

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ, चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL
CHANDIGARH BENCH, 'SMC', CHANDIGARH

SHRI RAJESH KUMAR, ACCOUNTANT MEMBER

आयकर अपील सं./ ITA No. 574/CHD/2019

निर्धारण वर्ष / Assessment Year : 2010-11

Shri Rajender Prashad Kapur, Sauli Khad, Mandi, Himachal Pradesh	Vs. बनाम	The DCIT, Circle-Mandi, Himachal Pradesh
स्थायी लेखा सं./PAN No: AAKZPK1895L		
अपीलार्थी/ APPELLANT		प्रत्यर्थी/ RESPONDENT

(VIRTUAL HEARING)

निर्धारिती की ओर से/Assessee by : Shri Parikshit Aggarwal, CA

राजस्व की ओर से/ Revenue by : Dr. Ranjeet Kaur, Sr. DR

सुनवाई की तारीख/Date of Hearing : 03.10.2024

उदघोषणा की तारीख/Date of Pronouncement : 31.12.2024

आदेश/Order

The assessee is in appeal before the Tribunal against the order dated 22.01.2019 of ld. Commissioner of Income Tax (Appeals)-2 Amritsar Camp at Palampur [herein referred to as 'CIT(A)'].

2. At the outset, it is noted that the appeal is barred by limitation period of 30 days. The Counsel of the Assessee brought to the notice of the Bench the condonation application as well as the Affidavit of the Assessee i.e., Shri Rajendar Parsad Kapur S/o Shri Parma Nand

Kapur r/o H.No. 255/2, Purani Mandi, Distt. Mandi wherein, the Assessee has explained the reasons attributable to late filing of appeal by 30 days. It was submitted by the ld. Counsel that he hired a legal advisor in Chandigarh for filing appeal and sent the relevant documents to him but due to some clerical error it was not delivered on time, which led to delay in filing the appeal. The ld. DR did not have objection to the submissions made by the Counsel of the Assessee.

3. After hearing both the parties and perusing the material on record including the affidavit of the Assessee, I find that the delay in filing the appeal was on account of some clerical error which caused non-delivery of documents sent by the Assessee to the legal advisor. In the light of above and examination of the facts of the present case, it would reveal that there was a bonafide lapse at the end of the assessee because the assessee will not gain anything by making his appeal time barred. Considering the bonafide mistake, we condone the delay and proceed to decide the appeal on merit.

4. At the time of hearing of appeal, only Ground No.2, which is a legal issue, was pressed by the Counsel of the Assessee and the same is extracted below:

“2. That on law, facts and circumstances of the case, the Worthy CIT(A) has erred in confirming the action of the ld. Assessing Officer in issuing notices u/s 148 by invoking provisions of section 147 of the Income Tax Act, 1961.”

5. The facts of the case in brief are that the Assessee filed the return of income electronically declaring total income at Rs. 62,98,071/-. Subsequently, the return was revised on 6.4.2011 declaring total income at Rs. 2,07,087/-. Pertinent to state that the Assessee claimed deduction u/s VIA of the Income Tax Act, 1961 (in short 'the Act') at Rs. 1,76,51,676/- against Rs. 1,15,58,842/- as claimed in the original return. The return was processed u/s 143(1) of the Act on 7.5.2012. The Assessee is engaged in the business of producing industrial & medical oxygen and industrial nitrogen at Plot No.12, Phase-1, Industrial Area, Sauli-Khad, Mandi. The Assessee claimed deduction u/s 80IC of the Act on the basis of substantial expansion in A.Y. 2006-07. Further the Assessee installed some machinery and fitted the same in the premises and the commissioning was completed in A.Y. 2008-09. It was claimed that the new unit was referred to as IU-II in accounts and deduction u/s 80IC was claimed accordingly. Another Unit (Unit II) was set up in Village Mathyani, P.O. Nasioh, Distt. Mandi producing dissolved acetylene gas in which the installation was completed in F.Y. 2009-10 and the Assessee

started claiming deduction u/s 80IC of the Act from A.Y. 2011-12 for these units. The Assessing Officer reopened the assessment u/s 147 of the Act by issuing notices u/s 148 of the Act on 29.3.2017 stating therein that during the course of assessment proceedings for A.Y. 2012-13, it was noticed that IU 1 and IU-II, which are situated at Plot No.12, Phase I, Industrial Area, Sauli-Khad, Mandi have common establishment and employees and common CST/GST numbers. The A.O. further noted that there are only one manger and the same employees who were employed in Unit-I and also were in Unit-II and thus, concluded that the unit was set up by splitting up and reconstruction of existing business and deduction claimed by the Assessee u/s 80IC amounting to Rs. 92,02,277/- was disallowed. The Assessing Officer further noted that keeping in view the similar facts, the deduction claimed u/s 80IC for A.Y. 2010-11 need to be disallowed to the tune of Rs. 1,76,13,005/- which has escaped assessment within the meaning of section 147. The Assessee filed objection to the said reopening which was also deliberated upon in para 4 of the assessment order. Finally, the assessment was framed vide order dated 27.12.2017 passed u/s 143(3) / 147 of the Act.

