

THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD "DIVISION BENCH-A"  
AHMEDABAD

**Before: Shri Ramit Kochar, Accountant Member &  
Shri T. R. Senthil Kumar, Judicial Member**

**ITA No. 798/Ahd/2024  
Assessment Year: 2017-18**

Deputy Commissioner of Income Tax, Circle-4(1)(1), A Wing, Room No. A-410, 4 <sup>th</sup> Floor Pratyakash Kar Bhawan, Pankrapole, Ambawadi, Ahmedabad- 380015, Gujarat. (Appellant)	v.	Shilp Gravures Limited, 101, Kashi Parekh Complex, B.H. Bhagwati Chambers C.G. Road, Navrangpura, Ahmedabad-380009, Gujarat  <b>PAN: AADCS0868G</b>  (Respondent)
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**Revenue by: Shri Santosh Kumar, Sr.DR**  
**Assessee by: Shri S N Divatia, Advocate**

Date of hearing : 31-07-2024  
Date of pronouncement : 23-08-2024

**आदेश/ORDER**

This appeal in ITA No.798/Ahd/2014 for assessment year 2017-18, filed by Revenue before Income Tax Appellate Tribunal, Ahmedabad Division Bench, Ahmedabad has arisen

from the appellate order dated 26-02-2024 passed by Ld. CIT(A), NFAC, Delhi u/s.250 of the Income-tax Act,1961 in DIN & Order No. ITBA/NFAC/S/250/2023-24/1061531121(1), which has in turn has arisen from the assessment order dated 02.12.2019 passed by the Assessing Officer u/s. 143 of the Income-tax Act 1961.

2. The grounds of appeal raised by Revenue with the Income Tax Appellate Tribunal, Ahmedabad Bench, Ahmedabad in appeal memo , reads as under:-

- a) *The Ld.CIT(A) has erred in law and on facts in allowing the deduction u/s.80IA of the Act of Rs.1,56,66,658/- claimed by the assessee.*
- b) *The appellant craves leave to add, alter and or to amend all or any the ground before the final hearing of the appeal.*

3. The brief facts of the case are that assessee is engaged in the manufacturing and job work of electronically engraved copper roller , which are used for printing and packaging industries. The assessee filed its return of income on 30.10.2017 declaring total income of Rs. 8,72,74,960/-. The return of income was processed by Revenue u/s 143(1). Thereafter, it was selected for framing complete scrutiny assessment(CASS). Statutory notices u/s 143(2) and 142(1) were issued by the AO to the assessee. In the return of income filed by the assessee with Revenue, the assessee has claimed deduction u/s 80IA to the tune of Rs. 1,56,66,658/- . This income was generated on account of wind mill business (sale

of power). The notice was issued by the AO u/s.142(1) of the Act , dated 04.08.2019 to the assessee requesting assessee to substantiate large deduction of claim u/s.80IA of the Act in comparison to the earlier year with supporting evidences and certificate. The assessee submitted the details of deduction claimed vide reply dated 11.09.2019. Thereafter, the assessee was asked by the AO vide notice u/s.142(1) of the Act dated 10.10.2019 , to furnish explanation as to why disallowance made u/s.80IA of the Act should not be made in the case of the assessee. The assessee relied upon the orders of this Tribunal in its own case for assessment year 2012-13 and 2013-14. The AO observed that the claim of the assessee is consistently being disallowed keeping in view provisions of section 80IA(5) of the Act. The AO had observed that quantum of deduction u/s.80IA of the Act has to be computed after deduction of notional brought forward losses and depreciation of eligible business though have been allowed set off against other income in earlier years. The AO observed that the assessee is not eligible for deduction u/s.80IA of the Act. The AO relied upon the decision of ITAT in the case of *ACIT v. Goldmine Shares & Finance (P) Ltd. ,reported in (2008)113 ITD 209*, to disallow the claim of deduction u/s 80IA. Thus, during the course of assessment proceedings, the AO made disallowance u/s. 80IA of the Act to the tune of Rs.1,56,66,658/-, and the income computed by the AO vide

assessment order u/s 143(3), dated 02.12.2019, was Rs. 10,29,41,620/- as against returned income of Rs. 8,72,74,960/-.

