**आयकर अपीलीय अधिकरण न्यायपीठ, नागपुर में।**
**IN THE INCOME TAX APPELLATE TRIBUNAL BENCH, NAGPUR**

**(Through Virtual Hearing at Raipur)**

**BEFORE SHRI RAVISH SOOD, JUDICIAL MEMBER**
**AND**
**SHRI JAMLAPPA D BATTULL, ACCOUNTANT MEMBER**

**आयकरअपीलसं. / ITA Nos. 268 & 269/NAG/2018**

**निर्धारणवर्ष / Assessment Years : 2010-11 & 2011-12**

The Deputy Commissioner of Income Tax,
Circle-2, Nagpur.

.....अपीलार्थी / Appellant

**बनाम / V/s.**

M/s. Sunflag Iron & Steel Co. Ltd.
33, Mount Road, Sadar,
Nagpur-440 001
PAN : AACCS3376C

……प्रत्यर्थी / Respondent

Assessee by : Shri Rachit Thakar, AR
Revenue by : Shri Pradeep Headoo, CIT-DR

सुनवाई की तारीख / Date of Hearing : 18.02.2022

घोषणा की तारीख / Date of Pronouncement : 29.04.2022

## आदेश/ ORDER

**PER RAVISH SOOD, JM:**

The captioned appeals filed by the revenue are directed against the consolidated order passed by the CIT(Appeals)-2, Nagpur dated 14.09.2018, which in turn arises from the respective orders passed by the A.O under Sec. 143(3) r.w.s 147 of the Income-tax Act, 1961 (in short 'the Act') dated 27.12.2017 for assessment years 2010-11 & 2011-12. As common issues are involved in the captioned appeals, therefore, the same are being taken up and disposed off together by way of a consolidated order. We shall first take up the appeal filed by the revenue for the assessment year 2010-11 wherein the impugned order has been assailed before us on the following grounds of appeal:

> "1. On the facts and circumstances of the case the Ld. CIT(A)-2, Nagpur has erred in holding that notices issued u/s.148 of the Act were issued beyond four years from the end of relevant assessment years and are barred by time and are without jurisdiction in spite of the fact that AO received a third-party information which was not available earlier.
>
> 2. On the facts and circumstances of the case, the Ld. CIT(A), Nagpur has erred in deleting the addition made by the AO disallowing the claim u/s.80IA of the Act since the assessee contravened the provisions of section 80IA of the Act by trading the surplus power generate to MSEDCL.
>
> 3. Any other ground which may be raised during the course of hearing."

2. Succinctly stated, the assessee company which is engaged in the business of manufacturing and sale of special steel products, had filed its return of income for assessment year 2010-11 on 25.09.2010, declaring an income of

Rs.82,49,30,700/-. Original assessment was, thereafter, framed by the Assessing Officer vide his order passed u/s. 143(3) of the Act, dated 14.03.2014 determining the total income of the assessee company at Rs.88,64,76,420/-. Observing, that the assesee company which was, inter alia, having power generation plant for captive consumption had transmitted the excess power so generated to Maharashtra State Energy Distribution Company Ltd. (for short 'MSEDCL), the Assessing Officer, holding a belief that the assessee had wrongly raised a claim for deduction u/s. 80IA(4)(iv) of the Act qua the sale of power generated by its power plant to MSEDCL, thus, reopened its case u/s.147 of the Act. Accordingly, the Assessing Officer vide his order passed u/s. 143(3) r.w.s. 147 of the Act, dated 27.12.2017 disallowed the assesee's claim for deduction of Rs. 38,70,65,603/- u/s.80IA(4)(iv) qua the electricity generated by its power plant that was transferred/sold to MSEDCL and assessed its income at Rs. 128,91,42,023/-.

3. Aggrieved, the assessee carried the matter in appeal before the CIT(Appeals). After deliberating at length on the issue in question, i.e., entitlement of the assessee for deduction u/s. 80IA(4)(iv) of the Act qua the electricity generated by the assessee's power plant that was transferred to MSEDCL, the CIT(Appeals) found favor with the contentions advanced by the assessee, and concluded, that the assessee's claim for deduction u/s.80IA(4)(iv) of the Act for the year under consideration was in order.

