

IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” BENCH, MUMBAI
BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No. 2945/Mum/2023

(A.Y: 2010-11)

Aczet Private Ltd, Plot No.15,Unit No.E02, CEP Zone, MIDC Marol, Opp: Speez, Andheri (E) Mumbai-400093.	Vs	ACIT-Circle4(1)(1), Aayakar Bhavan, Mumbai-400020.
PAN/GIR No. : AABCC3800G		
Appellant	..	Respondent

Assessee by :	Shri.V.P.Kothari.C.A. AR
Revenue by :	Shri.S.G.Menon.Sr. DR

Date of Hearing	16.02.2024
Date of Pronouncement	19.02.2024

आदेश / O R D E R

PER PAVAN KUMAR GADALE JM:

The appeal is filed by the assessee against the order of the National Faceless Appeal Centre (NFAC) Delhi /CIT(A) passed u/sec143(3) r.w.s147 of the Act and u/sec250 of the Ac.The assessee has raised the following grounds of appeal:

- 1. The learned CIT(A)NFAC has erred in law and on facts in confirming the disallowance of Rs.7,69,600/- being purchase as alleged to be from havala dealer without properly considering the submissions made by the appellant*

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2(a) *The learned CIT(A)NFAC has erred in law and on facts in disallowing the claim of Rs.40,34,868/- u/s 80-IC(2)(a) of the Income Tax Act1961 in the assessment order passed u/s 143(3) r.w.s 147 of Income Tax Act1961 dated 31st March, 2016 as against the same was allowed by his predecessors while passing the Assessment Order u/s 143(3) of Income Tax Act1961 dated 08th November, 2012 which being merely a change of opinion without having any additional new evidence and without considering the facts that the appellant has claimed deduction u/s 80-IC in earlier years and also in this Assessment Year which was allowed as per provision of law.*

b. The learned CIT(A)NFAC has erred in law and on facts in misinterpreting the provision of 80-IC for disallowing the appellants claim of deduction.

Your appellant craves leave to add, alter and/ or amend the above grounds of appeal.

2. The brief facts of the case that, the assessee company is engaged in the business of trading and manufacturing of electronic balances. The assessee has filed the return of income for the A.Y.2010-11 on 15.10.2010 disclosing a total income of Rs.Nil after claiming deduction u/s 80IC of the Act of Rs.39,67,371/-.Subsequently the assessee has filed the revised return of income on 30.05.2011

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disclosing a total income of Rs.Nil after claiming deduction u/sec 80IC of the Act of Rs.40,34,868/- and the book profits computed u/sec115JB of the Act of Rs.52,03,939/-.Whereas the assessment was completed u/sec 143(3) of the Act on 08.11.2012 determining total income of Rs. Nil and allowing the deduction u/sec 80IC of the Act of Rs.40,34,686/-. Subsequently the Assessing Officer (AO) has received information from DGIT (Inv) based on the sales tax department maharashtra communication that, the assessee was involved in obtaining bogus purchase bills from M/s Samrudhi Corporation aggregating to Rs.7,69,600/-. Whereas the AO has reason to believe that the income has escaped assessment and after recording the reasons has issued notice u/s 148 of the Act. The assessee has filed a letter dated 31.07.2015 to treat the original return of income filed as compliance to notice u/sec 148 of the Act. Further the AO has issued notice u/sec 143(2) and u/sec 142(1) of the Act. In compliance to notice, the Ld. AR of the assessee appeared from time to time and submitted the details and the case was discussed.

3. The assessee has submitted the available information in respect of purchases. The AO found that the assessee has obtained bogus purchase bills and to test check the genuineness of the transactions, the AO has issued notice u/sec 133(6) of the Act to the party and the said notice was returned un served with remark "Left" by the postal authorities. Hence the AO vide order sheet nothing dated 6-03-2016 has called for the additional details from the assessee. Whereas the AO has received some information but the assessee has failed to produce the party for verification. Finally, the AO dealt on the facts and information at Para 4.4 to 4.8 of the order and was not satisfied with the explanations of the assessee and observed that the genuineness of the transactions could not be established and made disallowance of alleged bogus purchases of Rs.7,69,600/-.On the second issue, the AO has considered the facts and submissions of the assessee on the claim of deduction u/sec 80IC of the Act at Para 5 of the order and called for the details substantiating the claim dealt at Para 5.3 &5.4 of the order and since the assessee has furnished the

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incomplete details, the A.O has denied the claim of deduction u/sec80IC of the Act of Rs.40,34,686/- and assessed the total income of Rs. 48,04,470/- and passed the order u/sec 143(3) r.w.s 147 of the Act dated 31.03.2016.

4. Aggrieved by the order the assessee has filed an appeal before the CIT(A), whereas the CIT(A) considered the grounds of appeal, submissions of the assessee and findings of the AO but has sustained the action of the assessing officer and has dismissed the assessee appeal. Aggrieved by the CIT(A)order, the assessee has filed an appeal before the Hon'ble Tribunal.

5. At the time of hearing, the Ld. AR made submissions on addition of the bogus purchases that, the CIT(A) has erred in confirming the action of the AO irrespective of the fact that the assessee has submitted information/details before the lower authorities and the books of accounts are maintained and the payments have been made through the

banking channel. On the second disputed issue, the Ld.AR submitted that CIT(A) has erred in confirming the non allow ability of claim of deduction u/sec 80IC of the Act. Further in the original assessment order passed u/sec 143(3) of the Act on 08.11.2012, the AO has accepted the information filed by the assessee and allowed the claim of deduction u/sec80IC of the Act. The Ld.AR submitted that the reasons for reopening of assessment was only with respect to the information received from DGIT (Inv) on the bogus purchases and not with respect to claim of deduction u/sec 80IC of the Act and it is a merely a change of opinion and the A.O has denied the claim of deduction without any tangible material. The Ld.AR substantiated the submissions with the factual paper book and judicial decisions and prayed for allowing the assessee appeal. Contra, the Ld. DR submitted that the assessee has indulged in alleged bogus purchases and has not furnished the details on the claim of deduction u/sec80IC of the Act in the assessment proceedings and the Ld.DR relied on the order of the CIT(A).

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6. Heard the rival submissions and perused the material on record. In respect of addition of bogus purchases made by the A.O. and confirmed by the Ld CIT(A).The Assessing Officer has made addition of the purchases as there is no compliance to the notice u/sec133(6) of the Act and non production of the parties. Whereas the assessee has made bogus purchases from the party/ dealer and in turn it provides savings to the assessee in nonpayment of state taxes and the Ld.AR has referred to the gross profit rate chart for the A.Y 2009-10 to A.Y 2011-12. Therefore considered the facts and circumstances and the decisions of the Honble High Court and the Honble Tribunal in the identical cases and the judicial precedence were estimating the profit element embedded @12.5% of doubtful/ bogus purchases was accepted. Further the assessing officer has not doubted the sales and hence considering the ratio of decision of Hon'ble Jurisdictional High Court in the case of CIT v. Nikunj Eximp (216 Taxman.com 171)) and Honble Gujarat High court in CIT Vs. Simit P Sheth (2013) (356 ITR 451) and to meet the ends of justice, set-aside the order of the CIT(A) on this disputed issue and direct the assessing officer to estimate the income@12.5% on unapproved/

bogus purchases and partly allow this ground of appeal of the assessee.

7. On the second disputed issue of denial of claim of deduction u/sec 80IC of the Act, the contentions of the Ld. AR that in the assessment proceedings u/sec 143(3) of the Act, the assessing officer has called for the details and the assessee has submitted the information in lieu of query and referred to the notice u/sec 142(1) of the Act dated 13.09.2012 at Point No. 33 “in respect of your claim of deduction u/s 80IC, furnish form No. 10CCC and submit a detailed note on the fulfillment of conditions for eligibility of deduction u/s 80IC of the Act”. The Ld.AR submitted that the assessing officer considered the details filed by the assessee and allowed the claim. Whereas the reassessment proceedings of the A.O are on same set of facts and mere change of opinion and denial of the claim u/sec80IC of the Act is not tenable.

8.The Ld.AR emphasized that in the A.Y.2008-09 being first year, the claim of deduction U/sec80IC of the Act was allowed by the assessing officer and for

subsequent years from A.Y.2011-12 to 2015-16, the revenue has considered the assessee's submissions and the claim was allowed. The Ld. AR also referred to the copy of 10CCB, certificate of registration, rental agreements and other details to substantiate the claim of 80IC of the Act. When a query was raised to Ld.AR to substantiate with the submissions on claim of deduction u/sec80IC of the Act in lieu of notice U/sec142(1) of the Act discussed above, made in the original assessment proceedings u/sec143(3) of the Act, the explanations are not convincing and are not supported with the evidences and similarly the Ld DR also could not express the view on this query. Therefore, considering the principles of natural justice shall provide with one more opportunity of hearing to the assessee to substantiate the case with evidences and information. Accordingly, set aside the order of the CIT(A) on this disputed issue and remit the entire disputed issue of claim of deduction U/sec80IC of the Act for limited purpose to the file of the Assessing Officer to examine and adjudicate afresh on merits considering facts discussed above and the assessee should be provided adequate

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opportunity of hearing and shall cooperate in submitting the information. And allow this ground of appeal of the appeal for statistical purposes.

9. In the result, the appeal filed by the assessee is partly allowed for statistical purposes.

Order pronounced in the open court on 19.02.2024.

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated 19.02.2024

KRK, PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT (Judicial)
4. The PCIT
5. DR, ITAT, Mumbai
6. Guard File

सत्यापित प्रति //True Copy//

1.

आदेशानुसार/ BY ORDER,

(Asst. Registrar)
ITAT, Mumbai

		Date
1.	Draft dictated on	08.11.2023
2.	Draft placed before author	06.12.2023
3.	Draft proposed & placed before the second member	
4.	Draft discussed/approved by Second Member.	
5.	Approved Draft comes to the Sr.PS/PS	
6.	Kept for pronouncement on	
7.	File sent to the Bench Clerk	
8.	Date on which file goes to the AR	
9.	Date on which file goes to the Head Clerk	
10.	Date of dispatch of Order.	
11.	Dictation Pad is enclosed	