4. Aggrieved, the assessee filed first appeal before Ld. CIT(A). The assessee had relied on the orders of this Tribunal assessee's own case for assessment year 2010-11 to 2013-14, wherein the deductions u/s 80IA was allowed by ITAT to the assessee. The Ld. CIT(A), considered the decision of Hon'ble Madras High Court in the case of *Velayudhaswamy Spinning Mills Pvt. Ltd. V. ACIT reported in (2012) 340 ITR 477(Mad. HC)*, and granted relief to the assessee, and also after considering that claim of deduction u/s 80IA was allowed by the ITAT in the preceding years, as detailed hereunder:-

*"5.5 Perusal of the submission of the assessee revealed that similar issue has been decided by the Hon'ble Ahmedabad Tribunal in favour of the assessee and the details of the same are reproduced below for reference.*

<i>Assessment Years</i>	<i>Profit/Loss (Rs.)</i>	<i>Remarks</i>
<i>2006-07</i>	<i>(-)1,78,76,406</i>	<i>-</i>
<i>2007-08</i>	<i>(-)11,11,19,970</i>	<i>-</i>
<i>2008-09</i>	<i>12,61,959</i>	<i>No claim u/s.80IA of the Act made by the assessee</i>
<i>2009-10</i>	<i>48,77,722</i>	<i>Deduction u/s.80IA of the Act allowed by Hon'ble ITAT</i>
<i>2010-11</i>	<i>70,29,527</i>	<i>Deduction u/s.80IA</i>

		<i>of the Act allowed by Hon'ble ITAT</i>
<i>2011-12</i>	<i>63,89,564</i>	<i>Deduction u/s.80IA of the Act allowed by Hon'ble ITAT</i>
<i>2012-13</i>	<i>68,69,317</i>	<i>Deduction u/s.80IA of the Act allowed by Hon'ble ITAT</i>
<i>2013-14</i>	<i>77,06,935</i>	<i>Deduction u/s.80IA of the Act allowed by Hon'ble ITAT</i>

*Further, it has been that relief was granted by the Hon'ble Commission of Income Tax(Appeal) on the similar issue while deleting the disallowance made u/s.80IA of the Income Tax Act 1961 and no disallowance with respect to provision of Section 80IA of the Income Tax Act 1961 was made in the assessment order passed u/s 143(3) of the Income Tax Act, 1961 for the Assessment Year 2016-17*

*Considering the fact that the aspect of the immediate case are homogeneous to the issue under consideration in the preceding assessment years decided upon by the Hon'ble Judicial Authorities, it is noted that the assessee is eligible to claim deduction u/s 80IA of the Income Tax Act, 1961 and the disallowed made by the Assessing Officer u/s 801A of the Income Tax Act, 1961 amounting to Rs 1,56,66,658/- is deleted.*

*6. In the result, the appeal is Allowed."*

Hence, it was held by ld. CIT(A) that the assessee is eligible for claiming deduction u/s.80IA of the Act, and the appeal of the assessee was allowed by ld. CIT(A). Thus, the additions of Rs. 1,56,66,658/- as was made by the AO was deleted by ld. CIT(A) .

