpur 440 010  
PAN – AETPS5421E

..... Respondent

**C.O. no.7/Nag./2020**  
(Arising out of ITA no.32/Nag./2020)  
(Assessment Year : 2014-15)

Smt. Anju Ajay Saraf  
Prop: M/s. Rajlakshmi Minerals  
Flat no.C-2, Yogeshwar Ganga Apartment  
Ramdaspath, Nagpur 440 012  
PAN – AETPS5421E

..... Cross Objector  
(Original Respondent)

v/s

Asstt. Commissioner of Income Tax  
Circle-1, Nagpur

..... Respondent  
(Original Appellant)

Assessee by : Shri Sudesh Banthia  
Revenue by : Shri Kailash C. Kanojiya

Date of Hearing – 28/05/2024

Date of Order – 28/05/2024

**ORDER**

**PER BENCH**

The instant appeals have been filed by the Revenue challenging the impugned orders of even date 22/12/2017, for A.Y. 2012-13 and order dated 29/11/2019, for the A.Y. 2014-15, passed by the learned Commissioner of Income Tax (Appeals)-3, Nagpur, [“learned CIT(A)”], for the assessment year

2012-13 and 2014-15 respectively. The assessee has also filed Cross Objections for the years under consideration, which are in support of the appeals filed by the Revenue.

2. Since both the Revenue's appeals pertain to the same assessee involving common issues arising out of identical set of facts and circumstances, therefore, as a matter of convenience, these appeals were heard together and are being disposed off by way of this consolidated order. However, in order to understand the implication, it would be necessary to take note of the facts of one appeal. We are, accordingly, narrating the facts, as they appear in the appeal in ITA no.30/Nag./2018, for assessment year 2012-13. The decision so arrived in this appeal, mutatis mutandis, shall be applicable to the other appeal as well.

**ITA no.30/Nag./2018**  
**Revenue's Appeal – A.Y. 2012-13**

2. The grounds of appeal raised by the Revenue are as follows:-

*"1. On the facts and circumstances of the case and in law, the learned CIT(Appeals)-3 has erred in deleting the addition of Rs. 1,88,69,766/- made on account of 80IA of the I.T. Act, 1961.*

*2. On the facts and circumstances of the case and in law, the learned CIT(Appeals)-3 has erred in not appreciating the fact that the deduction u/s. 80IA of the Income Tax Act, 1961 is not allowable to the assessee on wind mill activity.*

*3. Any other ground which may be taken with the permission of Hon'ble ITAT."*

3. Facts in Brief:- In the present case, the assessee is engaged in the business of manufacturing and production of various grades of iron ore at

Hospet and in the business of generation of power at different locations. The original return under section 139 of the Income Tax Act, 1961 ("*the Act*") was filed on 30/09/2012, which was subsequently revised and the revised return of income was filed under section 139(5) of the Act on 11/10/2012, declaring total income of ₹ 1,11,21,570. The Assessing Officer concluded the assessment and the order was passed under section 143(3) of the Act on 06/03/2014, determining total income of ₹ 1,17,70,744. Thereafter, notice under section 148 of the Act was issued on 29/09/2015, which was duly served upon the assessee. The assessee filed a letter on 07/10/2015, stating that the revised return filed under section 139(5) of the Act may be treated as return filed in response to notice under section 148 of the I.T. Act. The notice under section 143(2) of the Act was issued on 15/10/2015, and served on 19/10/2015. The Assessing Officer has disallowed deduction of ₹ 1,88,69,966, under section 80IA of the Act on the ground that as per sub-section 5 of section 80IA of the Act, the unabsorbed losses of windmill of the years prior to the initial year have to be brought forward and adjusted to arrive at the quantum of deduction to be claimed under section 80IA of the Act, though they have been set off against the other income of the assessee. The assessee being aggrieved filed appeal before the first appellate authority.

4. Before the learned CIT(A), the assessee made following submissions:-

*"4.1 In support of the grounds of appeal, the appellant has made the following submission:*

*"It is respectfully submitted that the addition made is unjustified, unwarranted and not in accordance with the law. The assessee requests to consider the following submissions in this regard.*

*The assessee had put up a wind mill unit qualifying for deduction u/s 80IA of Income-Tax Act, 1961. The said unit commenced production in AY 2006-07. As per option provided by Section 80IA(2) of Income Tax Act, 1961 the assessee opted to claim deduction u/s 80IA (2) in relation to wind mill unit for ten consecutive assessment years starting from AY 2012-13 and accordingly the assessee obtained and filed audit report for first time in AY 2012-13 in support of deduction u/s 80IA claimed in the Return of Income. Section 80IA(5) provides that profit of eligible unit shall be computed as if it is only source of income during previous year relevant to the initial assessment year and to every subsequent assessment year up to and including the assessment year for which the determination is to be made. Section 80IA (2) grants option to the assessee to claim deduction for any ten consecutive assessment years out of fifteen years beginning from the year in which the unit generates power. Exercising option granted u/s 80IA(2), the assessee chose to claim deduction u/s 80IA from AY 2012-13. Once the option is exercised, the wind mill unit will be treated as if it is only source of income from the year of exercise of option. The fiction created in sub-section 5 of section 80IA that the eligible unit is the only source of income begins from the initial assessment year which is not the same as the year of commencement of commercial production. Hence there does not arise any question of notionally bringing forward losses from earlier assessment year from the year of putting up of wind mill which have already been set off against business income.*

*The CBDT has now come with Circular No.1/2016/F. No. 200/31/2015-ITA-I) dated 15-2-2016 (Copy enclosed) which is binding on Revenue, whereby the Board has clarified the term initial assessment year in section 80-IA(5) of the Act, wherein it has been categorically mentioned that the matter has been examined by the Board and it is abundantly clear from sub-section (2) of section 80IA of the Act that an tax-payer who is eligible to claim deduction u/s 80-IA of the Act has the option to choose the initial/first year from which it may desire the claim of deduction for ten consecutive years, out of a slab of fifteen (or twenty years, as prescribed under that sub-section. It has been clarified that once such initial assessment year has been opted for by the tax-payer, he shall be entitled to claim deduction u/s 80IA of the Act for ten consecutive years beginning from the year in respect of which he has exercised such option subject to the fulfilment of conditions prescribed in the section.*

*The CBDT has very categorically stated that some assessing officers are wrongly interpreting the term initial assessment year as the year in which the eligible business / manufacturing activity has commenced and clarified that the term "Initial Year" would mean the first year opted by the assessee for claiming deduction u/s 80IA. The assessee has opted FY 2011-12 relevant to AY 2012-13 for claiming deduction u/s 80IA and hence the initial assessment year is AY 2012-13. The unabsorbed depreciation of years prior to the initial year i.e. AY 2012-13, which have been set off against other business income of the assessee cannot again be brought forward notionally and set off against the income of eligible business for arriving at the quantum of deduction u/s 80IA.*

*In support of the proposition that loss from the eligible business in the year prior to the initial assessment year absorbed against the profits of other business need not be notionally brought forward and has no effect on the deduction claimed, reliance is placed on the following decisions:-*

- 1) *Velayudhaswamy Spinning Mills Pvt Ltd. V ACIT 38DTR 57*
- 2) *CIT VS GRT Jewellers Pvt Ltd I.T.A.No. 1037/Mds/2015(HC)*
- 3) *CIT Vs Anil H. Lad 102 DTR 241 (Karnataka HC)*
- 4) *Calibre Chemicals P.Ltd Vs CIT-3 ITA Nos 4219 & 4220 (Mum)*
- 5) *CIT Vs Chawla Brothers P. Ltd ITA No 6736 & 6047/MUM/2013*
- 5) *CIT Vs Chawla Brothers P. Ltd ITA No 6736 & 6047/MUM/2013*

*The issue therefore stands concluded by the CBDT circular and decision of the higher forums in favor of the assessee.*

*Considering the above submissions, it is respectfully prayed that the disallowance of deduction u/s 80IA of Rs.1,88,69,966/- made by the AO is unwarranted & unjustified and the same may kindly be directed to be deleted."*

5. The learned CIT(A), while adjudicating the issue, allowed deduction claimed under section 80IA of the Act by the assessee while arriving at the following observations:-

*"4.2 I have gone through the assessment order, the grounds of appeal and the appellant's submission. The appellant has 3 Wind Mill undertakings as given below:*

- 1) *Kabaneri, Village in Tamil Nadu, which started commercial production on 17/09/2005*
- 2) *Seth Vadala in Gujarat which started commercial production on 31/03/2008 and*
- 3) *Padava Village in Gujarat which started commercial production on 25/03/2010.*

*4.3 The wind mill undertakings are engaged in generation of power and qualify for deduction u/s 80IA. The appellant has opted A.Y. 2012-13 as the initial assessment year as mentioned in Form 10CCB and claimed deduction u/s 80IA. The profit/loss in wind mill undertakings from A.Ys. 2006-07 to 2011-12 are tabulated and given by the AO on Page 3 of the assessment order. The AO*

*has not disputed all these facts/The only dispute is whether the unabsorbed loss/depreciation of the eligible units of the earlier years i.e. years prior to the initial assessment year has to be notionally brought forward and adjusted against the profit of the eligible unit to arrive at the 2012-13.*

*4.4 The appellant submitted the computation of income, audited profit and loss account of windmill undertakings and income tax returns for A.Ys. 2006-07 to 2011-12. After verification, I find that the unabsorbed depreciation/loss of windmill undertakings in each of the A.Ys. 2006-07 to 2011-12 were set off against the profits of the iron ore business of the appellant and no unabsorbed loss/depreciation was carried forward by the appellant in any year. Thus there were no brought forward losses from the earlier years to be adjusted against the income of A.Y. 2012-13.*

*4.5 The CBDT has vide its circular No. 1/2016 dated 15/2/2016 clarified that the assessee has a right to chose the initial assessment year and the initial assessment year means the first year opted by the assessee for claiming deduction u/s 80IA. The appellant has chosen A.Y. 2012-13 as the first year for claiming deduction u/s 80IA and hence the initial assessment year in the instant case is A.Y. 2012-13. The sum and substance of sub-section 5 of 80IA, as I understand from the plain reading of the provision, is to extend the tax shelter under the provision only to the profits of the eligible business/unit, by deeming the same (eligible business/unit) as the appellants only source/s of income for the previous year relevant to initial assessment year and every subsequent assessment year up to the (assessment) year of determination of deduction u/s 80IA(1). The deeming, thus, commences with the previous year relevant to the initial assessment year. I agree with the contention of the appellant that the fiction created in sub-section 5 of section 80IA that the eligible unit is the only source of income begins from the initial assessment year which is not the same as the year of commencement of commercial production. The various tribunals and High Courts has relied on have held that "Where the depreciation and loss of earlier assessment years have already been set off against other business income of those assessment years, there is no need for notionally carrying forward and setting off of the same depreciation and loss in computing the quantum of deduction available u/s 80IA".*

*4.6 The Hon'ble High Court of Madras in the case of Velayudhaswamy Spg. Mills (P.) Ltd. vs. Asstt. CIT [2012] 340 ITR 477/21 taxmann.com 95 (Mad.) has held that the losses in the year earlier to initial assessment year which were already absorbed against the profit of other businesses cannot be notionally brought forward and set off against the profits of eligible business as no such mandate was provided in Section 80IA(5). The Hon'ble Court has deciding the issue has made the following observations:*

*"22. We are not agreeing with the counsel for the Revenue. We are, therefore, of the view that loss in the year earlier to the initial assessment year already absorbed against the profit of other business cannot be nationally brought forward and set off against the profits of the eligible business as no such mandate is provided in section 804A/5)."*

4.7 The SLP in this case was dismissed by Hon'ble Supreme Court of India 76 taxman.com 176 SC(2016). In another case Hon'ble High Court of Madras in the case of CIT Coimbatore vs. Best Corporation Ltd. has decided the same issue in similar manner. In this case also the SLP filed by the Department before the Hon'ble Supreme Court of India vide its order dated October, 21 2016 has been dismissed by 76 Taxmann.com 295 (SC).

