

IN THE INCOME TAX APPELLATE TRIBUNAL “E” BENCH, MUMBAI

BEFORE SHRI. AMARJIT SINGH, AM
AND
MS. KAVITHA RAJAGOPAL, JM

ITA No. 4939/Mum/2024 (Assessment Year: 2012-13)
ITA No. 4934/Mum/2024 (Assessment Year: 2013-14)
ITA No. 4971/Mum/2024 (Assessment Year: 2014-15)
ITA No. 4930/Mum/2024 (Assessment Year: 2015-16)
ITA No. 4929/Mum/2024 (Assessment Year: 2016-17)
ITA No. 4927/Mum/2024 (Assessment Year: 2017-18)
ITA No. 4926/Mum/2024 (Assessment Year: 2018-19)

DCIT CC 4 (2) Mumbai R. No. 420, Kautilya Bhavan, BKC – 400051.	Vs.	K Raheja IT Park (Hyderabad) Ltd. MindSpace Cyberabad S. No. 64 (part), APIIC Software, Layout Unit, Next to VSNL Building, Madhapur, Telangana – 500081.
PAN/GIR No. AACCK1914G		
(Assessee)	:	(Respondent)

Assessee by	:	Shri. Madhur Agarwal
Respondent by	:	Shri. Biswanath Das – CIT DR

Date of Hearing	:	12.12.2024
Date of Pronouncement	:	31.12.2024

ORDER

Per Bench:

These captioned appeals have been filed by the revenue, challenging the order of the learned Commissioner of Income Tax (Appeals), 52, Mumbai ('Id. CIT(A)' for short), National Faceless Appeal Centre ('NFAC' for short) passed u/s.250 of the Income Tax Act, 1961 ('the Act'), pertaining to the Assessment Years ('A.Y.' for short) 2012-2013 to 2018-19.

2. As the facts are identical in all these appeals, we hereby dispose of these appeals by passing a consolidated order by taking ITA No. 4926/Mum/2024 as a lead case, pertaining to A.Y. 2018-19. It is also observed that the revenue has filed these appeals belatedly with a delay of 2 days beyond the period of limitation for which an application for condoning the delay has been filed. Upon perusal of the same, we deem it fit to condone the said delay as there being 'sufficient cause' for the delay. Delay condoned.
3. The revenue has raised the grounds challenging the order of the Id. CIT(A) in allowing deduction claimed u/s. 80IA(4)(iii) of the Act which according to the revenue is not an allowable deduction, as it is the income arising from 'house property' and not a 'business income'. The revenue has also challenged the order on the ground that the assessee has not satisfied the conditions for claiming the deduction u/s. 80IA(4)(iii) of the Act that there should be minimum 30 industrial units set up by the assessee for the purpose of claiming the said deduction.
4. Briefly stated that the assessee's nature of business is real estate development, operation and maintenance of industrial parks, non-industrial parks and other commercial segments and treasury. The assessee had filed its return of income dated 29.10.2018 for the year under consideration, declaring total income at Rs. 86,27,00,340/- out of income earned from license fees, maintenance services, interest, etc. after claiming deduction of Rs. 53,45,96,631/- u/s. 80IA(4)(iii) of the Act and Rs. 3,25,000/- u/s. 80G of the Act under the normal provisions and Rs. 141,23,85,517/- as book profit. Pursuant to the search action u/s. 132 of the Act carried out at the business premises of the assessee group, the assessee's case was selected for scrutiny and notices u/s. 143(2) and 142(1) of the Act were duly issued and served upon the assessee.

5. The learned Assessing Officer (for short 'ld. AO') observed that the assessee's claim of deduction u/s. 80IA(4)(iii) of the Act was not allowed by the ld. AO for A.Y. 2012-13 to 2014-15 in the original scrutiny assessment and also in the assessment u/s. 143(3) r.w.s. 153A of the Act. The ld. AO passed the assessment order dated 27.12.2019 u/s. 143(3) of the Act determining total income at Rs. 139,72,96,970/- after making addition/disallowance u/s. 80IA(4)(iii) of the Act amounting to Rs. 53,45,96,631/- on the ground that the ld. AO has disallowed the said deduction in the scrutiny assessment for A.Y. 2014-15 and since the matter was pending before the appellate authority, the ld. AO proceeded to disallow the same for taking a consistent view.
6. Aggrieved the assessee was in appeal before the first appellate authority, who vide consolidated order dated 24.07.2024 had allowed the assessee's appeal on the ground that the Tribunal in assessee's case for A.Y. 2010-11 in ITA No. 1774/Hyd/2014 and ITA No. 727/Hyd/2015 dated 11.07.2016 and for A.Y. 2011-12 in ITA No. 691/Hyd/2016, order dated 06.05.2021, in Section 263 proceedings has held that the assessee cannot be denied deduction u/s. 80IA(4)(iii) of the Act in subsequent years, when the same has been allowed in assessee's case for previous years.
7. The revenue is in appeal before us, challenging the impugned order of the ld. CIT(A) for all these years.
8. The learned Departmental Representative ('ld. DR' for short) for the revenue contended that the deduction claimed u/s. 80IA(4)(iii) of the Act was disallowed by the ld. AO in A.Y. 2010-11 in ITA No. 1774/Hyd/2014 and ITA No. 727/Hyd/2015 dated 11.07.2016 holding the same to be 'income from house property' which was subsequently quashed by the Tribunal in the revisionary proceeding u/s. 263 of the Act. The ld. DR further

contended that the income is not in the nature of a 'business income' and hence, the same will not be eligible for claiming deduction u/s. 80IA of the Act. The ld. DR relied on the order of the ld. AO.

9. The ld. AR on the other hand controverted the said fact and contended that the coordinate benches in the earlier years has allowed the claim of the assessee u/s. 80IA(4)(iii) of the Act. The ld. AR further stated that the impugned income is arising out of the project developed with the approval of the government in terms of the Industrial Park Scheme, 2002 notified by the Department of Industrial Policy and Promotion under the Ministry of Commerce and Industry. The ld. AR further iterated that the assessee has complied with all the norms required for undertaking the said project as per the terms and conditions prescribed by the Government of India. The ld. AR stated that the said income is classified as 'business income' which is eligible for claiming deduction u/s. 80IA(4)(iii) of the Act. The ld. AR relied on the decisions of the coordinate bench for earlier years.
10. We have heard the rival submissions and perused the materials available on record. The only moot issue that requires adjudication in this present appeal is whether the assessee is eligible to claim deduction u/s. 80IA(4)(iii) of the Act, for which it is essential to determine whether the said income is categorized under the head 'income from house property' or 'business income'. For this, it is necessary to consider the nature of the business of the assessee which is deriving income from the operation and management of the buildings out of rent from lease of rental space and rent from lease of furniture and fit-out and facility management charges towards maintenance and upkeep of the premises that is rented out. Pursuant to the notice u/s. 153A of the Act, the assessee

filed its return of income declaring the same as profit and gains out of business or profession. The revenue has taken a contrary view that the same is 'income from house property'. The assessee has relied on the CBDT circular no. 16/2017 dated 25.04.2017 which has clarified that the income from letting out of premises/developed space along with other facilities in an industrial park/SEZ which an undertaking has developed and operates or maintains an industrial park/SEZ notified in accordance with the scheme framed and notified by the government would be charged to tax under the head profit and gains of business or profession. Subsequent to the said circular, the assessee has been declaring the said income as 'business income' and has been claiming depreciation on the rent out premises.

11. The ld. AO has rejected the assessee's claim of deduction u/s. 80IA(4)(iii) of the Act for the reason that his predecessors have disallowed the claim of the assessee for the earlier years and has extensively relied on the same. It is observed that the assessee in A.Y. 2006-07 to 2009-10 in ITA No. 1038, 1039 & 1040/Hyd/2014, order dated 07.11.2014 has assessed the rental income under the head 'income from house property' and services income under the head of 'profit and gains of business or profession'. The ld. PCIT had invoked the revisionary powers for the purpose of treating the rental income to be income under the head 'profit and gains of business or profession' by relying on various decisions. The same was contested by the assessee and the Tribunal quashed the order passed u/s. 263 but had not given any finding as whether the income is to be assessed under the head 'business income or income from house property'. Subsequently, for A.Y. 2010-11 in ITA No. 1774/Hyd/2014 and ITA No. 727/Hyd/2015 dated 11.07.2016 again in a revisionary proceeding the Tribunal held

that even if the assessee has assessed the income as income from house property', the assessee was eligible for claiming deduction u/s. 80IA(4)(iii) of the Act as 'business income', for the reason that the assessee was merely engaged in developing and maintaining infrastructural facilities which arose out of a project approved by the Government of India as an eligible project for claiming deduction u/s. 80IA(4)(iii) of the Act. Further, it held that as long as the approval given by the Central Government exist and has not been withdrawn the assessee would be entitled to deduction u/s. 80IA(4)(iii) of the Act. It further held that when deduction has been allowed in the earlier years, the same cannot be denied in subsequent years with no change in circumstance. It is also observed that for A.Y. 2011-12 in ITA No. 691/Hyd/2016, order dated 06.05.2021 also, the Tribunal has allowed the claim of the assessee.

12. From the above observation, it is evident that this issue has been recurring in nature were the Tribunal has constantly granted relief to the assessee by holding that the assessee is entitled to claim deduction u/s. 80IA(4)(iii) of the Act. Even on the merits of the case, it is pertinent that the Industrial Park Scheme, 2002, notified by the GOI in exercise of powers u/s. 80IA(4)(iii) of the Act facilitates projects for setting up industrial parks which are eligible for claiming deduction u/s. 80IA(4)(iii) of the Act. There is no iota of doubt that the assessee was entitled to get benefit under this provision, for the reason that the assessment order does not speak of any violation in the conditions specified in the scheme, though, the revenue has raised a specific ground of appeal that the minimum 30 industrial units requisite for claiming deduction has not been satisfied. The assessment order nowhere has specified that the assessee has not complied with the said condition. In the absence of the same, we find no infirmity in

the order of the Id. CIT(A) in allowing the deduction claimed by the assessee u/s. 80IA(4)(iii) of the Act.

13. In the result, the appeal filed by the revenue is dismissed.

ITA No. 4939/Mum/2024 (Assessment Year: 2012-13)

ITA No. 4934/Mum/2024 (Assessment Year: 2013-14)

ITA No. 4971/Mum/2024 (Assessment Year: 2014-15)

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14. The findings in ITA No. 4926/Mum/2024 for A.Y. 2018-19 will apply *mutatis mutandis* to these appeals also.

15. In the result, all these appeals filed by the revenue are dismissed.

Order pronounced in the open court on 31.12.2024

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

Sd/-
(KAVITHA RAJAGOPAL)
JUDICIAL MEMBER

Mumbai; Dated: 31.12.2024

Karishma J. Pawar (Stenographer)

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. CIT- concerned
4. DR, ITAT, Mumbai
5. Guard File

BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Mumbai