

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "F", NEW DELHI

BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

	ITA NO. 2699/DEL/2014		
	A.Y. 2010-11		
ASSTT. COMMISSIONER OF INCOME TAX, CIRCLE 23(1), NEW DELHI ROOM NO. 1302, 13 TH FLOOR, E- 2, PRATYKASHYA KAR BHAWAN, SHAYAMA PRASAD MUKHERJEE CIVIC CENTRE, JAWAHAR LAL NEHRU MARG, MINTO ROAD, NEW DELHI - 110 002	VS.	PRAVEEN MALHOTRA, E-147, MASJID MOTH, NEAR GREATER KAILASH-2, NEW DELHI - 110 048 (PAN- AALPM1556E)	
(APPELLANT)		(RESPONDENT)	

Department by : Sh. F.R. Meena, Sr. DR
Assessee by : None

ORDER

PER H.S. SIDHU, JM :

This appeal by the Revenue is directed against the Order of
the Ld. Commissioner of Income Tax (Appeals)-XXIII, New Delhi

dated 18.2.2014 pertaining to Assessment Year 2010-11 on the following grounds:-

1. On the facts and on the circumstances of the case the Ld. CIT(A) has erred in law and on the facts in holding the year of claiming deduction under section 80IA(5) as the initial assessment year by relying upon the case laws, which are still pending for adjudication before the Hon'ble Supreme Court.
2. On the facts and on the circumstances of the case the Ld. CIT(A) has erred in law and on the facts in holding that the initial assessment year u/s. 80IA(5) would mean the year of claim and not the year of commencement.
3. On the facts and on the circumstances of the case, the impugned order passed by the Ld. CIT(A) is perverse both in facts and law.
4. The appellant craves leave to add, alter or amend any of the grounds of appeal before or during the course of hearing of the appeal.

2. The brief facts of the case are that Assessee filed return declaring income of Rs.1,08,31,788/- on 13.10.2010 which was

processed u/s 143(1) of the I.T. Act, 1961 and later selected for scrutiny. Accordingly, the Assessing Officer issued statutory notices u/s 143(2)/142(1) of the Act which were complied by the assessee. Assessee is a proprietor of M/s Palms Exports and M/s Palms Enercon Inc. which was engaged in the business of manufacturing of garments and energy production. Besides business income, assessee had also shown Income from other sources. It was noted by the Assessing Officer that, assessee had claimed deduction u/s 80-IA of the Act to the tune of Rs.32,55,010/- (claiming energy generation be the 4th year of operation and the first year of deduction). Assessee's claim of deduction u/s 80-IA was rejected by the Assessing Officer in the assessment year 2009-10, therefore, Authorised Representative of the assessee was asked to justify the claim made u/s 80-IA in the instant year. Assessee filed the submissions vide letter dated 15.2.2013, which have been made part of the assessment order by the Assessing Officer in para 3. The Assessing Officer considered the submissions of the assessee but rejected the same on the ground that assessee had relied on the judgment of Hon 'ble Chennai High Court in the case of Mohan Breweries and Distilleries Ltd., which is not the jurisdictional High Court and considering the specific provisions of section 80-IA(5) of the Act. Considering the facts of the case and relying upon the

judicial pronouncement of the Apex Court in the case of Hiralal Ratanlal Vs. Sales Tax Officer AIR 1973 SC 1034, Assessing Officer held that in the case of the assessee, provisions of section 80-IA(5) are clearly applicable and held that assessee is not eligible to claim deduction under section 80- IA of the Act.

2.1 Further, Assessing Officer also made addition of Rs.60,996/- as per the provisions of section 40(ia) of the Act holding that assessee has not deducted TDS while making payment of brokerage to one Sh. Shastri Ballabh Bhatt. Thus, total taxable income of the assessee was computed at Rs.1,41,47,790/- as against the returned income of Rs. 1,08,31,788/- vide his order dated 15.2.2013 passed assessment order u/s. 143(3) of the I.T. Act, 1961. Aggrieved with the assessment order, assessee filed the appeal before the Ld. CIT(A) who vide his impugned order dated 18.2.2014 deleted the additions by allowing the appeal of the assessee.

3. Aggrieved with the impugned order of the Ld. CIT(A), the Revenue is in appeal before the Tribunal.

4. Ld. DR relied upon the order of the AO and reiterated the contentions raised in the grounds of appeal.

5. This Appeal came up before the Bench many times and adjourned from time to time. On 12.1.2017 none present from the

assessee and case was adjourned for 03.4.2017 and Notice was issued to assessee through Ld. DR and again on 3.4.2017 none present on behalf of the assessee and case was adjourned for 10.4.2017. On 10.4.2017 again none present on behalf of the Assessee nor his authorized representative appeared to prosecute the matter in dispute, nor filed any application for adjournment. Keeping in view the facts and circumstances of the present case and the issue involved in the present Appeal, we are of the view that no useful purpose would be served to issue notice again and again to the assessee, therefore, we are deciding the present appeal ex parte qua assessee, after hearing the Ld. DR and perusing the records.

6. We have heard the Ld. DR and perused the relevant records, especially the order of the Ld. CTI(A). We find that Ld. First Appellate Authority has elaborately discussed and adjudicated the issue No. 1 to 2 relating to addition in dispute vide para no. 4 at page no. 3 to 5 of the impugned order. The relevant paras are reproduced hereunder:-

"4. I have carefully considered the submissions made by the appellant and the judgments cited by the Ld. AR in favour of his client. In the case of Satbhav Engineering

Ltd. (supra), Hon'ble ITAT, Ahmedabad has relied upon the order of the Hon'ble Madras High Court in the case of Velayudhaswami Spinning Mills (Supra), while holding that "we find that Section 80IA of the Act which has been substituted w.e.f. 1.04.2000 provides that where the GTI of an assessee includes any profits and gains derived by an undertaking from any eligible business referred to in sub-section (4), there shall, in accordance with and subject to the provisions of this section, be allowed in computing the total income, a deduction of an amount equal to 100% of the profits and gains derived from such business for ten consecutive years. Substituted sub-section (2) of Section 80IA provides that an option is given to the assessee for claiming any ten consecutive assessment years out of fifteen years beginning from the year in which the undertaking or the enterprise develops and begins to operate. The fifteen years is the outer limit within which the assessee can choose the period of claiming the deduction. Sub-section (5) is a non-obstante clause which deals with the quantum of deduction (or an eligible business Thus, the fiction created is that the eligible business is the only source of income and the

deduction would be allowed from the "initial assessment year" or any subsequent assessment year. It nowhere defines as to what is the "initial assessment year". Prior to 1.04.2000, the "initial assessment year" was defined for various types of eligible assessee u/s. 80IA(12). However, after the amendment brought in statute by the Finance Act, 1999, the definition of "Initial Assessment Year" has been specifically taken away. Now, when the assessee exercises the option of choosing the "initial assessment year", as culled out in sub-section (2) of Section 80IA from which it chooses its ten years of deduction out of fifteen years, then only the losses of the years starting from the "initial assessment year" alone are to be brought forward as stipulated in Section 80IA(5). The loss prior to the "initial assessment year" which has already been set-off cannot be brought forward and adjusted into the period of ten years from the "initial assessment year" as contemplated or chosen by the assessee ... This is the true import of Section 80IA(5)." In the light of the above judgment, if we consider the facts of the instant case, we find that there is no dispute as to eligibility of deduction u/s. 80IA(1),

but, the only dispute is whether computing provisions of sub-section (5) of Section 80IA would apply to the years earlier than A.Y. 2009-10 or not. When we read the above judgment, it becomes clear that the "initial assessment year" in the case of the appellant in A.Y. 2009-10, when the claim of deduction u/s. 80IA was made for the first time, and the current A.Y. 2010-11 is the second year of the appellant's claim u/s.80IA. Therefore, in my considered opinion and in the light of the judgment cited above, the appellant is eligible for deduction u/s. 80IA as claimed. The addition of Rs. 32,55,010/- is hereby deleted."

7. On going through the aforesaid findings of the Ld. CIT(A), with regard to addition in dispute are concerned, we note that in the case of Satbhav Engineering Ltd. (supra), ITAT, Ahmedabad has relied upon the order of the Hon'ble Madras High Court in the case of Velayudhaswami Spinning Mills (Supra), while holding that we find that Section 80IA of the Act which has been substituted w.e.f. 1.04.2000 provides that where the GTI of an assessee includes any profits and gains derived by an undertaking from any eligible business referred to in sub-section (4), there shall, in accordance

with and subject to the provisions of this section, be allowed in computing the total income, a deduction of an amount equal to 100% of the profits and gains derived from such business for ten consecutive years. Substituted sub-section (2) of Section 80IA provides that an option is given to the assessee for claiming any ten consecutive assessment years out of fifteen years beginning from the year in which the undertaking or the enterprise develops and begins to operate. The fifteen years is the outer limit within which the assessee can choose the period of claiming the deduction. Sub-section (5) is a non-obstante clause which deals with the quantum of deduction (or an eligible business Thus, the fiction created is that the eligible business is the only source of income and the deduction would be allowed from the "initial assessment year" or any subsequent assessment year. It nowhere defines as to what is the "initial assessment year". Prior to 1.04.2000, the "initial assessment year" was defined for various types of eligible assessees u/s. 80IA(J2). However, after the amendment brought in statute by the Finance Act, 1999, the definition of "Initial Assessment Year" has been specifically taken away. Now, when the assessee exercises the option of choosing the "initial assessment year", as culled out in sub-section (2) of Section 80IA from which it chooses its ten years of deduction out of fifteen years, then only the losses of the years

starting from the "initial assessment year" alone are to be brought forward as stipulated in Section 80IA(5). The loss prior to the "initial assessment year" which has already been set-off cannot be brought forward and adjusted into the period of ten years from the "initial assessment year" as contemplated or chosen by the assessee ... This is the true import of Section 80IA(5)." In the light of the above judgment, if we consider the facts of the instant case, we find that there is no dispute as to eligibility of deduction u/s. 80IA(1), but, the only dispute is whether computing provisions of sub-section (5) of Section 80IA would apply to the years earlier than A.Y. 2009-10 or not. When we read the above judgment, it becomes clear that the "initial assessment year" in the case of the assessee in A.Y. 2009-10, when the claim of deduction u/s. 80IA was made for the first time, and the current A.Y. 2010-11 is the second year of the assessee's claim u/s.80IA. Therefore, we are of the considered opinion and in the light of the judgment cited above, the assessee is eligible for deduction u/s. 80IA as claimed, therefore, the Ld. CIT(A) has deleted the addition of Rs. 32,55,010/-, which does not need any interference on our part, hence, we uphold the action of the Ld. CIT(A) on the issue in dispute and dismiss the ground nos. 1 to 2 raised by the Revenue.

8. In the+ result, the Appeal filed by the Revenue stands dismissed.

Order pronounced in the Open Court on 10/04/2017.

SD/-

**(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER**

SD/-

**(H.S. SIDHU]
JUDICIAL MEMBER**

Date 10/04/2017

"SRBHATNAGAR"

Copy forwarded to: -

1. Appellant -
2. Respondent -
3. CIT
4. CIT (A)
5. DR, ITAT

TRUE COPY

By Order,

Assistant Registrar,
ITAT, Delhi Benches