4.8 The Hon'ble ITAT Mumbai in the case of Calibre Chemicals P. Ltd. Mumbai vs. CIT-3, Mumbai vide ITA Nos. 4219 & 4220/Mum/2013 order dated 03/06/2015 has adjudicated a similar issue after considering various Judicial pronouncements including the order of the Hon'ble Madras High Court in the case of Velayudhaswamy Spg. Mills (P.) Ltd. vs. Asstt. CIT [2012] 340 ITR 477/21 taxmann.com 95 (Mad.). In this case, the assessee's claim for deduction u/s 80IA was allowed after reducing losses in the form of unabsorbed depreciation which were already set off in the earlier years against the profits of ineligible units of the assessee. The tribunal has decided the issue by making the following comments:

"7. In view of the above, we do not find any merit in the action of the lower authorities for allowing the claim of deduction u/s 80IA by reducing the eligible profit by the amount of losses and depreciation pertaining to earlier year which has already been set off against the profit of non-eligible unit."

4.9 Therefore various Courts and tribunals while adjudicating the issue have clearly held that the initial assessment year shall be the first year opted for by the appellant for claiming deduction u/s 80IA. From the records and computation of income of the appellant, it is clear that the appellant has claimed the deduction u/s 80IA for the first time during the assessment year 2012-13. Therefore, the initial assessment year shall be taken as 2012-13 in case of the appellant for claiming u/s 80IA. Similarly, following the ratio of judgment in cases cited above, the losses in the year earlier to initial assessment year which were already absorbed against profit of other businesses cannot be notionally brought forward and set off against profits of eligible business.

4.10 Therefore, considering the appellant's submissions, CBDT circular and following the decisions of various Tribunals and High Courts, I am of the considered view that the appellant is eligible for deduction under section 80IA of the Act, without deducting the unabsorbed loss/depreciation of the eligible unit of earlier years prior to A.Y. 2012-13, which were already set off against the other business income of the appellant. The AO is accordingly directed to delete the addition of Rs.1,88,69,966/- after making necessary verification regarding unabsorbed losses of earlier years. Ground nos.4 and 5 are accordingly allowed."

6. The Revenue, being aggrieved by the order so passed by the learned CIT(A), filed appeal before the Tribunal.

7. Before us, the learned Counsel for the assessee reiterated the submissions made before the authorities below and relied upon the order passed by the learned CIT(A). He thus prayed for upholding the order of the learned CIT(A).

8. The learned Departmental Representative vehemently submitted that the reason stated by the Assessing Officer for re-opening the assessment under section 147 of the Act was on the basis of incorrect claim of deduction under section 80IA of the Act and further stated that the assessee failed to correctly apply the provisions of sub-section (5) of section 80IA of the Act. He submitted that the assessee had led an objection against the validity of notice issued under section 148 stating various legal decisions. The learned D.R. further submitted that the assessee had also relied upon the CBDT Circular no.1/2016, explaining "*initial assessment year*" of an industrial undertaking with reference to the provisions of sub-section (5) of section 80IA of the Act stating that the explanation to the Assessing Officer regarding applicability of the said circular in the present case. Accordingly, the learned D.R. prayed that the order passed by the learned CIT(A) was not justified and needs to be reversed.

9. We have heard the rival arguments, perused the material available on record and gone through the orders of the authorities below. We find that the assessee had filed computation of income, audited Profit & Loss A/c of windmill undertakings and income tax return for the preceding years from 2006-07 to 2011-12 which were set off against the profits of the business and

no unabsorbed loss / depreciation was carried forward by the assessee in any year. Even there was no brought forward loss from the earlier years to be adjusted against the income for the year under consideration. We further find that insofar as the CBDT Circular no.1/2016 dated 15/02/2016 is concerned, the learned CIT(A) has in detail clarified that the issue is covered by the said circular. Consequently, considering the CBDT Circular cited supra and based on the case laws relied upon, we hold that the learned CIT(A), while considering the claim of deduction under section 80IA of the Act, has perfectly relied upon the judicial pronouncements and we do not find any reason to interfere with the decision of the learned CIT(A) warranting interference in the said appellate order at the instance of the Revenue. Thus, upholding the order passed by the learned CIT(A), all the grounds raised by the Revenue are dismissed for the assessment year 2012-13.

