IN THE INCOME TAX APPELLATE TRIBUNAL
DIVISION BENCH, CHANDIGARH

BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER
AND MS. ANNAPURNA GUPTA, ACCOUNTANT MEMBER

ITA No.1114/Chd/2016
(Assessment Year : 2012-13)

The A.C.I.T., Circle 5(1), Chandigarh.	Vs.	M/s Green Field Enterprises, SCO 36, 1st Floor, Sector 26, Chandigarh. PAN: AAGFG6666C
(Appellant)		(Respondent)

Appellant by : Shri Manjit Singh, DR
Respondent by : Shri T.N. Singla
Date of hearing : 22.05.2017
Date of Pronouncement : 02.06.2017

O R D E R

PER ANNAPURNA GUPTA, A.M. :

This appeal has been filed by the Revenue against the order of CIT(Appeals)-2, Chandigarh dated 9.8.2016 relating to assessment year 2012-13.

2. The grounds raised by revenue are as under:

"1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in allowing appeal of the assessee without appreciating the facts of the case.

2. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in holding that the excise duty refund of Rs. 1,65,02,244/- received by the assessee constituted a capital receipt not liable to tax under the provisions of Income Tax Act, 1961.

3. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in holding that the addition of Rs. 11,22,561/- on account of Rebate & Discount relates to purchase of material which was shown on the credit side of the profit & Loss account and the assessee is eligible for deduction u/s 80IB.

4. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in holding that the addition of

Rs. 77,249/- on account of interest received on FDRs which was shown on the credit side of the profit & Loss account and the assessee is liable for deduction u/s 80IB.

5. *It is prayed that the order of the Ld. CIT(A) be set aside and that of the Assessing Officer may be restored.*

6. *The appellant craves leave to add or amend any grounds of appeal before the appeal is heard or disposed off."*

3. Ground Nos.1, 5 and 6 being general in nature need no adjudication and are, therefore, not being dealt with by us.

4. Ground No.2 raised by the Revenue is against the action of the Ld.CIT(Appeals) in holding the excise duty refund received by the assessee, amounting to Rs.1,65,02,244/-, as being capital in nature and thus deleting the addition made by the Assessing Officer by treating the same as revenue and further not eligible for deduction u/s 80IB of the Income Tax Act,1961.

5. Brief facts relevant to the issue are that the assessee had claimed deduction of Rs.1,65,02,244/- u/s 80IB of the Income Tax Act, 1961 (in short 'the Act') on excise duty refund. The Assessing Officer disallowed the claim, holding that it cannot be said to be derived from the business of the assessee, which is a prerequisite for claiming the said deduction, since its source was not from the industrial undertaking of the assessee but the scheme of the Central Government.

6. The matter was carried in appeal before the Ld.CIT(Appeals), where the assessee argued that the Hon'ble Jammu & Kashmir High Court in the case of M/s Shree

Balaji Alloys & Others Vs. CIT in ITA No.2 of 2010 & Others dated 31.1.2011 had held that the excise duty refund received by the assessee by virtue of the policy of Government of Jammu & Kashmir was a capital receipt and hence not liable to tax in the hands of the assessee. The assessee also pointed out that this decision has been upheld by the Hon'ble Apex Court reported in 138 DTR 36. The assessee also stated that the ITAT, in the assessee's own case for assessment year 2010-11 had held the refund of the excise duty as capital in nature. The Ld.CIT(Appeals) after considering the assessee's submissions deleted the addition made by following the order of the I.T.A.T. in assessee's own case for assessment year 2010-11 vide its order in ITA No.971/Chd/2013 dated 2.5.2016.

7. Aggrieved by the same, the Revenue has now come up in appeal before us. While the Ld. DR relied upon the order of the Assessing Officer and stated that the excise duty refund receipt was revenue in nature and having no direct nexus with the business of the assessee but having been earned by the assessee on account of the scheme of Government in this regard, it was not liable to deduction u/s 80IB of the Act.

8. The Ld. counsel for assessee, on the other hand, relied upon the order of the Ld.CIT(Appeals).

9. Having heard the rival contentions, we find no merit in the present ground raised by the Revenue. The issue in the present ground pertaining to the nature of the

subsidy received in the form of excise duty refund whether capital or revenue and its deductibility u/s 80IB, we find that the same has attained finality in view of the decision of the Hon'ble Apex Court in the case of M/s Shree Balaji Alloys & Others (supra) and in the case of CIT Vs. Meghalaya Steels 383 ITR 217 (SC). The Hon'ble Apex Court in the case of M/s Shree Balaji Alloys & Others (supra) dismissed the appeal of the Revenue against the order of the Hon'ble Jammu & Kashmir High Court following its decision rendered in the case of CIT Vs. Meghalaya Steels (supra). The Hon'ble Jammu & Kashmir High Court had in turn held that Excise duty Refund was capital in nature since it was granted to achieve the purpose of acceleration of industrial development in the State and generation of employment which were public purposes and thus could not be construed as operational incentives. Thus it is settled that subsidy received by way of refund of excise duty for setting up new industrial undertaking is a capital receipt and not taxable as income.

10. In view of the same, we find no reason to interfere in the order of the Ld.CIT(Appeals) deleting the addition made on account of excise duty refund amounting to Rs.1,65,02,244/-. Ground No.2 raised by the Revenue is, therefore, dismissed in the above terms.

11. Ground No.3 raised by the Revenue is against the action of the Ld.CIT(Appeals) in deleting the addition of Rs.11,22,561/- made on account of rebate and discount

relating to purchase of material and holding that the assessee is eligible for deduction u/s 80IB on the same.

12. Brief facts relating to the issue are that the assessee had claimed deduction u/s 80IB on rebate and discount amounting to Rs.11,22,561/-. The Assessing Officer denied the same for the reason that receiving rebate and discount was not the primary business of the assessee and, therefore, there was no direct nexus of the income arising on account of rebate and discount with the business activity of the assessee and thus the assessee was not entitled to claim deduction u/s 80IB of the Act on account of the same.

13. Before the Ld.CIT(Appeals), the assessee contended that rebate and discount has been received by the assessee on purchases made by it in its unit set up in Jammu & Kashmir, which was eligible to claim deduction of its profits u/s 80IB, and the assessee had instead of deducting this amount from purchases had shown the same separately on the credit side of the Profit & Loss Account. The assessee submitted that these amounts were directly related to the purchase and thus had direct nexus with the income earned from the eligible business of the assessee. The assessee contended that it was, therefore, eligible to claim deduction on account of the same. It was also pointed out by the assessee that similar disallowance made in assessment year 2010-11 in the case of the assessee had been deleted by the I.T.A.T. vide its order in ITA

No.971/Chd/2013 dated 2.5.2016. The learned CIT (Appeals) after considering the assessee's submissions deleted the disallowance made relying upon the decision of the I.T.A.T. in assessee's own assessee for assessment year 2010-11.

14. Before us, the learned D.R. relied upon the order of the Assessing Officer, while the Ld. counsel for the assessee relied upon the order of the learned CIT (Appeals).

15. Having heard both the parties, we find no merit in the ground raised by the Revenue. Undisputedly, identical issue of allowance of deduction u/s 80IB on rebates and discounts earned by the assessee on purchases made by it had arisen in the case of the assessee in assessment year 2010-11 wherein the I.T.A.T. had held that the assessee was entitled to deduction on the same. No change in facts have been brought to our notice by the learned D.R. from the assessment year 2010-11. In view of the same, since the issue has already been decided by the I.T.A.T., on identical set of facts in assessment year 2010-11, in favour of the assessee, we see no reason to interfere in the order of the learned CIT (Appeals) who has allowed the assessee's appeal by following the decision of the I.T.A.T. in assessee's own case in assessment year 2010-11. In view of the same ground No.3 raised by the Revenue is dismissed.

