

आयकर अपीलीय अधिकरण "ए" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, PUNE

(Through Virtual Court)

BEFORE SHRI R.S.SYAL, VP AND
SHRI PARTHA SARATHI CHAUDHURY, JM

आयकर अपील सं. / ITA No.1758/PUN/2017

निर्धारण वर्ष / Assessment Year : 2012-13

The Assistant Commissioner of Income Tax,
Circle-6, Pune.

.....अपीलार्थी / Appellant

बनाम / V/s.

Suma Shilp Ltd.
93/5A, Erandwane,
Pune-411 004.
PAN: AACCS4724N

.....प्रत्यर्थी / Respondent

Revenue by : Shri S.P Walimbe

Assessee by : Shri Nikhil Pathak

सुनवाई की तारीख / Date of Hearing : 30.09.2020

घोषणा की तारीख / Date of Pronouncement : 01.10.2020

आदेश / ORDER

PER PARTHA SARATHI CHAUDHURY, JM:

This appeal preferred by the Revenue emanates from the order of the Ld. CIT(Appeals)-4, Pune dated 01.03.2017 for the assessment year 2012-13 as per the following grounds of appeal on record:

"1. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in allowing the amount of Rs.1,77,45,946/- as claimed of deduction u/s.80IA(iv)(a) of the I.T. Act.

2. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in allowing the amount of Rs.9,84,391/- being prior period expenses.

3. For this and such other reasons as may be urged at the time of hearing the order of the Ld. CIT(A) may be vacated and that of the Assessing Officer be restored.

4. The appellant craves leave to add, alter, amend or delete any of the above grounds of appeal during the course of appellate proceedings before the Hon'ble Tribunal."

2. **Ground No.1** pertains to the deduction claimed u/s.80IA(iv)(a) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').

3. The brief facts on the issue are that during the assessment proceedings, the Assessing Officer found the assessee had claimed a deduction of Rs.1,77,45,946/- u/s.80IA(4)(iv)(a) of the Act. The assessee submitted its explanation vide letter dated 13.03.2015 and the same is scanned on Page 2 in Para 5 of the assessment order. The Assessing Officer after considering the submissions of the assessee disallowed the deduction under the said provision and added the amount to the income of the assessee.

4. In the written submissions filed before the Ld. CIT(Appeals), it was contended by the Ld. AR drawing his attention to CBDT Circular No.1/2016 dated 15.02.2016 wherein the CBDT has clarified that the term 'Initial Assessment Year' in Section 80IA (5) of the Act would mean the first year opted for by the assessee for claiming deduction u/s.80IA and not the year in which the eligible business has commenced. Further, the CBDT Circular directed the Assessing Officers to allow deduction u/s.80IA in accordance with this clarification and also stated that pending litigation on allowability of

deduction u/s.80IA shall not be pursued to the extent it relates to interpreting 'Initial Assessment Year' as mentioned in Section 80IA(5) of the Act. In this respect, the assessee submitted that the initial assessment year in the case of assessee was assessment year 2010-11 and not assessment year 2007-08 as interpreted by the Assessing Officer. The Ld. CIT(Appeals) on this issue has held as follows:

*“5.3 **Decision:** - I have perused the assessment order and the submission made by the appellant as above carefully. I find that the 'Initial Assessment Year' as prescribed u/s.80IA (5) has been decided in the CBDT Circular no.1/2016 dated 15/02/2016 wherein, it has been stated that the same would mean the first year opted for by the assessee for claiming deduction u/s 80IA and not the year in which the eligible business has commenced. Further, the CBDT has directed the Assessing Officers to allow deduction u/s 80IA in accordance with this clarification and also stated that pending litigation on allowability of deduction u/s 80IA shall not pursued to the extent it relates to interpreting 'Initial Assessment Year' as mentioned in section 80IA(5). I also find that various case laws cited by the appellant in the written submission dated 16/02/2017 have also decided and set right the issue of 'Initial Assessment Year' as provided in the said section, in support of appellant's claim. Accordingly, the 'Initial Assessment Year' in the case of the appellant would be A.Y. 2010-11 though the business was commenced earlier as the appellant had opted to select for claiming deduction u/s.80IA(4)(iv)(a) of the Act only from the A.Y. 2010-11. I do not find any infirmity in appellant's claim in pursuance to the CBDT's Circular as above and also of the various decisions cited by the appellant. I direct the AO to treat the 'Initial Assessment Year' as A.Y. 2010-11 for the purpose of claiming deduction u/s.80IA. The addition made of Rs.1,77,45,946/- (wrongly written by the AO in the computation of total income at Rs.17,70,45,946/-) on account of disallowance u/s.80IA(4)(iv)(a) is, therefore, hereby deleted. Ground no. 1 raised by the appellant is accordingly allowed.”*

5. At the time of hearing through video conference, the Ld. AR of the assessee submitted that in the preceding assessment year i.e. 2011-12 where this claim of deduction u/s.80IA(4)(iv)(a) of the Act was denied by the Assessing Officer and confirmed by the Ld. CIT(Appeals), the assessee preferred an appeal before the Pune Bench of the Tribunal and the Tribunal vide order dated 16.06.2017 in ITA No.1036/PUN/2016 for assessment year

2011-12 in assessee's own case reversed the findings of the Ld. CIT(Appeals) and allowed the relief provided to the assessee by observing as follows:

“9. We heard both the sides on this issue and perused the orders of the Revenue and the cited decisions before us. On perusal of the said order of the Pune Bench of the Tribunal, we find the decision of the Tribunal is relevant for the following proposition:

“Assessee having chosen A.Y. 2004-05 as the initial assessment year and paid taxes on the profits of its windmill activity in the earlier years as per the statute, the year in which the assessee started generating electricity (A.Y. 2002-02) cannot be treated as the initial assessment year for the purposes of sec. 80IA(2) r.w.s. 80IA(5); initial assessment year for the above purposes is the first year in which the assessee claimed deduction u/s.80IA(1) after exercising the option as per the provisions of sec. 80IA(2)”

10. The above view of the Tribunal was approved by the Hon'ble Madras High Court in the case of Velayudhaswamy Spinning Mills Pvt. Ltd. Vs. ACIT (supra). Therefore, the CIT(A) has not properly appreciated the said decision (supra). In the remand proceedings, CIT(A) is directed to consider the existing legal position on the issue under consideration and allow the claim of the assessee in accordance with law. Assessee shall be given reasonable opportunity of being heard to the assessee in accordance with the principles of natural justice. In the process, we find there is no reason for disallowing the claim of the assessee and the losses of the earlier assessment years prior to A.Y. 2010-11 are eligible for set off against the profits of the other income of the ineligible units of the earlier years. AO has grossly erred in disallowing the said set off of the said brought forward losses against the income earned from the windmills of the eligible units in the current year under consideration. Accordingly, Ground Nos. 1.1 to 1.4 raised by the assessee are allowed, in principle, subject to the above conditions.”

Therefore, in assessment year 2011-12 also, it was held that the initial assessment year for the purposes of section 80IA is the first year in which the assessee claimed deduction under the said provision.

5.1 The Ld. AR placing strong reliance on the findings of the Ld. CIT(Appeals) on this issue submitted that the assessee has claimed deduction u/s. 80IA of the Act for the first time in assessment year 2010-11 and not from Assessment years 2007-08 to 2009-10 and therefore, the findings of the Ld. CIT(Appeals) directing the Assessing Officer to treat the Initial

Assessment Year' as assessment year 2010-11 for the purpose of claiming deduction u/s.80IA of the Act is the correct proposition of law.