10. In the result, appeal filed by the Revenue for the A.Y. 2012-13 is dismissed.

**ITA no.32/Nag./2020**  
**Revenue's Appeal – A.Y. 2014-15**

11. The grounds of appeal raised by the Revenue are as follows:–

*"1. On the facts and the circumstances of the case, the Ld. CIT(Appeals), Nagpur erred in deleting the addition of Rs. 3,14,88,990/- made on account of disallowance of claim of deduction u/s 801A of the I. T. Act, 1961.*

*2. On the facts and the circumstances of the case, the Ld. CIT(Appeals), Nagpur erred in allowing the appeal of the assessee without appreciating the fact that the assessee failed to correctly apply the provisions of section 801A(5) of the Act thereby resulting in escapement of chargeable income.*

3. On the facts and the circumstances of the case, the Ld. CIT(Appeals), Nagpur erred in allowing the appeal of the assessee without appreciating the fact that the section 801A(5) clearly holds that for claiming deduction under section 801A(1), it will be presumed that the assessee is having only one eligible business and therefore, the assessee was required to brought forward the notional losses of earlier year and setoff the same against the income from the eligible business's profit.

4. On the facts and the circumstances of the case, the Ld. CIT(Appeals), Nagpur erred in allowing the appeal of the assessee without appreciating the fact that the AO in assessment order has correctly worked out the figures of the earlier year losses from wind mill business which the assessee was required to carried forward notionally and should have set off against the profit from the eligible business and not against the profit of the other business income in the respective AYs.

5. On the facts and the circumstances of the case, the Ld. CIT(Appeals), Nagpur erred in allowing the appeal of the assessee without appreciating the fact that the circular of CBDT mentions about the will of the assessee for choosing the first/ initial assessment year from which the assessee wants to claim the deduction u/s 80IA but not intervenes in the provisions of section 801A(5) of the Act.

6. Any other grounds which may be raised at the time of hearing with the permission of Hon'ble ITAT. "

12. The issue arising out of the above ground is also identical to the issue raised by the Revenue in its appeal being ITA no.3/Nag./2018, which is decided by us vide Para no.9 of this order. Consistent with the view taken therein, we uphold the order passed by the learned CIT(A) by dismissing the grounds of appeal raised by the Revenue for the assessment year 2014-15 as well. We order accordingly.

13. In the result, Revenue's appeal for the A.Y. 2014-15 is dismissed.

**Cross Objection no.3/Nag./2018 and**  
**Cross Objection no.7/Nag./2020**  
**A.Y. 2012-13 and 2014-15**

14. The Cross Objections filed by the Assessee are in support of the appeal filed by the Revenue on the same issue i.e., claim of deduction under section

80IA of the Act. Since we have upheld the impugned orders of the learned CIT(A), hence, the cross objections filed by the assessee become infructuous. Consequently, the cross objections filed by the assessee are liable to be dismissed.

15. In the result, both the cross objections filed by the assessee for the A.Y. 2012-13 and 2014-15 are dismissed.

16. To sum up, Revenue's appeals and assessee's cross objections are dismissed.

Order pronounced in the open Court on 28/05/2024

**Sd/-**  
**K.M. ROY**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**V. DURGA RAO**  
**JUDICIAL MEMBER**

**NAGPUR, DATED: 28/05/2024**

Copy of the order forwarded to:

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

*Pradeep J. Chowdhury*  
*Sr. Private Secretary*

True Copy  
By Order

Sr. Private Secretary  
ITAT, Nagpur