

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

**BEFORE SHRI ANIKESH BANERJEE, JM &
MS PADMAVATHY S, AM**

**I.T.A. No. 3358/Mum/2024
(Assessment Year: 2018-19)**

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| ACIT-8(3)(1), Room No. 665A, 6 th Floor, M.K. Road, New Marine Lines, Mumbai-400029. | Vs. | M/s. Thirumalai Chemicals Ltd. Thirumalai House, Road No. 29, Sion Matunga Estate, Mumbai-400022 PAN : AA ACT2015M |
| Appellant) | : | Respondent) |

Appellant / Assessee by : Shri Deepak Shah, CA

Revenue / Respondent by : Shri Hemanshu Joshi, Sr. DR

Date of Hearing : 01.01.2025

Date of Pronouncement : 07.01.2025

ORDER

Per Padmavathy S, AM:

This appeal by the Revenue is against the order of the Commissioner of Income Tax (Appeals) / National Faceless Appeal Centre (NFAC), Delhi (in short "the CIT(A)" dated 30.04.2024 for Assessment Year (AY) 2018-19. The Revenue raised the following grounds of appeal –

“1. Whether on the facts and in the circumstances of the case and in law, the LD.CIT(A) erred in allowing the claim u/s.801A of the IT without appreciating that the power distribution is not the main business of the assessee and hence the conditions for claiming of deduction u/s.801A have not been met?”

2. Whether on the facts and in the circumstances of the case and in law, the LD.CIT(A) erred in ignoring the ratio of Supreme Court judgements in in the case of Sterling Foods 237 ITR 53(SC) and in the case of Cambay Electrical Supply Company Ltd. 113 ITR 84 wherein it is held that the income incidental to the main business of the assessee and there is no direct nexus between the income and the industrial undertaking is not direct but incidental only ?

3. Whether on the facts and in the circumstances of the case and in law, the Ld.CIT(A) erred in holding that catalyst expenditure as revenue expenditure and providing for amortisation of the expenditure over 3 years period, without appreciating that there is no such provision in the Income tax Act which provide for such mechanism for revenue expenditure?

4. Whether on the facts and in the circumstances of the case and in law, the Ld.CIT(A) erred in ignoring the factual matrix of the case, wherein the AO disallowed the amortisation of catalyst expenditure being capital expenditure on the ground that preconditions of Section 32 of the IT Act were not satisfied?"

2. The assessee is a public limited company and is engaged in the business of manufacturing of fertilizers, chemical, paints and wind power and energy and trading of wholesale of other machinery, equipment and supplies. The assessee filed the return of income for AY 2018-19 on 30.11.2018 declaring a total income of Rs. 2,12,62,50,810/-. The return was processed under section 143(1) of the Income Tax Act, 1961 (the Act). Subsequently, the case was selected for scrutiny and statutory notices were duly served on the assessee. During the year under consideration, the assessee has claimed a sum of Rs. 1,13,32,605/- as deduction under section 80IA(4)(iv) for the first time. The assessee in this regard submitted before the AO that an agreement has been entered into with Tamil Nadu State Electricity Board (TNEB) by the assessee for sale of power generated through Windmill. The assessee further submitted that the generation and sale of power through Windmill is a separate undertaking eligible for deduction under section 80IA and the deduction is claimed accordingly. The AO held that the assessee is in

the business of manufacturing of fertilizers, chemicals, paints and therefore the Windmill installed by the assessee to be used for its own business is incidental to the main business of the assessee. The AO further held that there is no nexus between the main business of the assessee and the generation of power through Windmill. The AO accordingly held that the assessee is not entitled to the deduction under section 80IA by placing reliance on the decision of the Hon'ble Supreme Court in the case of Sterling Foods [237 ITR 53 (SC)] and Cambay Electrical Supply Co. Ltd. (113 ITR 84).

3. On further appeal, the CIT(A) held that the assessee is entitled for deduction under section 80IA of the Act by holding that

“4.2. The Ground No. 3 of the assessee is regarding disallowance of deduction claimed u/s. 80IA for Rs. 113,32,605/-.

4.2.1. The assessee company has established some windmills to generate power and as per agreement with the Tamil Nadu Electricity Board dated 27/12/2007, it was agreed that the assessee will supply entire generated electricity to the power grid of the State Board. It was agreed that the TNEB will purchase the power generated by such windmill @ Rs. 2.90 per unit on monthly basis. The assessee claimed net profit generated out of this unit for Rs. 1,13,32,605/- and claimed the profit u/s. 80IA of the Act. It also submitted the auditor's report in Form 10CCB.

4.2.2. The AO denied the claim, as he found that in the Form 3CEB, which is the tax auditor report, the auditor at point no. 17(b) stated that the undertaking does not transmit or distribute the power.

4.2.3. The assessee claimed that this is the first year, when the deduction u/s. 80IA was claimed and therefore, the mistake in the tax audit report might have occurred inadvertently. The assessee also claimed that it had submitted documentary evidence in copies of invoices for sale of power to TNEB vide its submissions dated 05/02/2021. The AO also quoted the decision of the Apex Court in the case of Sterling Foods and in the case of Cambay Electrical Supply Company Ltd., wherein it is held that to qualify for a deduction, the income has to be directly relatable to the industrial undertaking of the assessee and not incidental. The assessee is in the primary business of making edible acids and other chemicals. However, the windmills operation is a separate industrial undertaking, which started operating on 27/12/2007. In this case, the windmills operations itself, is an industrial

undertaking of the assessee and it works as a profit centre for the assessee. The income of the unit is included in the P/L account of the assessee and therefore, it cannot be held that the income of the industrial undertaking, being the windmills, is a mere incidental income of its main income, out of production of chemicals. Therefore, I find the cited decision is not applicable in the assessee's case and the disallowance of the claim u/s. 80IA is not justified. Therefore, I direct the AO to delete the disallowance and allow the assessee for the claimed benefit of deduction u/s. 80IA. The Ground of appeal is allowed."

4. We heard the parties and perused the material on record. The assessee has setup windmills for generation of power and an agreement is entered into with TNEB for supply of power generated through wind energy. The assessee claimed the income generated from the sale of wind energy as a deduction under section 80IA(4)(iv) of the Act. The only reason for the AO to reject the claim of deduction under section 80IA is that the generation and sale of wind power is incidental to the main business of the assessee and does not have any nexus. The AO otherwise has not given any adverse finding with regard to assessee violating any conditions prescribed under section 80IA(4)(iv). In our considered view, the basis for rejection by the AO is based on a misunderstood fact that the assessee is claiming the profits attributable to power generation as incidental to the business of the undertaking. However from the perusal of facts we notice that the power generation business itself is treated as a separate undertaking which as per the claim of the assessee is eligible for deduction under section 80IA(4)(iv) of the Act. This is supported by the fact that the generation and sale of wind power is reflected as separate activity in the financial statements and that the income and expenditure pertaining to the wind power have been accounted separately in the books of account (page 1 to 36 of PB). We also notice that in the Tax Audit Report (TAR) the Auditor has stated that one of the business of the assessee as "Production, Collection and Distribution of electricity". Therefore, there is merit in the submission of the Id. AR that the wind energy is a separate undertaking which is

eligible for deduction under section 80IA of the Act. Therefore the AO has incorrectly made the disallowance treating income of the industrial undertaking being the windmills, as a mere incidental income of its main income, out of production of chemicals. The case laws relied on by the AO with regard to income being incidental is also accordingly not applicable to assessee's case. In view of these discussion and considering the facts in this case, we see no infirmity in the order of the CIT(A) in allowing the claim of the assessee under section 80IA(4)(iv) of the Act.

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

Order pronounced in the open court on 07-01-2025.

Sd/-
(ANIKESH BANERJEE)
Judicial Member

**SK, Sr. PS*

Copy of the Order forwarded to :

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

Sd/-
(PADMAVATHY S)
Accountant Member

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai