

**IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH, MUMBAI**

**BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER &
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER,**

**ITA No.489/Mum/2024
(A.Y. 2016-17)**

DCIT, CC-4.4 1918, Air India Building Nariman Point, Maharashtra – 400021	Vs.	Indagro Foods Pvt. Ltd. Allana House, Colaba Mumbai – 400001
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AAACI6584Q		
Appellant	..	Respondent

Appellant by :	H.M. Bhatt
Respondent by :	Apurva Shah

Date of Hearing	27.05.2024
Date of Pronouncement	21.06.2024

आदेश / O R D E R

Per Amarjit Singh (AM):

The present appeal filed by the revenue is directed against the order of Id. CIT(NFAC) of the Income Tax Act, 1961 for A.Y. 2016-17. The revenue has raised the following grounds before us:

- “1. On the facts and in the circumstances of the case, the Ld. CIT(A) was not justified in directing to allow the assessee's claim of additional depreciation under section 32 of the Income Tax Act, 1961 without appreciating the fact that the business activity carried out by the assessee does not amount to manufacture or production of goods.*
- 2. On the facts and in the circumstances of the case, the Ld. CIT(A) was not justified in restricting the disallowance u/ s. 14A of the Income Tax Act, 1961 to the extent of exempt income without appreciating the clarification of legislative intent provided by the CBDT vide Circular No. 5/2014 dated 11.02.2014 and to this effect even an amendment was made by Finance Act, 2022 by way insertion of Explanation to Section 14A of the Income Tax Act, 1961.*

3. *On the facts and in the circumstances of the case, the Ld. CIT(A) was not justified in relying on the decision of Hon. Delhi High Court in the case of M/S Era Infrastructure (India) Ltd, without appreciating the distinction made by the Parliament with reference to two amendments made u/ s, 14A and its effect on pending matter.*

The appellant craves to leave, to add, to amend and/or to alter any of the ground of appeal, if need be.”

2. Fact in brief is that return of income declaring total income at Rs.1,34,66,05,600/- was filed on 27.11.2016. The case was subject to scrutiny assessment and notice u/s 143(2) was issued on 02.08.2017. The assessee was in the business of processing and sale of frozen foods stuff and other products. During the course of assessment the assessing officer noticed that assessee has shown substantial investment in the equity share of the companies and also received dividend income of Rs.12,000/- during the year under consideration. The assessing officer asked the assessee to explain why the disallowance u/s 14A of the Act should not be made in accordance with Rule 8D of the Income Tax Rules 1962 at Rs. 138,14,309/- as against disallowance of Rs.7593/- made by the assessee sou moto u/s 14A of the Act. The assessee explained that it has earned only dividend income of Rs.12,000/- which was exempt u/s 10 of the Act and investment was made out of own fund of the assessee company. The assessee also submitted that the Rule 8D cannot be applied automatically in the case of the assessee and further submitted that such rule is only applicable on the investment on which assessee company has yielded dividend income during the year. Further the assessee stated that in any case disallowance u/s 14A cannot exceed dividend income actually earned by the assessee to the amount of Rs.12,000/-, however, the AO has not agreed with the submission of the assessee and determined the disallowance u/s 14A in accordance with Rule 8D to the amount of Rs.138,06,716/- and after reducing the sou moto disallowance of

Rs.7,593/- the assessing officer has added the remaining amount of Rs.138,06,716/- u/s 14A to the total income of the assessee.

3. During the course assessment the AO has also noticed that assessee has claimed deduction u/s 32 of the Act to the amount of Rs.165,65,908/- on account of additional depreciation on machineries installed at it is integrated undertaking at Unnao. On query the assessee explained that deduction u/s 32 of the Act in respect of additional depreciation is allowable as the assessee engaged in the business of manufacture or production of article or thing in respect of new machinery of plant acquired and installed during the year. However, the AO has not agreed with the submission of the assessee and rejected the claim of additional depreciation u/s 32(1)(ii) of the Act and added the amount of Rs.165,65,908/- to the total income of the assessee.

4. The assessee filed the appeal before the ld. CIT(A). The ld. CIT(A) has allowed the appeal of the assessee. The relevant extract of the decision of ld. CIT(A) is reproduced as under:

“6. I have considered the facts of the case. In the appellant's own case for AY 2009-10 in ITA No. 3560/Mum/2013 dt. 15 07 2019, the Hon'ble has held as under:-

“10. We find that above submission of learned counsel is supported by the decisions from Hon'ble Jurisdictional High Court and Hon'ble Apex Court. Hon'ble Apex court in the case of Maxopp Investment Ltd vs CIT. (Civil Appeal 104-109 of 2015 dated 12.02.2018) has confirmed the decision of Hon'ble P&H High Court in the case of State Bank of Patiala, wherein disallowance u/s. 14A was limited to dividend income earned. Furthermore, Hon'ble Jurisdictional High Court in the case of Ballarpur Industries Ltd. (Income Tax Appeal No. 51 OF 2016 dated 13.10.2016) have affirmed the proposition that when no exempt dividend income is earned no disallowance u/s 14A is permitted. The ITAT Special Bench in the case of Vireet Investment has also taken the same view. Accordingly, we hold that disallowance u/s. 14A should be limited to exempt income. If no exempt income has been earned no disallowance is called.”

6.1. Although the explanation of sec. 14A inserted by the Finance Act, 2022 can be treated to be clarificatory in nature, the Hon'ble Delhi High Court in the case of M/s. Era Infrastructure (India) Ltd. in ITA No. 204/2022 & CM APPL.

31445/2022 dated 20.07.2022 has held that the provisions cannot be treated to be retrospective. Hence, the claim of the appellant that disallowance u/s. 14A cannot exceed the exempt income is backed by judicial precedence and binding in nature.

6.2. In the instant case, the appellant has received exempt dividend income of Rs.12,000/- during the year. Considering that the appellant already made disallowance of Rs.7,593/-, the balance disallowance is restricted to Rs.4,407/-. Thus, the disallowance of Rs.1,38,06,716/- is restricted to Rs.4,407/- Hence, Ground No. 1 stands PARTLY ALLOWED.:

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“9. I have considered the facts of the case. I find that the issue stands covered in favour of the appellant in the appellant's own case in ITA No. 3560/Mum/2013 for AY 2009-10 dt. 15.07.2019, the Hon'ble has held as under:-

“From the above we find that the ITAT had categorically held that the assessee's activity falls under realm of manufacture or producing an article or thing. In this view of the act, assessee is entitled to deduction u/s 801B for the relevant assessment year. Furthermore, denial of additional depreciation on the ground that the assessee is not involved in manufacturing activity also needs to be set aside in view of the ITAT decision in assessee's own case as above. Accordingly, we set aside the orders of the authorities below and hold that the assessee will be entitled for deduction u/s 801B of the Act and claim additional depreciation as the assessee's activity has been held to be coming under the realm of manufacturing or production activity by the ITAT in assessee's own case.”

9.1. In view of the decision of the Hon'ble ITAT on the issue, the appellant is entitled to succeed in its claim of additional depreciation of Rs.1,65,65,908/-. Hence, Ground No. 2 stands ALLOWED.”

5. Heard both the sides and perused the material on record. Similar issue on identical facts has been adjudicated in the case of the assessee itself vide ITA No. 3560/Mum/2013 for AY. 2009-10. The relevant extract of the decision is reproduced as under:

“15. The Hon'ble Apex Court in *Aspinwall and Co Ltd Vs CIT (supra)* held that the process is manufacturing process when it brings out a complete transformation in the original article so as to produce a commercially different article or commodity. That process itself may consist of several processes. The different processes are integrally connected which results in the production of a commercially different article. If a commercially different article or commodity results after processing, then it would be a manufacturing activity. The

assessee after processing the raw berries converted them into coffee beans which is a commercially different commodity. Conversion of the raw berry into coffee beans would be a manufacturing activity.

16. *The Hon'ble Apex Court in CIT vs. Hindustan Petroleum Corporation Ltd. (supra) while considering the question of law "whether bottling of LPG, as undertaken by the assessee, is a process which amounts to 'production' or 'manufacture' for the purposes of Sections 80HH, 80-I and 80-IA of the Act?; and if so, whether the respondents/assesseees are entitled to claim the benefit of deduction under the aforesaid provisions while computing their taxable income". The Hon'ble Court held that the when bottling activities at the assessee's plants, LPG is stored in cylinders in liquefied form under pressure. When the cylinder valve is opened and the gas is withdrawn from the cylinder, the pressure falls and the liquid boils to return to gaseous state. This is how LPG is made suitable for domestic use by customers who will not be able to use LPG in its vapour form as produced in the oil refinery. It, therefore, becomes apparent that the LPG obtained from the refinery undergoes a complex technical process in the assessee's plants and was clearly distinguishable from the LPG bottled in cylinders and cleared from these plants for domestic use by customers. It may be relevant to point out that keeping in view the aforesaid process; the Tribunal arrived at the specific findings in support of its decision, which are (a) There was no dispute that the LPG produced in the refinery cannot be directly supplied to the consumer for domestic use because of various reasons of handling, storage and safety. (b) LPG bottling was a highly technical and complex activity which requires precise functions of machines operated by technically expert personnel. (c) Bottling of LPG is an essential process for rendering the product marketable and usable for the end customer. (d) The word 'production' has a wider connotation in comparison to 'manufacture', and any activity which brings a commercially new product into existence constitutes production. The process of bottling of LPG renders it capable of being marketed as a domestic, kitchen fuel and, thereby, makes it a viable commercial product.*

17. *The co-ordinate bench of Tribunal in ITO vs. Shri Swasan Chemicals (M) P. Ltd. (supra) held that the assessee who was involved in production of specialized polymer alloys in powder form that were commercially different from polymer granules. The process of production itself involved a number of step and process. The result was that final polymer alloys in powder work not the same as original product. The final product and application in various industries. The raw-material could not be substituted for the final product. The production process resulted not only in qualitative changes but also gave the product a distinct appearance and character which was so recognized in the trade. Hence, production process resulted in a commercially different product having specific characteristic and qualities through a series of steps and process. The assessee, therefore, satisfied the requirement that it manufactured or produced an article of things for the purpose of section 80IB of the Act.*

18. *Considering the above referred factual and legal discussion, we are of the view that the final product produced by the assessee-company is commercially different from the raw-material (Buffalo Carcasses), the process of production involved a number of steps and processes. The raw- material used by the assessee cannot be substituted by the final product. The production process as explained by assessee resulted not only in qualitative changes, but also a distinct product for end-use of the consumer. Thus, in our considered view, the*

assessee fulfilled the requisite requirement i.e. manufacturing or producing an article of things for the purpose of section 80IB of the Act. In the result, ground no.1 of the appeal raised by assessee is allowed.”

Since the Id. CIT(A) has followed the decision of the ITAT Mumbai in the case of the assessee itself as discussed supra therefore following the decision of ITAT, Mumbai we don't find any infirmity in the order of Id. CIT(A). Therefore, the grounds of appeal of the revenue stand dismissed.

6. In the result, the appeal of the revenue is dismissed.

Order pronounced in the open court on 21.06.2024

Sd/-

Sd/-

(Rahul Chaudhary)
Judicial Member

(Amarjit Singh)
Accountant Member

Place: Mumbai

Date 21.06.2024

Rohit: PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,
Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण/ ITAT, Bench,
Mumbai.