

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH, CHENNAI

श्री चंद्र पूजारी, लेखा सदस्य एवं
श्री चल्ला नागेन्द्र प्रसाद, न्यायिक सदस्य के समक्ष
BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER &
SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER
आयकर अपील सं./ **I.T.A. No.2187/Mds/2014**
& C.O.No.12/Mds/2015
(in ITA No.2187/Mds/2014)
(निर्धारण वर्ष / Assessment Year : 2010-2011)

The Assistant Commissioner of
Income Tax,
Company Circle I(3),
Chennai 600 034.

M/s. Casa Grande Pvt. Ltd
Vs New No.111, Old No.59,
L.B. Road,
Chennai 600 041

[PAN: AACCC 2758A]

(Appellant)

(Respondent/ Cross Objector)

अपीलार्थी की ओर से / Appellant by : Shri. Pathlavata Peerya, IRS, CIT.
प्रत्यर्थी की ओर से / Respondent by : Shri. Devanathan, Advocate

सुनवाई की तारीख/Date of hearing : 20.08.2015
घोषणा की तारीख /Date of Pronouncement : 28.08.2015

आदेश / ORDER

PER CHANDRA POOJARI, ACCOUNTANT MEMBER

The appeal by the Revenue and Cross Objection by the
assessee are directed against the order of the Commissioner of

Income-tax (Appeals)-I, Chennai for the assessment year 2010-2011
vide order dated 26.05.2014.

2. The Revenue has raised the following grounds:-

"2.1 The learned Commissioner of Income Tax (Appeals) has erred in directing the Assessing Officer to allow the entire claim of ₹10,59,37,589/- under section 80IB(10) of the I.T. Act which was disallowed by the Assessing Officer on the ground that certain expenditure debited in 80IB units were less and the expenditure debited in non 80IB units were more, so as to gain more deduction from 80IB and reduce the taxable profits from the non 80IB units.

2.2 The learned Commissioner of Income Tax (Appeals) ought to have appreciated the reworking of expenditure made by the Assessing Officer between 80IB and non 80IB units".

3. The assessee in Cross Objection has raised the following grounds:-

"2. The assessee ought to have appreciated that the appeal lacks maintainability in the light of the fact that there was no application of mind and discretion was properly exercised by the CIT.

3. The assessee ought to have appreciated the decision of the ITAT (which in the case of Sri Varadaraja Textiles reported in 9 ITD 469 (Mad) been accepted by the Revenue) in support of the contention of the respondent , viz

"Section 253(2) of the Act provides that the Commissioner may, if he objects to any order passed by the Commissioner (Appeals) direct the ITO to file an appeal to the Tribunal against the order. But, this does not mean that every order of the Commissioner of Income Tax (Appeals) which interferes with the assessment made by the ITO can be objected to. The objection must be reasonable and rational cannot be made without regard to the correctness of the order appealed against. The power itself is a discretionary power and is coupled with the duty to act fairly. The

exercise of this power is also a matter of review by the Tribunal because an administrative Tribunal is duty bound to determine whether the power of the Commissioner has been exercised in a manner that complies with certain implied legal requirement. De Smith's Judicial Review of Administrative Action in at page 323 states that in some context it may be confined to the question whether the competent authority has keep within the four corners of the Act and whether it has acted in good faith, but usually they will persue their inquiry further and will consider whether the repository of a discretion although acting in good faith has abused its power by exercising it for an inadmissible purpose or an irrelevant grounds or without regard to relevant consideration or with gross unreasonable . We find the following statement of law on this point:

The emphasis that the court have recently placed on an implied duty to exercise discretionary powers fairly must normally be understood to mean a duty to adopt a fair procedure. Bu there is no doubt that the ideal of fairness is also a substantive principle. It is implicit in the concept of a judicial discretion, and it includes a duty to be impartial and not to discriminate on unacceptable grounds or to delay the making of a decision to the prejudice of fundamental rights.

4. *The learned AO ought to have appreciated that the computation of relief u/s.80IB (10) is based on facts namely,*

- (i) That the respondent maintained seperate books*
- (ii) That the books were not rejected bythe appellant.*
- (iii) Method of accounting was not rejected in terms of section 145 of the Act.*
- (iv) That the appellant faield to appreciate that the project ws nearing completetion and hence no outflow of funds required.*
- (v) That the respondent has reservoir of funds in its hand in the light of realiationof sale price and opening balance of reserves.*
- (vi) The 80IB project was not mingled with regular projects in the light of separate infrastructure.*

5. *The order of the Commissioner of Income Tax (Appeals) has been based on analysis of above facts and thus requires no tinkering on facts.*

4. There was a delay of 122 days in filing of Cross-objection. The assessee filed a condonation petition for condoning a delay of 148 days. It was stated that delay was due to circumstances beyond the assessee's control. The assessee placed reliance on the judgment in the case of *Dehri Rohtas Light Railway vs. District Board Bhojpur and Ors* 1992 SCR (2) 155, 1992 SCC (2) 598 and also placed reliance on the judgment of *Ram Nath Sahu & Ors. Vs. Gobardhan Sao & Ors.* 2002(3) SCC 195. We have gone through the petition. The assessee has not explained the exact reason for delay in filing the Cross Objection. The reason advanced by the assessee is general in nature. The assessee justified the delay only with reference to the affidavit filed by the Director and it cannot be said that there is any good and sufficient reason to condone the delay. It clearly shows that the delay was due to the negligence and inaction on the part of the assessee. The assessee could have very well avoided the delay by the exercise of due care and attention. Being so, there is no sufficient and good reason for the delay of 122 days and even the number of days of delay mentioned in affidavit is also incorrect. Therefore, we declined to condone the delay and thus the Cross Objection filed by the assessee is dismissed.

5. Coming to the appeal of the Revenue , the facts of the case are that the Assessing Officer has found that certain expenditure debited in accounts of unit entitled for deduction u/s.80IB is less, where as such expenditure debited in accounts of unit not entitled for deduction u/s.80IB was more, so as to gain more deduction u/s 80IB and reduce the taxable profits from the non-80IB unit. Accordingly, the Assessing Officer reworked the profits of unit entitled for deduction u/s.80IB and non-80IB units on pro-rata basis with reference to "increase in inventory ratio" (80IB unit 63.5% and non 80IB unit -36.5%). After reallocating the expenditure between 80IB unit and non 80IB units, the Assessing Officer restricted the eligible deduction u/s.80IB (10) to ₹8,97,33,422/- against the claim of ₹10,59,37,589/- made by the assessee. Aggrieved, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals).

6. The Commissioner of Income Tax (Appeals) observed that the Id. Authorised Representative for assessee has objected for such reallocation of expenditure on the basis of incremental inventory ratio, stating that the company was maintaining separate accounts for 80IB and non 80IB units which were audited by the qualified chartered accountants and the allocation of expenditure was on actuarial basis. The Id. Authorised Representative for assessee has further argued

that the reworking of the expenditure by the Assessing Officer without rejecting the books of account of the assessee was not permissible under law. It was submitted before the Commissioner of Income Tax (Appeals) that the assessee was running six other projects in addition to the 80IB project. With regard to apportionment of interest, the Id. AR has submitted that since 80IB unit has got more surplus funds as the project was nearing completion and advances towards flats were being received on their registration, the company was having surfeit of funds over liabilities and has put them in its other non 80IB units. The Commissioner of Income Tax (Appeals) further observed that in the assessment order that the Assessing Officer has hand-picked some of the heads of expenditure for reworking out of several heads of expenditure debited to the P&L account. The Assessing Officer has picked up those heads which were found to have been debited at a lower amount in 80IB units and more in non 80IB units to justify such theory that the assessee has deliberately hiked up the expenditure in non 80IB units so as to reduce the taxable profits and claim more deduction benefits from the 80IB unit. The expenditure like construction expenses, sales and general expenses which were shown other way round were not touched, since they were convincing to the Assessing Officer. This theory of the Assessing Officer cannot be

accepted. It was beyond anybody's imagination that the assessee will deliberately hike up the expenditure of non 80IB units under some heads and not others. If the AO is logical then, not being satisfied with the accounts, he should have rejected the books first and estimated the entire expenditure between the 80IB unit and non 80IB units on some scientific basis. Reallocating the expenditure on certain presumption and choosing only a few head where the expenditure debited in 80IB units is more, was not warranted. The Assessing Officer should have refrained from such reallocation when separate set of accounts were maintained and subjected to audit which fact was not disputed by him. The Commissioner of Income Tax (Appeals) has not found any merit in such reallocation of expenditure between 80IB and non 80IB units on mere conjecture and rejected the reworking of the eligible 80IB deduction by the Assessing Officer. Aggrieved, the Revenue preferred an appeal before us.

7. We have heard both the parties and perused the material on record. The Commissioner of Income Tax (Appeals) deleted the addition made by the Assessing Officer without any basis. The facts brought on record by the Assessing Officer suggest that the assessee lowered the profits of the units not enjoying deduction u/s.80IB, so as to reduce the liability of tax. It is appropriate to remit the issue back

to the file of the Assessing Officer with a direction to examine the details furnished by the assessee with regard to all expenses including interest, finance charges, depreciation and other general administrative expenses on the basis of incremental inventory of work in progress from earlier assessment year to this assessment year, after giving due credit to the inflow of funds, if any in both units. The Assessing Officer shall independently examine the issue after proper enquiry. With these observations, we are remitting the issue back to the file of the Assessing Officer for fresh consideration.

8. In the result, the appeal of the Revenue in ITA No.2187/Mds/2014 is partly allowed for statistical purposes and the Cross Objection No.12/Mds/2015 of the assessee is dismissed.

Order pronounced on Friday, the 28th day of August, 2015, at Chennai.

Sd/-

(चल्ला नागेन्द्र प्रसाद)

(CHALLA NAGENDRA PRASAD)

न्यायिक सदस्य/ JUDICIAL MEMBER

चेन्नई/Chennai.

दिनांक/Dated:28.08.2015.

KV

आदेश की प्रतिलिपि अग्रेषित/Copy to: 1. अपीलार्थी/Appellant 2.प्रत्यर्थी/ Respondent 3. आयकर आयुक्त (अपील)/CIT(A) 4. आयकर आयुक्त/CIT 5. विभागीय प्रतिनिधि/DR 6. गार्ड फाईल/GF.

Sd/-

(चंद्र पूजारी)

(CHANDRA POOJARI)

लेखा सदस्य/ ACCOUNTANT MEMBER