4. The Department being aggrieved with the order of the CIT(Appeals) has carried the matter in appeal before us.

5. We have heard the Ld. Authorized Representatives of both the parties, perused the orders of the lower authorities and material available on record, as well as considered the judicial pronouncements that have been pressed into service by them to drive home their respective contentions. As is discernible from the records, the controversy involved in the present appeal lies in a narrow compass, i.e., entitlement of the assessee company for deduction u/s.80IA(4)(iv) of the Act qua the power generated by its Captive Power Plant (CPP) that was transferred/sold to MSEDCL, in lieu whereof the latter would give corresponding credit to the assessee company by reducing the amount from the electricity bill payable by the company. On a perusal of the assessment order, we find that the Assessing Officer was of the view that as the incentive u/s. 80IA of the Act was granted assessee for the purpose of captive production and self-utilization in the course of its business of manufacturing of special steel products, therefore, transfer of electricity by it to MSEDCL was in complete violation of the norms and criteria of the eligibility of CPP for claim of deduction u/s.80IA of the Act. On the contrary, the CIT(Appeals) observed that the CPP of the assessee company which was set-up for generation and distribution of power was a new, separate and a distinct industrial undertaking as contemplated u/s.80IA(1) of the Act, and was entitled for deduction of an amount equal to 100% of the profits and gains derived

by it from such business for ten consecutive assessment years out of fifteen years beginning from the year in which the undertaking begun to operate as provided u/s.80IA(2) of the Act. It was noticed by the CIT(Appeal) that revenue of the CPP was from assessee's own steel plant and from MSEDCL. It was observed by the CIT(Appeals) that the assessee's claim for deduction u/s.80IA of the Act from the assessment year 2005-06 (i.e 1st year of claim of deduction by the assessee), and onwards, was either allowed by the Department, and as and where it was declined, the same was restored on appeal by the CIT(Appeals)/ITAT. Apart from that, it was observed by the CIT(Appeals) that the assessee's entitlement for claim of deduction u/s.80IA of the Act was duly considered and accepted by the Assessing officer while framing of the original assessment by him u/s. 143(3) of the Act. Backed by the aforesaid facts, the CIT(Appeals) was of the view that the Assessing Officer had reopened the case of the assessee u/s.147 of the Act merely on the basis of a "change of opinion", i.e, on the basis of the same facts that were borne on record, which was not permissible under law. Further, it was observed by the CIT(Appeals) that as there was no failure on the part of the assessee company to fully and truly disclose all the material facts that were necessary for its assessment, therefore, as per the "1st proviso" to Section 147 its case could not have been reopened beyond a period of 4 years from the end of the assessment year. Accordingly, it was observed by the CIT(Appeals) that the notice u/s. 148 of the Act, dated 25.01.2017 was barred by limitation. Lastly, it was observed by the

CIT(Appeals) that now when the assessee's claim for deduction u/s.80IA of the Act had been allowed in the preceding years, viz. A.Y. 2005-06, 2006-07, 2007-08, 2008-09 and 2009-10 and had attained finality, therefore, in the absence of any change of facts or law there was no justification in disallowing of its claim for deduction u/s. 80IA of the Act for the year under consideration. Backed by his aforesaid observations the CIT(Appeals) vacated the disallowance of the assessee's claim for deduction u/s.80IA of the Act for year under consideration.

6. Before us, the revenue is aggrieved with the order of the CIT(Appeals) for two fold reasons, viz. (i) that the CIT(Appeals) loosing sight of the fact that the reassessment were initiated on the basis of information that was received by the AO from a third party, and was not available earlier, had erred in concluding that as the notice u/s.148 of the Act was issued beyond four years from the end of the relevant assessment year, therefore, the same was barred by limitation.; and (ii) that the CIT(Appeals) had failed to appreciate that as the assessee had contravened the provisions of section 80IA by trading the surplus power generated to MSEDCL, therefore, as observed by the Assessing Officer, and rightly so, it was not entitled for claiming deduction u/s.80IA of the Act to the said extent.