5.2 The Ld. AR further took us through the CBDT Circular No.1/2016 dated 15th February, 2016, Govt. of India, Ministry of Finance annexed in the paper book wherein the relevant Para is extracted herein below:

“The matter has been examined by the Board. It is abundantly clear from sub section (2) that an assessee who is eligible to claim deduction u/s.80IA has the option to choose the initial/first year from which it may desire the claim of deduction for ten consecutive years, out of a slab of fifteen (or twenty) years, as prescribed under that sub section. It is hereby clarified that once such initial assessment year has been opted for by the assessee, he shall be entitled to claim deduction u/s.80IA for ten consecutive years beggng from the year in respect of which he has exercised such option subject to the fulfillment of conditions prescribed in the section. Hence, the term ‘initial assessment year’ would mean the first opted for by the assessment for claiming deduction u/s.80IA.....”

From the above circular also, it is crystal clear that assessee who is eligible to claim deduction u/s.80IA has the option to choose the initial/first year from which it may desire the claim of deduction.

5.3 The Ld. AR further submitted that no deduction have been claimed u/s.80IA of the Act for the entire period of assessment years 2007-08 to 2009-10 and that the decision of the Special Bench of Tribunal relied on by the Ld. DR in the case of Goldmine Shares and Finance Pvt. Ltd. reported in 113 ITR 209 was much prior to the CBDT Circular (supra.).

6. Per contra, the Ld. DR has placed strong reliance on the findings of the Assessing Officer and relied on the decision of Special Bench of Tribunal in the case of Goldmine Shares and Finance Pvt. Ltd. (supra.)

7. We have perused the case records and heard the rival contentions. We have also analyzed the judicial pronouncements placed before us. In this case, the deduction u/s.80IA of the Act has been claimed by the assessee and it was disallowed by the Assessing Officer holding that the initial assessment year is Assessment year 2007-08 which is the year relevant to the previous year in which the windmill commenced generation of power. The assessee on the other hand had submitted that they have not claimed any deduction u/s.80IA of the Act for the period of assessment years 2007-08 to 2009-10 and it was only for the first time for assessment year 2010-11 that they have chosen to claim deduction under the said provision of the Act. Therefore, the assessment year 2010-11 is the initial assessment year. We further find that the Pune Bench of the Tribunal in assessee own case for immediately preceding assessment year i.e. A.Y.2011-12, has allowed the deduction to the assessee by observing that the initial assessment year is the year in which the assessee has claimed first time the deduction u/s.80IA of the Act.

7.1 We also find that the CBDT Circular itself, gives preference to the assessee to choose a particular year as initial assessment year and in this case the assessee has chosen Assessment year 2010-11. Therefore, the case of the assessee is fortified by the CBDT Circular (supra.), the view taken by the Pune Bench of the Tribunal in assessee's own case (supra.) and the facts and circumstances being absolutely identical in this assessment year also, the relief provided to the assessee by the Ld. CIT(Appeals) should be sustained. This is so because the findings of the Ld. CIT(Appeals) is based on the Board's Circular and the Ld. CIT(Appeals) analyzed the issue correctly. That further the decision relied on by the Ld. DR of Special Bench of Tribunal in the case of Goldmine Shares and Finance Pvt. Ltd. (supra.) was much prior

to the CBDT Circular. Thus, **Ground No.1 raised by the Revenue is, therefore, dismissed.**

8. **Ground No. 2** relates to the allowance of the amount of Rs.9,84,391/- being prior period expenses by the Ld. CIT(Appeals).

9. The contention raised by the assessee in this ground, is that the Assessing Officer had erred in disallowing Rs.9,84,391/- being prior period depreciation on investment in premises. He erred in not appreciating that the above amount of Rs.9,84,391/- was grouped in book depreciation of Rs.5,30,66,886/- in Note No.24 of the Audited Annual Accounts and that the entire amount of Rs.5,30,66,886/- was disallowed and added to the total income of the assessee.

10. The assessee on this issue has submitted before the Department, the copy of the audited annual accounts of the company for the year ended 31.03.2012, Tax Audit Report regarding the disclosure of the prior period expenses, copy of the statement of total income filed separately and it was submitted that the assessee had added back the entire book depreciation of Rs.5,30,66,886/- i.e. including the depreciation on investment in premises for prior period in the statement of total income. Therefore, no further disallowance is warranted.

11. The Ld. CIT(Appeals) on this issue has held as follows:

*“7.3 **Decision** :- I have perused the assessment order and the submission made by the appellant as above carefully. I find that the disallowance was wrongly made by the AO for the reason that the side amount of Rs.9,84,391/- being “ Depreciation on investment in premises for prior period” was already included in Book Depreciation of Rs.5,30,66,886/- reflected in Note No.24 of the annual accounts and the entire book depreciation of Rs.5,30,66,886/- (i.e. including the aforesaid depreciation on investment in premises for prior period) was added back*

and disallowed in the statement of total income. The appellant also furnished the copy of the audited annual accounts of the Company for the year ended 31/03/2012, Tax Audit Report regarding the disclosure of prior period expenses, copy of the statement of total income separately contending that the appellant Company had added back the entire book depreciation of Rs.5,30,66,886/- (i.e. including the aforesaid Depreciation on investments in premises for prior period) in the Statement of total income. It was therefore, argued that no further disallowance was warranted and such an addition made by the AO was tantamount to double addition / disallowance. I find force in the contention of the appellant and as the said amount has already been added in Book Depreciation and disallowed by the appellant, no further disallowance was required. Therefore, the addition made on account of disallowance of Depreciation on investments in premises for prior period of Rs.9,84,391/- is hereby deleted. Ground No.3 raised by the appellant is accordingly allowed.”

12. We have perused the case records and heard the rival contentions. That before the Ld. CIT(Appeals) itself, it had been demonstrated by the assessee that in the entire book depreciation of Rs.5,30,66,886/-, it included depreciation on investment in premises for prior period and entire books of account, tax audit report were submitted and were analyzed by the First Appellate Authority. The Ld. AR of the assessee at the time of hearing drew our attention to the Balance Sheet and P & L account for the relevant assessment year wherein the entire depreciation and amortization expenses has been claimed at Rs.5,30,66,886/- and it included prior period depreciation on investment in premises.

12.1 The Ld. DR could not refute these facts on record nor could bring any material or evidences to show that the said amount of Rs.9,84,391/- was not included in the said total depreciation taken by the assessee company for taxation purpose. In view of above, we are of the considered opinion that there is no need for any interference with the order of the Ld. CIT(Appeals) and relief provided to the assessee by the Ld. CIT(Appeals) is hereby

sustained. Thus, **Ground No.2 raised in appeal by the Revenue is dismissed.**

13. **Ground No.3 and 4** are general in nature and hence, requires no adjudication.

14. In the result, **appeal of the Revenue is dismissed.**

Order pronounced on 01st day of October, 2020.

Sd/-
R.S.SYAL
VICE PRESIDENT

Sd/-
PARTHA SARATHI CHAUDHURY
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 01st October, 2020.

SB

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals)-4, Pune.
4. The Pr. CIT-3, Pune.
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, "ए" बेंच,
पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

निजी सचिव / Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.

		Date	
1	Draft dictated on	30.09.2020	Sr.PS/PS
2	Draft placed before author	01.10.2020	Sr.PS/PS
3	Draft proposed and placed before the second Member		JM/AM
4	Draft discussed/approved by second Member		AM/JM
5	Approved draft comes to the Sr. PS/PS		Sr.PS/PS
6	Kept for pronouncement on		Sr.PS/PS
7	Date of uploading of order		Sr.PS/PS
8	File sent to Bench Clerk		Sr.PS/PS
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R		
11	Date of dispatch of order		