5.Now, it is the turn of the Revenue to have been aggrieved by the decision of Ld.CIT(A). Shri Santosh Kumar, Learned

Senior DR submitted that in the earlier year in ITA No.542/Ahd/2017 for AY 2013-14, the Tribunal has decided this issue in favour of the assessee vide order dated 26.06.2018, in assessee's own case. The learned Senior Counsel for the assessee Shri S N Divetia, Advocate submitted that the issue is covered by the decision of the Hon'ble Ahmedabad Bench for the assessment year 2013-14 in assessee's own case in ITA No.542/Ahd/2017, dated 26.06.2018. Presently, we are concerned with assessment year 2017-18. The assessee has filed Paper Book containing 88 pages, which is placed on record in file. The Ld. Senior Counsel for the assessee, Shri S N Divetia, Advocate drew our attention to the fact that the assessee has installed new windmills to generate power. Our attention was drawn to Page 8 of PB which is a certificate of commissioning dated 04.06.2013 issued by Gujarat Energy Development Agency w.r.t. commissioning of 0.750MW capacity windfarm consisting of 1 number of new wind turbine generator at Nani Malti , Jamnagar. It is submitted that the deduction u/s 80IA was claimed for the first time in the impugned assessment year to the tune of Rs. 16,02,822/- with respect to aforesaid wind mill installed at Nani Malti, Jamnagar. Similar are the certificate of commissioning issued by GEDA which is placed in PB/Page 7 w.r.t. Windmill of the capacity 0.800 MW installed at Village Navadra, Taluka Kalyanpur, District

Jamnagar which was installed on 07.03.2006, and the impugned assessment year is the last assessment year for which deduction was claimed by the assessee(Page 7/PB). Similar is the certificate for the windmill installed on 14.12.2011 issued by GEDA w.r.t. windmill installed at Kalyanpur, District Jamnagar(PB/9), against which deduction u/s. 80IA was claimed for the first year being initial year i.e. 2014-15. The chart of claim of deductions u/s 80IA for assessment year 2011-12 to 2023-24 is duly placed by the assessee in PB/Page 2. The auditors certificate's with Form No. 10CCB are also placed on record in PB. The Ld. Sr. DR submitted that these facts are placed for the first time before the ITAT, and these are in the nature of additional evidences filed for the first time before ITAT and the matter can go back to the file of the AO . The Ld.Counsel for the assessee drew our attention to the ground of appeal and statement of fact filed before the Ld.CIT(A). It was also submitted that the decision of Special Bench of Tribunal in the case of *ACIT v. Goldmines Shares & Finance (P) Ltd. (supra)* was over ruled by Hon'ble High Court.

6.We have considered the contentions of both the parties and perused the materials available on record. We have observed that the assessee is engaged in the manufacturing and job work of electronically engraved copper roller , which are used

for printing and packaging industries. In the return of income filed by the assessee with Revenue, the assessee has claimed deduction u/s 80IA to the tune of Rs. 1,56,66,658/- . This income was generated on account of wind mill business (sale of power). The AO disallowed the claim of deduction u/s 80IA by following the decision of ITAT in the case of *Goldmine Share and Finance Private Limited(supra)*, wherein ITAT observed that while computing deduction u/s 80IA, the profit from the eligible business for the purpose of determination of the quantum of deduction u/s 80IA has to be computed after deduction of the notional brought forward losses and depreciation of eligible business even through they have been allowed to be set off against other income in earlier years. The Id. CIT(A) allowed the deduction u/s 80IA to the assessee to the tune of Rs. 1,56,66,658/- as claimed by the assessee , by following the decision of Hon'ble Madras High Court in the case of *Velayudhaswamy Spinning Mills Private Limited(supra)* and also after considering the decision's of ITAT in assessee's own case for the assessment year 2009-10 to 2013-14. There is no quarrel so far as the proposition of law laid down by Hon'ble Madras High Court in the case of *Velayudhaswamy(supra)*, wherein the Hon'ble Madras High Court held that loss in the year earlier to the initial assessment year already absorbed against the profit of other business cannot be notionally brought forward and set off

against the profits of the eligible business as no such mandate is provided in Section 80IA(5). This view was followed by Hon'ble Madras High Court in the case of *PCIT v. Prabhu Spinning Mills Private Limited*(2016) 76 taxmann.com 8 (Mad.HC). The SLP filed by Revenue with Hon'ble Supreme Court against the decision of Hon'ble Madras High Court in the case of *Velayudhswamy*(supra) stood dismissed by Hon'ble Supreme Court in *ACIT, Tirupur v. Velayudhaswamy Spinning Mills Private Limited* , reported in (2016) 76 taxmann.com 176(SC) . Since the SLP filed by Revenue under Article 136 stood dismissed in limine by Hon'ble Supreme Court of India, the doctrine of merger shall not apply. Reference is drawn to judgment and order of Hon'ble Supreme Court of India in the case *Kunhayammad v. State of Kerala* , 113 Taxman 470(SC). The said proposition of law as laid down by Hon'ble Madras High Court in *Velayudhaswamy*(supra) is approved by Hon'ble Delhi High Court in the case of *PCIT v. Sterling Agro Industries Limited*, reported in (2023) 151 taxmann.com 203(Delhi). The Hon'ble Karnataka High Court has taken a different view in *Micro Labs Limited v. ACIT*(2015) 56 taxmann.com 160(Kar. HC). The Hon'ble Delhi High Court in *Sterling Agro*(supra) considered the aforesaid decision of Hon'ble Karnataka High Court in the case of *Microlabs*(supra), but chose to follow the decision of Hon'ble Madras High Court in the case of *Velayudhaswami*(supra). No other contrary decision of Hon'ble

High Court, or judgment and order of Hon'ble Supreme Court is brought to our notice. It is well settled that if there are two contrary decision of Hon'ble High Court wherein the said High Court's are non jurisdictional High Courts, then the decision favourable to the assessee shall apply, and more so the later decision of Hon'ble Delhi High Court has taken a view in favour of the assessee after considering decision of Hon'ble Karnataka High Court which has taken a view in favour of Revenue. Reference is drawn to the judgment and order of Hon'ble Supreme Court in the case of *CIT v. Vegetable Products(1973) 1 SCC 442*. Thus, we upheld the view taken by ld. CIT(A) in favour of the assessee by following the judgment and order of Hon'ble Madras High Court in the case of *Velayudhaswamy(supra)*. So far so good, there is no difficulty, but the difficulty arose that ld. CIT(A) has simply followed the decision of this Tribunal for assessment year 2009-10 to 2013-14 and granted relief to the assessee. Presently, we are concerned with assessment year 2017-18. The verification of claim is a factual matter which requires factual verification of various aspects concerning installation/commissioning of wind mill as well computation thereof. The ld. CIT(A) did not considered the factual aspects that the assessee has commissioned new windmill at Nani Malti, Jamnagar in the financial year 2013-14, and the impugned assessment year is the initial assessment year , wherein the assessee is claiming

the deduction u/s 80IA for the first time. No verification was done by ld. CIT(A). Similarly, the ld. CIT(A) did not consider that the deduction u/s 80IA w.r.t. Wind Mill at Navedra was claimed in the impugned assessment year being the last year of the allowability of said claim. Thus, the ld. CIT(A) whose powers are co-terminus with the powers of the AO, did not examine the factual matrix of claim of deduction u/s 80IA , its computation and its allowability thereof. Thus, with these observations, we are remitting the matter back to the file of ld. CIT(A) for verifying the claim of deduction u/s 80IA after considering the factual matrix as is emerging for the impugned assessment year. The appeal of the Revenue is allowed for statistical purposes. We order accordingly.

7. In the result, the appeal of the Revenue in ITA No. 798/Ahd/2024 for assessment year: 2017-18 is allowed for the statistical purposes.

Order pronounced on 23<sup>rd</sup> August, 2024 in accordance with Rule 34(4) of the Income-tax Appellate Tribunal Rules, 1963 at Ahmedabad.

**Sd/-**  
**(TR SENTHIL KUMAR)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(RAMIT KOCHAR)**  
**ACCOUNTANT MEMBER**

**Ahmedabad : Dated : 23/08/2024**

**आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-**

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार  
आयकर अपीलीय अधिकरण,  
अहमदाबाद