7. After giving a thoughtful consideration to the contentions of the Ld. Authorized Representatives of both the parties in the backdrop of the orders of the lower authorities and the material available on record, we find no infirmity in the

view taken by the CIT(Appeals). In so far the view taken by the CIT(Appeals), that as there was no failure on the part of the assessee company in fully and truly disclosing all the material facts that were necessary for its assessment, therefore, assessment having earlier been framed in its case u/s. 143(3) of the Act, thus, could not have been reopened beyond a period of four years from the end of the relevant assessment year, i.e., A.Y.2010-11, the same for the sake of clarity is culled out as under :

> "(i) As per proviso to sec.147, notice for reopening of assessment made u/s.143(3), issued beyond four years from the end of respective assessment years are barred by time, especially because appellant had disclosed all material facts fully and truly during section 143(3) assessment proceedings in the years in question and all earlier years and it is after considering all those facts, the AO has allowed the claim u/s.80IA for all the years, including the present years in appeal. There is no material with the A.O. to show or allege that the facts disclosed were either not full or true. The appellant, having disclosed all material facts fully and truly, there is no further burden on the appellant to show as to what inference should be drawn by A.O. In such a case, the issue of notice u/s.148 beyond four years is barred by time and without jurisdiction.
>
> (ii) The appellant has drawn support from the decisions of Hon'ble Courts and relied on:
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> (1) Sadhna Nitro Chem Ltd. Vs. A.B. KoliACIT(2014) 368 I.T.R. P.505 (Bombay)
>
> (2) Shri ChalthanVibhag Khand Vs. C.I.T.(2015) 376 I.T.R. P.419 (Gujarat)
>
> (3) Calcutta Discount Co. Ltd. (1961) 41 I.T.R. P.191 (S.C.)
>
> (iii) It cannot be argued that because the alleged income escaping is more than Rs. 1 Lac (sec.149) and sanction having been obtained u/s.151 limitation of four years will not apply. The limitation of 4 years only will apply and this point is concluded by the decision of Calcutta H.0 confirmed by Supreme Court in following cases:-

(1) Simplex Concrete Piles Vs. Dy. C.LT. (2003) 262 I.T.R. P.605 (Calcutta)

(2) Confirmed by Supreme. Court in (2013) 358 I.T.R. P.129 (S.C.) Dy. C.I.T. Vs. Simplex Concrete Piles.

(3) Shri ChalthanVibhag Vs. Dy. C.I.T. (2015) 376 I.T.R. P.419 (Guj.)

(4) Direct Information Ltd. vs. I.T.O. (2012) 349 I.T.R. P.150 (Born.)
(5) Siemens Information Ltd. Vs. A.C.I.T. (2007) 295 I.T.R. P.333 (Born.)/ (2008) 214 C.T.R. P.16 (Born.)

(iv) Even by relying on some subsequent interpretation of law by H.C. or S.C., if the A.O. wants to reopen the case of earlier years, the same cannot be done beyond a period of four years from the end of relevant asst year if the assessee had disclosed fully and truly all material facts at the time of original assessment u/s.143(3).Thus, the notices u/s.148 in the present case were issued beyond four years from the end of relevant assessment years and are barred by time and are without jurisdiction."

On a perusal of the order of the CIT(Appeals), we find that it is a matter of fact borne from record that the assessee company had disclosed fully and truly all the material facts that were necessary for framing of its assessment for the year under consideration. Nothing is either discernible from records nor brought to our notice by the Ld. Departmental Representative (for short 'DR') which would show that the facts disclosed by the assessee were either not full or true. In our considered view, now when the assessee had fully and truly disclosed all the material facts in its return of income on the basis of which assessment u/s. 143(3) of the Act, dated 14.03.2014 was earlier framed in its case, therefore, as observed by the Ld. CIT(Appeals), and rightly so, notice u/s.148 of the Act dated 25.10.2017 issued beyond a period of four years from the end of the relevant assessment year, i.e., A.Y.2010-11 was clearly barred by limitation and without jurisdiction. We, thus, in

terms of our aforesaid observations concur with the view taken by the CIT(Appeals). Thus, the **Ground of appeal No.1** raised by the Revenue is dismissed.

8. We shall now advert to the claim of the Revenue that the CIT(Appeals) had erred in vacating the disallowance of the assessee's claim for deduction u/s.80IA of the Act that was made by the Assessing Officer, for the reason, that it had by trading surplus power generated to MSEDCL had contravened the provisions of section 80IA of the Act. We find that the facts and the issue qua the aforesaid grievance of the Revenue is a recurring issue which was duly appreciated by the CIT(Appeals) while adjudicating the same. On a perusal of the order of the CIT(Appeals), we find that he had categorically observed that the assessee company has established a separate industrial undertaking, viz. power plant for generation and distribution of electricity which was supplied to its own steel plant, as well as transferred/sold to MSEDCL. It was observed by him that the aforesaid facts had been examined year after year, as enumerated in Para 3 of the order of the Assessing Officer, Addl. CIT, CIT(Appeals) and Hon'ble ITAT, which thereafter had been accepted by the Department as it had chosen not to prefer any further appeal for the assessment year(s) 2006-07, 2007-08 , 2008-09 and 2009-10. Also, the CIT(Appeals) had invalidated the view taken by the Assessing Officer that since the assessee company was doing trade by supplying and banking power to MSEDCL, therefore, it had violated Section 80IA(4)(iv) of the Act, for the reason,

that the power plant was an integral part of the steel plant and was not a separate industrial unit. It was observed by the CIT(Appeals) that as the aforesaid view of the Assessing Officer was glaringly contrary to the facts that were available on record and had been accepted by him in the original assessment order passed u/s.143(3), dated 14.03.2014, therefore, the impugned reassessment proceedings were embarked upon a mere "change of opinion". The relevant observation of the CIT(Appeals) qua the issue in hand are reproduced as under:

> " *(i) The facts that the appellant has established a separate Industrial undertaking viz. Power Plant to generate and distribute electricity, and supplies electricity to its own Steel Plant and to MSEDCL. The said power plant unit was established with the previous approval of Central Govt. initially with 15 MW power generation capacity which was increased to 25 MW capacity, also with the approval of Central Govt. in the year 2005. The value of electricity supplied to Steel Plant and MSEDCL is charged at the same rate. MSEDCL makes payment by adjustment i.e. by giving credit for the power banked with them, against their electricity bills to Steel Plant. From the gross revenue so received, the Power Plant deducts direct and indirect expenses and the net profit so computed as per sec. 801A(5) is claimed as deduction u/s.80IA. These facts have been examined year after year, as enumerated in Para 3, by the Assessing Officer, the jurisdictional CIT, the CIT(A), and the Hon'ble ITAT- and has been further accepted by the Department, as no further appeal was preferred for AY 2006-07, AY 2007-08 and AY 2009-10. The issue of availability of the deduction 801A has been agreed and allowed in principle by all foras. On above facts, the final view of the Department was that the claim u/s.801A was allowable and accordingly, the Revenue has allowed 801A claim for all the earlier years. It will thus be seen that the appellant's claim for deduction U/s.801A(4)(iv) stands fully allowed for A.Y. 2005-06, 2006-07, 2007-08, 2008-09 and 2009-10 by relevant orders referred to above and that they are final, as submitted by the appellant, and are holding the field.*
>
> *(ii) Now on the very same facts, the A.O. on change of opinion wants to hold that (i) the power plant was supposed to supply power to steel plant only and not for trading of power generated by it, and since it is doing trading by supplying and banking the power with MSEDCL, it is a violation of sec. 80IA(4)(iv), and (ii) the power plant is an integral part of steel plant*

*and not a separate Industrial Unit. This assumption of A.O. is glaringly contrary to the facts established on record, and referred to and accepted by A.O. himself in assessment orders, order of C.I.T.(A) and orders of Tribunal (reference is made to 1.T.A.T.'s order for A.Y. 2006-07, para 32) and original asst. order u/s.143(3) dt.24.03.2014 for A.Y.2011-12 at para 3, and in almost all orders. The power plant is established in a separate building. It has its own separate and independent machinery. The Unit can be closed down or started without is4fiecting the steel plant. All these facts with full details are on records and are within --(he specific knowledge of the A.O. In the face of these admitted facts on record and within knowledge, the A.O. now to say that the power plant is an integral part of steel plant and not an independent plant is nothing but taking a combative, contentious and belligerent stand by ignoring the obvious. This approach of the A.O. is not only untenable but is also unfair and churlish. It is also contrary to all the facts found and established, and therefore, distorted and erroneous.*

*(iii) According to this changed view of the A.O., the claim of deduction u/s. 80IA i3 not allowable. However, the afore-referred facts which have been established on record and referred to in various orders of earlier years and accepted by revenue clearly shows and establishes that the A.O. now merely on change of opinion, on the same facts, wants to take a different and untenable view and on such erroneous change of view wants to disallow the claim u/s.80IA. Such change of opinion is impermissible in law and the assessment cannot be reopened on mere change of opinion. The appellant has drawn support from the decisions of Hon'ble Courts and relied on:*

*(1) Direct Information (P) Ltd. Vs. I.T.O. (2012) 349 I.T.R. P.150 (Bom.)*
*(2) I.T.O. Vs. Technospan India Ltd.(2018) 404 I.T.R. P.516 (S.C.)*
*(3) C.I.T. Vs. Kelvinator of India Ltd.(2010) 320 I.T.R. P.561 (S.C.)*

*(iv) From the above facts and law, it is clear that the A.O. has issued notice ufs.148 and made reassessment on mere change of opinion on same facts and hence the same are held as invalid. Even the changed opinion is wholly erroneous."*

9. We have given thoughtful consideration and are of the considered view that no infirmity arises from the aforesaid order of the CIT(Appeals) qua the issue in hand, i.e., entitlement of the assessee for deduction u/s.80IA of the Act on the surplus power transferred to MSEDCL. We, thus, in terms of our aforesaid

observations uphold the order passed by the CIT(Appeals) as regards the aforesaid issue in hand. Thus, the **Ground of appeal No.2** raised by the Revenue is dismissed in terms of our aforesaid observations.

10. In the result, appeal of the Revenue in ITA No.268/NAG/2018 for the assessment year 2010-11 is dismissed in terms of our aforesaid observations.

**ITA No.269/NAG/2018**
**A.Y.2011-12**

11. As the facts and the issues involved in the present appeal remains the same as were there before us in the aforementioned appeal of the revenue in ITA No.268/NAG/2018 for assessment year 2010-11, therefore, our order therein passed while disposing off the said appeal shall apply mutatis-mutandis for disposing off the present appeal in ITA No.269/NAG/2018 for the assessment year 2011-12. Accordingly, in this case also the **Grounds of appeal No.(s) 1 and 2** raised by the Revenue are dismissed.

12. In the result, appeal of the Revenue in ITA No. 269/NAG/2018 for the assessment year 2011-12 is dismissed in terms of our aforesaid observations.

13. Resultantly, both the appeals of the Revenue are dismissed in terms of our aforesaid observations.

Order pronounced in the open Court on 29th day of April, 2022.

| Sd/- | Sd/- |
|---|---|
| **JAMLAPPA D. BATTULL** | **RAVISH SOOD** |
| **ACCOUNTANT MEMBER** | **JUDICIAL MEMBER** |

रायपुर/ RAIPUR ; दिनांक / Dated : 29th April, 2022
SB

**आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals)-2, Nagpur.
4. The Pr. CIT-2, Nagpur.
5. विभागीय प्रतिनिधि,आयकर अपीलीय अधिकरण, नागपुर/ DR, ITAT, Nagpur.
6. गार्डफ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

**// True Copy //**

निजीसचिव / Private Secretary
आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur.

| | | Date | |
|---|---|---|---|
| 1 | Draft dictated on | 23.04.2022 | Sr.PS/PS |
| 2 | Draft placed before author | 28.04.2022 | 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 | | |