

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "C": NEW DELHI
BEFORE SHRI M. BALAGANESH, ACCOUNTANT MEMBER
AND
SHRI VIMAL KUMAR, JUDICIAL MEMBER**

**ITA No. 8280/Del/2018
(Assessment Year: 2006-07)**

Interarch Building Products Pvt. Ltd, B-30, Sector-57, Noida, Uttar Pradesh (Appellant) PAN:AAACI0106J	Vs. DCIT, Circle-11(1), New Delhi (Respondent)
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Assessee by :	Shri M. P. Rastogi, Adv Shri P. N. Shastry, CA
Revenue by:	Shri Sandeep Kr. Mishra, Sr. DR
Date of Hearing	13/05/2024
Date of pronouncement	23/07/2024

ORDER

PER M. BALAGANESH, A. M.:

1. The appeal in ITA No.8280/Del/2018 for AY 2006-07, arises out of the order of the Commissioner of Income Tax (Appeals)-32, New Delhi [hereinafter referred to as 'ld. CIT(A)', in short] in Appeal No. 168/17-18/CIT(A)-22 dated 10.10.2018 against the order of assessment passed u/s 147/144 of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 31.03.2014 by the Assessing Officer, DCIT, Circle-11(1), New Delhi (hereinafter referred to as 'ld. AO').

2. The assessee has raised the following grounds of appeal before us:-

"1 The learned CIT[A] has erred in not granting reasonable opportunity to submit rejoinder -though the AO took about 3 years for submitting Remand Report.

2. Without prejudice to the above ground the following grounds on merits may please be adjudicated

3.1 The re-opening of assessment is bad in law

3.2 The re-opening of assessment completed u/s 143[3] after 4 years without due compliance of provisions of the Act is bad in law.

3.3 That the learned AO cannot allege withholding of fact -when he has issued a notice to rectify the order u/s 154 as a mistake apparent from record.

4 The assessment order dated 31-3-14 passed u/s 147 read with 144 is bad in law as the learned AO has altogether ignored the submissions made -probably to justify the re-opening

5 Without prejudice to the above grounds the appellant is eligible to deductions u/s 80IB and 80IC of the Income Tax Act

6 The re-assessment is only a change of opinion on the same set of fact and thus bad in law

7 That the above grounds are independent and without prejudice to each other.

8 That the appellant seeks leave to add, amend, alter or abandon any of the above grounds at the time of hearing of the appeal.”

3. We have heard the rival submissions and perused the materials available on record. The assessee is in the business of manufacture and sale of pre-engineered structures and having its factory at Greater Noida and Pant Nagar. The income from the Pant Nagar unit was eligible for deduction u/s 80IC of the Act, whereas the income from Greater Noida unit was eligible for deduction u/s 80IB of the Act. The Greater Noida unit was a small scale industrial undertaking. It is not in dispute that the Greater Noida unit was an eligible undertaking and deduction u/s 80IB of the Act is always given qua the undertaking as if that is the only undertaking available with the assessee. Section 80IB(13) of the Act further states that the provisions contained in sub-section (5) and sub-sections (7) to (12) of Section 80IA of the Act shall, so far as may be, apply to the eligible business u/s 80IB of the Act. The provisions of section

80IA(7) of the Act states that the deduction under sub-section (1) from profit and gains derived from an industrial undertaking shall not be admissible unless the accounts of the undertaking for the previous year relevant to the assessment year for which the deduction is claimed has been audited by an accountant before the specified date and the assessee furnishes by that date the report of such audit in the prescribed form duly signed and verified by such accountant. It is not in dispute that the assessee has duly furnished the audit report in Form No. 10CCB which is enclosed in Pages 88 to 93 of the Paper Book wherein in response to query raised in Question No. 26 of the audit report, the total value of the machinery or plant used in business was categorically mentioned at Rs.92,96,778/-. It is not in dispute that the assessee had prepared a consolidated balance sheet which includes the income from Greater Noida unit as well as Pant Nagar unit and got the same statutorily audited as per the Companies Act, 1956. It is not in dispute that the assessee while filing its income tax return had also prepared the computation of income as well as the depreciation chart admissible under the Act. The depreciation chart admissible under the Act is enclosed in page 56 of the paper book. The said depreciation chart reflects the value of plant and machinery at Rs 5,40,00,663/-. But it is to be understood that the said depreciation chart is for the company as a whole and not only for the unit eligible for deduction u/s 80IB of the Act. The original assessment was completed u/s 143(3) of the Act on 29.12.2008 allowing the claim of deduction u/s 80IB of the Act in respect of profits of Greater Noida Unit and deduction u/s 80IC of the Act in respect of profits of Pant Nagar Unit by the Id. AO after being satisfied with the details filed by the assessee together with documentary evidences. Since there was a original claim by the assessee that the Greater Noida Unit is a small scale industry wherein the value of plant and machinery threshold limit is fixed at Rs 1 crore, the Id. AO sought to rectify

the assessment vide issuance of notice u/s 154 of the Act on 16.9.2010 on the ground that the value of plant and machinery as per IT depreciation Chart was Rs 5.40 crores which had exceeded the threshold limit of Rs 1 crore prescribed for SSI unit and thereby the assessee would not be eligible for deduction u/s 80IB of the Act based on audit objection raised on the department. Along with the said notice u/s 154 of the Act, the Id. AO also enclosed the copy of audit objection raised on the department. The assessee gave a detailed reply in response to notice u/s 154 of the Act on 11.10.2010 objecting to the proposed withdrawal of deduction u/s 80IB of the Act by again explaining that the value of plant and machinery block of Rs.5,40,00,663/- represents the grand total of both the units and not the Greater Noida unit only. In the reply, the assessee also furnished complete details of plant and machinery which includes in the block of assets as per Income-tax Act unit-wise. In the details, the assessee also mentioned that the plant and machinery for SSI units as per the Industries (Development and Regulation) Act, 1951 (hereinafter called Industries Development Act) is only Rs.92,96,778/-in Greater Noida unit. In the reply, the assessee specifically pointed out to the AO that for the purpose of working out the threshold limit, the value of plant and machinery under the Industries Development Act does not include various items viz. tools, dyes, mode, spare parts, cost of installation of plant and machinery, cost of generator, transformer etc. which has been notified by the Central Government in its notification published in terms of Section 11B of the said Act though according to the Income Tax Act they are forming part of the block of plant and machinery. The assessee also enclosed the copy of notification as issued by the Central Government in this regard before the Id. AO. The said notification is enclosed in pages 142 to 146 of the paper book. However, no further information was received by the assessee from the Id AO after filing its reply in compliance to notice u/s 154 of the Act.

4. Later the assessment for the Asst Year 2006-07 was sought to be reopened by the Id. AO vide issuance of notice u/s 148 of the Act on 26.3.2012. The reasons recorded for reopening the assessment was duly furnished to the assessee by the Id. AO which reads as under:-

"The assessment in the above mentioned case for A.Y. 2006-07 was completed on 29.12.2008 determining income of Rs.6,33,33,480/-. On perusal of the record, it is revealed that assessee was allowed deduction of Rs. 2,46,28,410/- under section 80IB as a small scale unit. However further scrutiny revealed that the assessee was had plant and machinery amounting to Rs.5,40,00,663/- which is more than the threshold limit of Rs.10000000/- for small scale units. By doing so, the assessee has not disclosed its income truly to the extent of Rs.2,46,28,410/-.

Based on the above facts, I have reason to believe that the income of the assessee chargeable to tax to the extent of Rs.2,46,28,410/- has escaped assessment. If approved, a notice u/s 148 of IT Act may be issued to assessee."

5. On perusal of the aforesaid reasons, it could be safely concluded that the Id. AO did not possess any fresh tangible material which has live link with formation of belief that income of the assessee had escaped assessment warranting reopening within the meaning of section 147 of the Act. The Id. AO had merely stated in the reasons – "on perusal of the records". This goes to prove that all the details were already placed on record by the assessee before the Id. AO and there was absolutely no failure on the part of the assessee to disclose fully and truly all material facts relevant for the purpose of determination of income of the assessee. The Id. AO had not even bothered to examine the provisions of section 80IB of the Act. Had he examined the said provision, he would have attained clarity that deduction u/s 80IB of the Act is eligible for both SSI as well as non-SSI units. Even if the assessee's stand that it is a SSI unit is to be rejected, then also , it would still be eligible for deduction u/s 80IB of the Act in the facts and circumstances of the instant case. This act of the Id. AO in not even referring to the provisions of section 80IB of the Act

and its eligibility conditions, clearly go to prove that the Id. AO had resorted to reopening of assessment only based on audit objection and not based on any independent application of mind. The entire reopening of assessment has been made based on incorrect assumption of facts. The assessee had duly disclosed the value of plant and machinery at Rs 92,96,778/- for the eligible unit in accordance with the notification issued by the Central Government in terms of section 11B of Industries (Development and Regulation) Act, 1951. In any event, as stated earlier, the assessee would be eligible for deduction u/s 80IB of the Act in respect of profits derived from Greater Noida Unit de hors the value of plant and machinery exceeding Rs 1 crore. The threshold limit of Rs 1 crore of plant and machinery is only to categorize a particular unit as a SSI unit. If the said limit of Rs 1 crore is exceeded, the provisions of section 80IB of the Act nowhere denies the claim of deduction to an assessee. In the instant case, the reopening of assessment has been made beyond 4 years from the end of the relevant assessment year. The original assessment was completed u/s 143(3) of the Act. Hence the Id. AO has to bring on record with cogent material that there was a failure on the part of the assessee to disclose fully and truly all material facts relevant for the purpose of determination of total income of the assessee. From the perusal of the materials available on record, we find that there is absolutely no failure on the part of the assessee. We hold that the assessee had duly furnished all the relevant details before the Id. AO in the original assessment proceedings itself in the form of audit report, division wise accounts etc which would enable the Id. AO to determine the profits eligible for deduction u/s 80IB of the Act. These details were indeed very much available before the Id. AO himself in the original assessment proceedings which only enabled the Id. AO to allow deduction u/s 80IB of the Act to the assessee u/s 143(3) of the Act to the tune of Rs 2,46,28,610/-.

Where is the failure on the part of the assessee to disclose true and full material facts here ? Hence we have no hesitation to hold that the Id. AO could not have validly assumed jurisdiction u/s 147 of the Act in the instant case.

6. Further the Id. CIT(A) had relied on the CBDT Circular NO. 314 dated 17.9.1981 to deny the deduction u/s 80IB of the Act to the assessee. This circular talks about allowing investment allowance for SSI unit and assessee herein has not claimed any investment allowance. In any case, as already stated earlier, the only reason for the Id. AO to deny deduction u/s 80IB of the Act to the assessee was that assessee loses to retain the status of SSI unit due to investment in plant and machinery exceeding Rs 1 crore (which is factually wrong as held by us in view of the reasons stated supra). The Id. AO nowhere alleges that assessee had violated any other provisions of section 80IB of the Act. Hence the argument advanced by the Id. DR before us that it is the duty of the assessee to prove that it had not manufactured products that are falling in 11th schedule, has absolutely no meaning in the facts and circumstances of the instant case. In any event, there is absolutely no change in facts and circumstances of the assessee's case qua the eligible unit when compared with earlier and subsequent years. The deduction u/s 80IB of the Act has been granted to the assessee for the very same eligible unit (i.e Greater Noida Unit) commencing from Asst Year 2001-02 onwards u/s 143(3) of the Act dated 26.3.2004; for Asst Year 2002-03 u/s 143(3) dated 30.3.2005 ; for Asst Year 2003-04 u/s 143(3) dated 20.3.2006 ; for Asst Year 2004-05 u/s 143(3) dated 26.3.2006 ; for Asst Year 2005-06 u/s 143(3) dated 28.12.2007 ; and for Asst Years 2007-08 to 2009-10 u/s 143(3) dated 30.12.2009, 29.12.2010 and 27.12.2011 respectively. All the aforesaid scrutiny assessment orders are placed on record by the Id. AR before us.

7. In view of the aforesaid observations, we have no hesitation to quash the entire reassessment proceedings u/s 147 of the Act due to invalid assumption of jurisdiction by the Id. AO for more than one reason as stated supra. Even on merits, the assessee would be entitled for deduction u/s 80IB of the Act as per the provisions contained therein as stated supra. Further even on the principle of consistency, the assessee would be eligible for deduction u/s 80IB of the Act as the said deduction has been granted to the assessee in earlier as well as in subsequent years under scrutiny assessment proceedings and the Id. AO had not brought any change in facts and circumstances during this year. Accordingly, the grounds raised by the assessee are allowed.

8. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 23/07/2024.

-Sd/-
(VIMAL KUMAR)
JUDICIAL MEMBER

-Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Dated:23/07/2024
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi

Date of dictation	22.07.2024
Date on which the typed draft is placed before the dictating member	22.07.2024
Date on which the typed draft is placed before the other member	
Date on which the approved draft comes to the Sr. PS/ PS	
Date on which the fair order is placed before the dictating member for pronouncement	
Date on which the fair order comes back to the Sr. PS/ PS	
Date on which the final order is uploaded on the website of ITAT	
date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the order	