

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'SMC-1', NEW DELHI**

Before Sh. N. K. Saini, Accountant Member

ITA No. 6350/Del/2014 : Asstt. Year : 2009-10

Environment Technologies & Systems, C/o-Shilpi Agarwal & Co., B-18, LGF, Express Green, Sector-44, Noida-201301	Vs	Income Tax Officer, Ward-1(2), Gurgaon
(APPELLANT)		(RESPONDENT)
PAN No. AABFE9670R		

**Assessee by : Sh. Abhimanyu Jhamba, Adv.
Revenue by : Sh. Ramanjaneyulu, Sr. DR**

Date of Hearing : 01.12.2016	Date of Pronouncement : 27.02.2017
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ORDER

This is an appeal by the assessee against the order dated 10.09.2014 of Id. CIT(A), Faridabad.

2. Following grounds have been raised in this appeal:

“1. The learned Commissioner of Income tax, Appeals ('CIT') has erred in law and in facts dismissing the appeal of the Appellant and confirming the order of the Income Tax Officer, Ward-1(2), Gurgaon (hereinafter referred to as 'Assessing Officer') wherein the assessment of the Appellant for the subject year has been completed at an income of Rs.1,943,222 as against the returned income of Rs. Nil.

2. The learned CIT has erred on facts and in law in disallowing the deduction claimed u/s 80JJA resulting

in an addition made for Rs.1,943,222 on that account, and while doing so has failed to correctly interpret the intent of law.

3. The learned CIT has erred on facts and in law in not citing any reason for non acceptance of documentary evidence (such as lab test reports) submitted by the Appellant confirming the end result of processing activities undertaken by the Appellant which supports the Appellant's claim on allowability of deduction claimed u/s 80JJA.

4. The order of the learned CIT is contrary to the facts, law and principles of natural justice.

5. The above grounds are mutually exclusive and without prejudice to each other.

The appellant craves leave to add, alter, amend and or modify any of the grounds of appeal before or at any time of hearing."

3. From the above grounds, it would be clear that only grievance of the assessee in this appeal relates to the disallowance of deduction claimed u/s 80JJA of the Income Tax Act, 1961 (hereinafter referred to as the Act).

4. Facts of the case in brief are that the assessee filed the return of income declaring Nil income on 22.09.2009 which was processed on 31.03.2010 at the returned income. Later on, the case was selected for scrutiny. The AO during the course of assessment proceedings noticed

that the assessee had shown income of Rs.19,43,222/- and claimed the deduction of the entire income u/s 80JJA of the Act but no calculations were provided for the same. The AO asked the assessee to furnish party wise details related to the payments received in respect of fulfilling of condition u/s 80JJA of the Act and also to furnish details of sale of bio-fertilizers/green manure produced. The assessee submitted to the AO that the income from various parties could not be bifurcated but the assessee was fulfilling all the conditions of Section 80JJA of the Act and it was also confirmed that no sale of organic manure, bio-fertilizer or nutrient rich irrigation water was undertaken and thus, there was no quantitative detail of such products sold. The AO was of the view that for the purpose of computing the deduction u/s 80JJA of the Act, income of the nature mentioned in the said section shall alone be deemed to be income which is derived or received by the assessee and which is included in his gross total income. The AO observed that the bio-degradable waste was collected by the various parties in their septic tanks/dumping grounds for whom the assessee worked, however, the septic tanks/dumping grounds were not constructed by the assessee but were got constructed by the various parties with whom the ownership was lying and that the assessee only provided professional services to various parties, the assessee had not done any business as mentioned u/s 80JJA of the Act. The AO in para 4.3 of the assessment order dated 28.12.2011 also mentioned that in the year under consideration, no sale

of power or bio-fertilizers, bio-pesticides or other biological agents or bio-gas or pellets or briquettes for fuel or organic manure had been made by the assessee. Therefore, no deduction could have been allowed to the assessee u/s 80JJA of the Act. Accordingly, the deduction claimed by the assessee was rejected.

5. Being aggrieved the assessee carried the matter to the Id. CIT(A) and furnished the written submissions. The Id. CIT(A) however, did not find merit in the submissions of the assessee and confirmed the action of the AO in denying the deduction claimed by the assessee u/s 80JJA of the Act, the relevant findings are given in paras 6 to 9 of the impugned order which read as under:

“6. The prime question that needs to be considered is whether the assessee is eligible for deduction u/s 80JJA, the relevant part of this Section is reproduced below:

"Where the gross total income of an assessee includes any profits and gains derived from the business of collecting and processing or treating of bio-degradable waste for generating power [or producing bio-fertilizers bio-pesticides or other biological agents or for producing bio-gas or] making pellets or briquettes for fuel or organic manure, there shall be allowed, in computing the total income of the assessee, [a deduction of an amount equal to the whole of such profits and gains for a period of five consecutive assessment years beginning with the assessment year relevant to the previous year in which such business commences]"

7. From a plain reading of this Section, it's evident that there are two parts to the section. The first part of this Section deals with the 'Process' and second part of the Section deals in 'end result'. As far as the process is concerned it says 'collecting' 'processing' or 'treating of bio-degradable waste'; should be the activity of the assessee to be eligible for any deduction under this section. Coming to the second limb of this section it says that the activities of the assessee should result in certain specified end results. In the 'end result' the conditions are generating power/bio-fertilizers/bio-pesticides/other biological agents or for producing bio-gas etc.

8. Thus the contention of the appellant is to be seen in the light of the fact that whether the appellant is following the 'due process' as prescribed u/s 80JJA and is the 'process' resulting in the things/objects specified u/s 80JJA i.e. generating power/bio-fertilizers/bio-pesticides/other biological agents or for producing bio-gas etc.

9. I have perused the submissions of the appellant during the course of appellate proceeding. During the course of the appellate proceedings, the appellant was asked to produce the work orders for the relevant assessment year as an evidence to examine whether that the appellant was actually delivering the end products as envisaged under the provisions of Section 80JJA of the Act. The 'work order' was called for, as it is a written documents of a contractual nature and it specifies the deliverables between the parties taking the services and the party rendering the services. A perusal of this work order shows that it's not evident from this work order that the appellant is supposed to deliver any of the "end result or products" as envisaged under the provision of section 80JJA In this regard, the appellant has submitted work order from NSG, Manesar dated 08.09.2008 for Rs. 2 lacs. Thus, this work order is of no support to the appellant. The appellant has also furnished certain lab reports in support of

its contention. Some of the lab reports, for example, for Analysis No. 14070216 are dated 07.07.2014, once again this lab report is not concerned with the relevant assessment years in appeal and thus of no support to the appellant. The second lab report for Analysis No. 10013007 from "Equity Lab" is dated 30.01.2010. Again from this Lab Report, it is not evident that the appellant is actually producing any end result/product as envisaged under the provisions of Section 80JJA. In view of these facts, all the grounds of appeal of the appellant are dismissed."

6. Now the assessee is in appeal. The Id. Counsel for the assessee reiterated the submissions made before the authorities below and further submitted that the assessee is engaged in the business of treatment of bio-degradable waste by using cultivation of live microorganism such as bacteria, fungi etc. by using scientific methods and is eligible for deduction u/s 80JJA of the Act. He further submitted that the assessee furnished a detailed factual and legal submission by relying on the departmental Circular before the Id. CIT(A). A reference was made to page nos. 21 to 37 of the assessee's paper book which are the copies of the submissions dated 21.07.2014 furnished to the Id. CIT(A), Faridabad. It was further submitted that for claiming the deduction u/s 80JJA of the Act, the assessee should have the income derived from business of collecting and processing or treating the bio-degradable waste which should be carried out for any of the following purposes:

- Generating power or
- Producing bio-fertilizes, bio-pesticides or

- Other biological agents or
- For producing bio-gas or
- Making pellets or briquettes for fuel or
- Organic manure

It was contended that the assessee satisfied the condition for treatment of bio-degradable waste, so it was not necessary that the assessee should also be engaged in the business of collecting and processing when major condition for claiming the deduction u/s 80JJA of the Act was fulfilled by the assessee. Alternatively, it was submitted that since the assessee carried out the operations at the sites of its clients, the collection was based on essentially done by the assessee before treating the said waste. It was also submitted that the treatment by the assessee resulted in the production of bio-fertilizers and organic manure which satisfied the second conditions stipulated in Section 80JJA of the Act. A reference was made to page no. 24 of the assessee's paper book and it was submitted that the micro-organisms such as Phosphates, Nitrates, Nitrogen, Potassium and living micro-organism as included in the definition of bio-fertilizers were present in the sample tested in the laboratory. A reference was also made to page no. 48 of the assessee's paper book which is the copy of lab report by the quality lab. It was also stated that the assessee furnished certificates from various clients which included Government organizations such as NSG Manesar and CPWD. A reference was made to page nos. 41 to 47 of the assessee's paper

book. It was submitted that the ld. CIT(A) had not disputed that the assessee was engaged in the treatment of bio-degradable waste and he had not made any adverse inference. However, the ld. CIT(A) sustained the disallowance on the premises that the assessee did not produce end result including organic manure or bio-fertilizers. It was emphasized that the ld. CIT(A) completely ignored the certificates issued by the assessee's client which included Government organizations i.e. CPWD etc. which clearly enunciated that the end product produced by the assessee was organic manure or bio-fertilizer. It was clarified that the ld. CIT(A) although made the disallowance for the assessment years 2006-07 and 2009-10 vide a consolidated order dated 10.09.2014 but no appeal was preferred for the assessment year 2006-07 only for the reason that the tax effect in the said year was merely Rs.12,320/-.

7. In his rival submissions the ld. DR strongly supported the orders of the authorities below and further submitted that the CPWD is not a competent authority to issue a certificate and the lab report furnished by the assessee was not related to the year under consideration. Therefore, the ld. CIT(A) was fully justified in confirming the action of the AO for making the disallowance claimed by the assessee u/s 80JJA of the Act.

8. I have considered the submissions of both the parties and carefully gone through the material available on the record. In the present case, the claim of the assessee is that it was engaged in the business of

treatment of bio-degradable by using cultivation of live micro-organism and therefore, it was eligible for deduction u/s 80JJA of the Act. The provision contained in the said section 80JJA of the Act read as under:

“Where the gross total income of an assessee includes any profits and gains derived from the business of collecting and processing or treating of bio-degradable waste for generating power or producing bio-fertilizers, bio-pesticides or other biological agents or for producing bio-gas or making pellets or briquettes for fuel or organic manure, there shall be allowed, in computing the total income of the assessee, a deduction of an amount equal to the whole of such profits and gains for a period of five consecutive assessment years beginning with the assessment year relevant to the previous year in which such business commences.”

9. From the above provisions it would be clear that the deduction u/s 80JJA of the Act is allowable to the assessee whose gross total income includes profit and gains derived from the business of collecting and processing or treating bio-degradable waste for generating power or producing bio-fertilizers, bio-pesticides or biological agents or for producing bio-gas or making pellets or briquettes for fuel or organic manure. In the present case, the assessee was engaged in the business of treatment of bio-degradable waste which is evident from the certificates issued by the clients of the assessee which are placed at page nos. 41 to 47 of the assessee's paper book. One of the assessee's client, the CPWD, Gurgaon vide certificate dated 12.08.2009 (copy of which is placed at page no. 41 of the assessee's paper book) certified that the assessee was

treating sewage waste at CRF Camp, Kadarapur, Gurgaon using special bacterial technology and the treatment breaks down complex organic matter in the sewage water which resulted nutrient rich treated water which is a bio-fertilizers and recycled into environment as irrigation water. Similar certificate has been issued by the Squadron Commander Construction Squadron, NSG Manesar, Gurgoan (copy of which is placed at page nos. 42 and 43 of the assessee's paper book). Another client M/s Ritnand Balved Education Foundation issued certificate dated 17.08.2009 that the assessee was engaged in the treatment of sewage waste at Amity University Campus. From the above certificates, it is clear that the assessee was engaged in the business of treatment of bio-degradable waste. The said business was carried out from the premises of the clients which is evident from the various certificate issued by different clients (copies of which are placed at page nos. 41 to 47 of the assessee's paper book). The claim of the assessee u/s 80JJA of the Act was denied by the AO for the reason that there was no sale of power or bio-fertilizers, bio-pesticides or other biological agents etc. by the assessee. In our opinion, for claiming deduction u/s 80JJA of the Act one of the two conditions should be satisfied, one of the conditions is collecting and processing of the bio-degradable waste, another condition is treatment of bio-degradable waste for generating power or producing bio-fertilizer, bio-pesticides or other biological agents etc. The assessee was engaged in the business of treatment of bio-degradable waste and

this fact has not been rebutted by the authorities below. In the instant case, the Id. CIT(A) sustained the disallowance on the premises that the lab report furnished by the assessee was of different year and not for the year under consideration but he ignored the various certificate issued by the clients certifying that the assessee was making the treatment of bio-degradable waste at their premises. The Id. CIT(A) had not given any adverse finding in the submissions of the assessee that it was engaged in treating of bio-degradable waste which generated biological agents from the bio-degradable waste. It is also relevant to point out that the CBDT issued a Circular No. 779 dated 14.09.1999 which provides explanatory note relating to the provisions of Section 80JJA of the Act and provides as under:

“To facilitate and give further impetus to the entry of the non-Government sector in waste management, such units (irrespective of location), which are collecting, processing or treating bio-degradable waste for generating power or producing bio-fertilizers, bio-pesticides, biological agents or for producing or making pellets or briquettes for fuel or organic manure will be allowed a hundred per cent deduction of profits and gains derived from such activities subject to a limit of rupees five lakhs, for a period of initial five years.”

10. From the above Circular also it is clear that the assessees who are involved in the treatment of bio-degradable waste will be eligible to claim deduction u/s 80JJA of the Act. In the present case, the assessee is engaged in the treatment of bio-degradable waste which facts has been certified by the various

clients of the assessee, the certificates issued by those clients are placed at page nos. 40 to 47 of the assessee's paper book. We, therefore, considering the totality of the facts are of the view that the assessee is eligible for deduction u/s 80JJA of the Act and the ld. CIT(A) was not justified in sustaining the disallowance made by the AO. Accordingly, the impugned order is set aside and the AO is directed to allow the claim of the assessee u/s 80JJA of the Act.

11. In the result, the appeal of the assessee is allowed.

(Order Pronounced in the Court on 27/02/2017)

Sd/-
(N. K. Saini)
ACCOUNTANT MEMBER

Dated: 27/02/2017

Subodh

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR