

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "E" DELHI**

**BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER  
AND  
SHRI YOGESH KUMAR, JUDICIAL MEMBER**

ITA No.2227/Del/2023  
Assessment Year 2013-14

<b>Narayan Industries</b> Nagarjuna Apartment Mayur Vihar East Delhi.	Vs.	<b>DCIT</b> Central Circle-8 New Delhi
TAN/PAN: AAGFN6026R		
(Appellant)		(Respondent)

Applicant by:	Shri Rohit Jain, Advocate Ms. Somya Jain, Chartered Accountant		
Respondent by:	Shri Subhra Jyoti Chakraborty, CIT-DR		
Date of hearing:	25	06	2024
Date of pronouncement:	10	07	2024

**ORDER**

**PER PRADIP KUMAR KEDIA - A.M.:**

The captioned appeal has been filed by the assessee against the order of the Commissioner of Income Tax (Appeals)-24, Delhi ('CIT(A)' in short) dated 02.06.2023 arising from the assessment order dated 16.03.2016 passed by the Assessing Officer (AO) under Section 143(3) of the Income Tax Act, 1961 (the Act) concerning A.Y. 2013-14.

2. When the matter was called for hearing, the Id. counsel for the assessee, Mr. Rohit Jain, Advocate pointed out that two issues are broadly involved;

(i) disallowance of deduction claimed under Section 80IC of the Act on account of duty drawback and;

(ii) disallowance of deduction claimed under Section 80IC of the

Act on account of interest received on KDRs.

3. Addressing the first issue, the Id. counsel submitted that the assessee is a partnership firm engaged in the business of manufacturing and export of home furnishing items like quilts, bedspreads, cushion covers, etc. The assessee filed return of income in which deduction under Section 80-IC was claimed as permissible in law. The AO however, while framing the assessment order under Section 143(3) of the Act denied the benefit of deduction available under Section 80-IC on duty drawback of Rs.1,11,84,398/-.

3.1 The Id. counsel, at this stage, pointed out that this amount is the gross amount of duty drawback received by the assessee. However, noticeably, this amount was recovered back against the excise duty and custom duty paid on purchases made. The Id. counsel pointed out that AO while denying the deduction under Section 80-IC proceeded on the ground that the assessee has not 'derived' the income by way of duty drawback from the business of manufacturing and export *per se*.

3.2 The Id. counsel submitted that this was never the case of the assessee that it has 'derived' the benefit of duty drawback from manufacturing or production of articles etc. in the course of business. The assessee all along has taken a stance that for the purposes of exclusion of duty drawback for the purposes of computation of deduction under Section 80-IC, what is to be excluded is the net amount of duty drawback received by the assessee rather than the gross amount excluded by the AO. The Id. counsel submitted that the receipt of duty drawback is integrally linked to the corresponding excise duty and custom duty paid by the assessee on purchases. Therefore, for the purposes of determining the profits derived from eligible business, the excise duty and custom duty paid must be necessarily deducted from the duty drawback are claimed from the authorities and only net amount of duty drawback requires to be excluded for the purposes of eligible profits and gains.

3.3 The ld. counsel next submitted that the identical issue came up before the Tribunal in A.Y. 2015-16 in ITA No.6878/Del/2019 order dated 03.03.2023. The Tribunal has appreciated the contentions of the assessee in assessee's own case in the subsequent A.Y. 2015-16 and accepted the plea of the assessee on first principles. The matter was however remanded back to the file of the AO for suitable verifications in this regard and the AO was directed to exclude only net amount of duty drawback for the purposes of eligible deduction under 80-IC. The AO, in turn, passed assessment order under Section 254 r.w. Section 143(3) order dated 30.04.2024 for A.Y. 2015-16 and applied directions of the Tribunal and redetermined the deduction eligible under Section 80-IC based on net amount of refund / duty drawback essentially granted to the assessee. The ld. counsel thus submitted that there is no reason to take a different view in the identical facts in A.Y. 2013-14 in question. It was thus urged that following the decision rendered by the Co-ordinate Bench in the subsequent year, the matter may be remanded back to the file of the AO for verification of facts on identical terms.

4. Adverting to the second issue towards disallowance of deduction under Section 80-IC attributable to interest received on KDRs amounting to Rs.1,44,398/-, the ld. counsel fairly submitted that in view of smallness of the amount, he does not want to engage in protracted litigation and rigors of verification of entries in relation to these transactions. The ld. counsel however also mentioned that such issue may be raised in other years, if so needed.

5. We have heard the rival submissions and perused the material available on record.

6. Adverting to issue towards disallowance of deduction claimed under Section 80-IC of the Act on account of duty drawback, as noted above, it is the case of the assessee that the duty drawback of Rs.1.11 crore credited to Profit and Loss Account exceeds the corresponding customs and excise duties paid of Rs.1.15 crore and debited to Profit and

Loss Account and therefore, in essence, no profit was derived *per se* on account of receipt by way of duty drawback. Consequently such duty drawback being lower than the expenditure incurred towards custom and excise duties, cannot be excluded for the purposes of determination of eligible profits under Section 80-IC in question.

7. The Hon'ble Delhi High Court in the case of *CIT vs. Eltek SGS (P.) Ltd., (2008) 300 ITR 6 (Del) inter alia* observed that duty drawback is in the nature of reimbursement. It thus follows that duty drawback would qualify for deduction under Section 80-IC of the Act in case such duty drawback is either equal to or lower than the corresponding costs towards customs and excise duty incurred and debited to P&L account. The Co-ordinate Bench of Tribunal in assessee's case for A.Y. 2015-16 was confronted with the identical fact situation and after taking note of the fact that duty drawback embedded in the purchases debited to P&L account was lower than the duty drawback received, the plea of the assessee towards eligibility of deduction under Section 80-IC attributable to duty drawback was accepted on first principles and the AO was directed to examine the net impact of duty paid and received for the purposes of determination of eligible deduction under Section 80-IC.

8. In consonance with the view taken by Co-ordinate Bench, the issue is remitted back to the file of the Assessing Officer. The assessee shall be eligible for deduction under Section 80-IC on duty drawback receipts where the AO finds to its satisfaction that the corresponding custom duty and excise duty paid exceeds the corresponding duty drawback in question. The issue is thus set aside to the file of the AO for fresh determination of the eligible deduction under Section 80-IC of the Act in terms noted above.

9. In the result, the ground concerning challenge to disallowance of deduction claimed under Section 80-IC is allowed for statistical purposes.

10. The disallowance of deduction claimed under Section 80-IC of the Act on account of interest received on KDRs is dismissed as not pressed for smallness of the amount.

11. In the result, the appeal of the assessee is partly allowed.

**Order pronounced in the open Court on 10<sup>th</sup> July, 2024.**

Sd/-

**[YOGESH KUMAR]  
JUDICIAL MEMBER**

Sd/-

**[PRADIP KUMAR KEDIA]  
ACCOUNTANT MEMBER**

DATED: July, 2024  
*Prabhat*