16. Ground No.4 raised by the Revenue is against the action of the learned CIT (Appeals) in deleting the addition made by the Assessing Officer of Rs.77,249/- on account of

interest received on FDRs by denying deduction u/s 80IB on the same.

17. Brief facts relevant to the issue are that the assessee has shown income from interest on FDRs and interest from others totalling Rs.2,20,834/-. The Assessing Officer show caused the assessee as to why the deduction u/s 80IB be not disallowed on the interest income since it was not profit from eligible business In the absence of any explanation offered by the assessee the Assessing Officer disallowed deduction under section 80IB on the interest income and made addition of Rs.2,20,834/-.

18. Before the learned CIT (Appeals), the assessee contended that out of the total interest credited to the Profit and Loss Account of Rs.2,20,834/-, Rs.68,220/- was interest received on FDRs and Rs.1,52,614/- was interest received from other sources. The assessee submitted that no deduction u/s 80IB had been claimed on Rs.1,43,585/-. The learned CIT (Appeals) after considering assessee's submissions and after perusing the computation of income found that the assessee had not claimed deduction on interest income of Rs.1,43,585/-. He, therefore, directed the Assessing Officer to allow deduction as per law after due verification.

19. Before us, the learned D.R. argued that the learned CIT (Appeals) had erred in allowing deduction under section 80IB on the interest amounting to Rs.77,249/-.

20. The Ld. counsel for the assessee, on the other hand, pointed out that the learned CIT (Appeals) had not allowed the assessee deduction on the interest of Rs.77,249/- but had in fact directed the Assessing Officer to allow deduction on the same under section 80IB of the Act as per law after due verification. The Ld. counsel for the assessee drew our attention to the order of the learned CIT (Appeals) giving the aforesaid directions at para 8.3.

21. We have heard the rival contentions. We are not in agreement with the contention raised by the Ld.DR. On perusal of the order of the learned CIT (Appeals) we find that the learned CIT (Appeals) after giving a categorical finding that out of the total interest credited to the Profit and Loss Account of Rs.2,20,834/-, the assessee had not claimed deduction under section 80IB of Rs.1,43,585/-, directed the Assessing Officer to allow deduction under section 80IB as per law after due verification. The relevant portion of the CIT(A) order is as under:

> *"8.3 The submission of the appellant have been considered. On perusal of computation of income, it is seen that assessee has already deducted interest income of Rs. 1,43,585/- to arrive at the deduction u/s 80IB. Therefore, AO is directed to allow the deduction u/s 80IB as per law after due verification. Ground of appeal no 6 is allowed."*

22. It is evident from the above that the Ld.CIT(Appeals) had only adjudicated the issue before it to the extent of Rs.1,43,585/-. Therefore the contention of the Ld.DR that the assessee has been allowed deduction u/s

80IB on the balance portion of Rs. 77,249/-, we find is incorrect. At the same time we find that the Ld.Counsel for the assessee has misconstrued the findings of the Ld.CIT(Appeals) to mean that the entire issue has been restored to the Assessing Officer to decide as per law, since the Ld.CIT(Appeals) has no powers to set aside a case to the AO, as per the provisions of section 251(1) of the Act, which deal with powers of the CIT(A)'s. But, we may add in the same breath, that it cannot be denied that the balance interest income of Rs.77,249/- has not been dealt with by the Ld. CIT(Appeals). We therefore restore the issue of allowance of deduction u/s 80IB on the interest income of Rs.77,249/-back to the file of the CIT(Appeals) to decide it afresh by passing a speaking order after giving due opportunity of hearing to the assessee.

23. Ground of appeal No.4 of the Revenue is partly allowed for statistical purposes.

24. In the result, the appeal of the Revenue is partly allowed.

Order pronounced in the open court.

Sd/-	Sd/-
(SANJAY GARG)	**(ANNAPURNA GUPTA)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Dated : 2nd June, 2017
Rati
Copy to:

1. The Appellant
2. The Respondent
3. The CIT(A)
4. The CIT
5. The DR

Assistant Registrar,
ITAT, Chandigarh