6. The ld. Counsel of the Assessee, at the outset, submitted that the reopening of the assessment has been made by the Assessing Officer without their being any material on record to come to

conclusion that income has in fact escaped assessment. The Id. Counsel stated that the Assessee has claimed the deduction u/s 80IC in respect of the impugned unit for A.Y. 2008-09 when the unit was commissioned and started. The assessment was framed u/s 143(3) of the Act vide order dated 29.3.2017 in respect of A.Y. 2008-09, which stood undisturbed by the Revenue till date and the deduction allowed u/s 80IC of the Act for the said unit attained finality. The Id. AR submitted that during the year the Assessing Officer during the course of scrutiny for A.Y. 2012-13 observed that the unit was formed and constituted by splitting / re-construction of the existing business and disallowed the deduction claimed u/s 80IC in respect of both the units. The Id. AR further contended that the CIT(A) has already allowed the appeal of the Assessee by holding that the Assessee has in fact carried out a substantial expansion which qualifies for deduction u/s 80IC of the Act as it was not formed by splitting up / re-construction of the existing business vide order dated 15.9.2016. The notice was issued u/s 148 of the Act on 29.3.2017 for the impugned assessment year whereas, the CIT(A) has decided the issue in favour of the Assessee vide order dated 15.9.2016, therefore, on the date of reopening of the assessment, no substantial material was available before the Assessing Officer and, therefore, the re-assessment was bad in law. Moreover, assessment for A.Y. 2012-13 is done in favour of the Assessee and the Revenue has not filed any appeal against such order

nor deduction allowed in the initial A.Y. 2008-09 was distinguished by the Revenue. The ld. AR, therefore, vehemently prayed before the Bench that the order passed by the CIT(A) upholding the order of the Assessing Officer in reopening of the assessment is invalid, illegal and bad in law and may accordingly be referred to the A.O. and the A.O. may be directed to allow the claim.

7. The ld. AR relied on the order of the CIT(A).

8. After hearing the rival submissions and perusing the material available on record, an undisputed fact, as are coming out from the appeal folder before me, it is noted that the Assessee has set up Unit No. I, which was completed and commissioned in A.Y. 2008-09 and deduction was claimed u/s 80IC of the Act. The assessment was framed u/s 143(3) of the Act vide order dated 29.3.2017 accepting the said claim of the Assessee meaning thereby that claim has been accepted in the initial assessment year when the substantial expansion was completed and the commercial production was started. Thereafter, during the course of assessment proceedings in 2012-13, the A.O. noted that the unit has been formed by splitting up / reconstruction of the existing business and on that basis recorded reasons u/s 148 sub section (2) on 29.3.2017 that the Assessee claimed deduction to the tune of Rs. 1,76,13,005/- for A.Y. 2010-11, which need to be disallowed. I note that ld. CIT(A) has already allowed

the appeal of the Assessee for A.Y. 2012-13 holding that the new units were not set up on splitting up / re-construction of the existing business vide order dated 15.9.2016. We also note that in the initial assessment when the substantial expansion was completed and deduction claimed, the same was accepted and allowed by the Revenue and thus, attained finality. Moreover, for the F.Y. 2012-13, on the basis of which the Id. AO reopened the assessment u/s 148 of the Act as already been allowed by the Id. CIT (A) vide order dated 15.09.2016, wherein the Id. CIT (A) has held that that the substantial expansion was not carried out either by splitting up / re-construction of the existing business and revenue is in not appeal before the Tribunal and the same has also attained finality. Therefore, there was no material before the Assessing Officer on the date of reopening of the case to come to the conclusion that the unit was set up by splitting / re-construction of existing business. Accordingly, the reopening is quashed and the appeal is allowed on legal issue.

9. In the result, appeal of the Assessee stands allowed.

Order pronounced on 31.12.2024.

Sd/-
(RAJESH KUMAR)
Accountant Member

“आर.के.”

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT,
CHANDIGARH
5. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar