

आयकर अपीलीय अधीकरण, न्यायपीठ –“A” कोलकाता,
IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH: KOLKATA
[Before Hon’ble Shri A. T. Varkey, JM & Hon’ble Shri Manish Borad, AM]

I.T.A. No. 2446/Kol/2019
Assessment Year: 1997-98

DCIT, Circle-3(1), Kolkata	Vs.	M/s MSL Industries ltd. (PAN: AACCM 0109 M)
Appellant		Respondent

Date of Hearing (Virtual)	09.09.2021
Date of Pronouncement	04.10.2021
For the Appellant	Shri Supriyo Paul, Advocate
For the Respondent	Shri Akkal Dudhwewala, CA

ORDER

Per Shri A. T. Varkey, JM:

This is an appeal preferred by the revenue against the order of Ld. CIT(A)-10, Kolkata dated 30.07.2019 for Assessment year 1997-98.

2. The grounds of appeal raised by the assessee reads as under:

1. *Whether in the facts and circumstances of the case and in law the Ld. CIT(A) was justified in deleting the addition made by the AO of Rs. 1,05,03,063/- on account of excess deduction u/s 80IA.*

3. Briefly stated, the facts of the present case are that, the assessee is engaged in the business of manufacture and production of steel strips and compounds. The assessee operated two steel units at Patna, namely Steel Unit-I & Steel Unit II and a Hi-Tech Steel Unit. For the relevant AY 1997-98, the assessee had filed the return of income declaring total income of Rs.5,76,06,700/- after claiming deduction u/s 80-IA of Rs.1,15,46,638/- being 30% of the profits of Rs.3,84,88,795/- of the eligible Steel Unit-II. The AO in the original assessment order passed u/s 143(3) of the Act dated 15.03.2000 assessed the total income at Rs. 10,03,18,170/-. In the said order, the AO had *inter alia* disallowed the

separate claim of deduction of interest of Rs.3,50,10,212/-made by the assessee in the return of income, which was otherwise was capitalized in the stand-alone accounts of Hi-Tech Steel Unit. On appeal, the Ld. CIT(Appeals) deleted the aforesaid addition. The AO accordingly passed an order giving effect to the Ld. CIT(A)'s order u/s 251/143(3) dated 17.01.2001, re-computing the total income at Rs.6,26,86,780/-. The AO thereafter issued notice u/s 154 of the Act wherein he proposed to rectify the computation of deduction u/s 80IA of the Act. According to the AO, the interest of Rs.3,50,10,212/-, whose deduction was allowed by the Ld. CIT(A), was required to be deducted from the eligible profits of Steel-II Unit. The AO accordingly passed an order u/s 154/251/143(3) dated 30.03.2005 wherein he reduced the claim of deduction u/s 80IA from Rs. 1,15,46,638/- to Rs.10,42,405/- [(Rs.3,84,88,795 - Rs.3,50,10,212) Rs.34,74,683/- X 30%] and re-computed the total income at Rs. 7,31,89,840/- (Rs.6,26,86,786/- + Rs.1,05,03,063/-). Thus Deduction u/s 80IA was reduced from Rs.1,15,46,638/- to Rs.10,42,405/- and thereby Rs. 1,05,03,063/- was disallowed and so added. Aggrieved by the said rectification order, the assessee preferred an appeal before the Ld. CIT(A). On first appeal, the Ld. CIT(A)-XX, Kolkata by his appellate order dated 10.12.2012 upheld the order passed by the AO u/s 154/251/143(3) of the Act. On further appeal, this Tribunal by its order in ITA No. 259/Kol/2013 dated 07.09.2016 restored the matter back to the Ld. CIT(A) to decide the issue afresh with the following observations:

"5. A perusal of paragraph no. 5.1 of the impugned order of the Id. CIT(Appeals) extracting the detailed submissions of the assessee on the issue and paragraph no. 5.2 of the order of the Id. CIT(Appeals) giving his decision thereon clearly shows that the various factual aspects pointed out by the assessee have not even been verified by the Id. CIT(Appeals) from the relevant record nor the same have been discussed and considered by him while passing a very cryptic order on this issue dismissing the case of the assessee without giving any cogent and convincing reason. We, therefore, "consider it fair and proper and in-the-interest-of-justice- to set aside the , impugned order of the Ld. CIT(Appeals) on this issue and remit the matter back to him for deciding the same afresh by passing a well-reasoned and well discussed order after verifying all the factual aspects from the relevant record."

Pursuant to the directions of this Tribunal, the appeal being restored for fresh hearing it was re-fixed by Ld. CIT(A)-10, Kolkata. Before the Ld. CIT(A), the appellant furnished detailed explanation setting out the factual aspects of the case and the erroneous facts assumed by the AO while passing the rectification order dated 30.03.2005, copy of which has been

placed at Pages 1 to 5 of the Paper book. Upon verifying the facts and submissions put forth by the assessee, the Ld. CIT(A) cancelled the rectification order holding it to be bad in law by observing as under:

05. *Findings & Decisions:*

1. *The present proceedings emanate from the order of the Hon'ble ITAT dated 07.09.2016 wherein the Tribunal restored the matter back to the First Appellate Authority for deciding the issues afresh by passing a well-reasoned and well discussed order after verifying all the factual aspects from the records. In the course of appellate proceedings, besides claiming that the order u/s 154 was passed by the Ld. AO without properly serving the statutory notice and without granting adequate opportunity of being heard, it was emphatically claimed by the appellant-company that the order was passed by the Ld. AO due to wrong understanding of the facts concerning the appellant's claim of deduction u/s 80IA of the Income Tax Act. During the course of the appellate proceedings, the Ld. A.R.s filed before me the Audited Financial Statements of three units of the appellant which were in operation during the FY 1996-97. The Id. ARs have submitted that the primary issue to be adjudicated in the present appeal is whether the interest capitalization of Rs.3,50,10,212/- for which deduction as revenue expenditure was allowed by the Id. CIT(Appels) 'actually pertained to the industrial undertaking which claimed deduction u/s 80IA or it related to other non-eligible undertaking. The Ld. AO passed the impugned order u/s 154 on the premise that interest capitalization was effected in the books of Steel Unit No. II, which had claimed deduction u/s 80IA @ 30% of its profits for the FY 1996-97. In the assessment order u/s 143(3) the Ld. AO did not allow the claim of the assessee for its deduction but on appeal the Ld. CIT(A) allowed the appellants claim for interest as revenue deduction in computing the profits of the business for AY 1997-98. In the order u/s 251 the Ld. AO allowed the relief as per the directions of the Ld. CIT(A). -Later on the Ld. AO considered the order u/s 143(3)/251 to be erroneous on the presumption that the deduction for interest allowed pertained to the assessee's undertaking which had claimed deduction u/s 80IA. On this presumption the Ld. AO considered the order u/s 143(3)/251 to be erroneous within the meaning of Section 154 and accordingly passed the rectification order impugned in appeal.*

2. *On careful analysis of the submissions filed by the Ld. A.Rs for the appellant-company, I find that if the facts assumed by the Ld. AO were in fact correct, then the order u/s 154 would have been upheld to be legally correct. I however observe that since the proceedings u/s 154 were conducted by the Ld. AO in what clearly appears to be utmost haste and adequate and proper opportunity of being heard was not granted to the assessee, the true and correct facts were not considered by the Ld. AO nor the assessee was afforded any dear opportunity of bringing to the Ld. AO's attention that the proceedings u/s 154 were initiated on assumption of incorrect facts, Keeping in mind the fact that the authorities below passed the orders without discussing thread-bare the relevant facts the Hon'ble Tribunal deemed prudent and necessary to restore the entire matter to the file of the 1st Appellate Authority for deciding the matter afresh and after verifying all factual aspects and affording opportunity of hearing. From the audited financial statements of the three undertakings as also the annual audited accounts of the appellant company at entity level. I find that the Ld. AO has proceeded on an incorrect appreciation and understanding of the material facts. It is undisputed that the appellant's claim u/s 80IA related to profits derived by Steel Unit II in respect of which separate accounts were maintained by the appellant and audit report in the prescribed form as required u/s 80IA was furnished before the Ld. AO. On careful scrutiny of the accounts of Unit II-I find that the gross interest, expenditure of Unit-II was Rs. 5,90,39,087/- whereas interest recovery was Rs. 5,28,16,707/- and thereby the net interest expenditure of Unit II was only Rs. 62,22,380/-."From the fixed asset schedule it also appeared that the gross additions to the fixed assets during the relevant year was only Rs.32,63,286/- and there was no capitalization of expenses in the*

accounts of Steel Unit-II. On the other hand I observe that in the stand alone accounts of Hi-tech Steel Division, there was capitalization of Rs. 8,97,33,631/-. In the notes on Accounts, under the heading Significant Accounting Policies, the disclosure in Clause (II) clarified as follows:

02. High Tensile Unit was commissioned in 1993 and the related expenses and cost of Plant & machinery and other Assets of the said unit relating to one aforesaid period were capitalized in the accounts for the year 1993-94, 1994-95 & 1995-96. However, technical bottlenecks teething troubles and stabilization of production needed corrections and remedial measures which were carried out subsequently and the company is going to give steady feasible production very shortly. It has, therefore, been considered prudent to reflect the above, by making the following adjustments in accounts.

(i)	<u>Relating to the year 1994-95</u>	(Rs.)
	Write back of depreciation	<u>19148</u>
	Write back of expenses (Net of Sales Proceeds & Stocks) accounted as Pre-operative expenses now	(-) 9284
		<u>(-) 9284</u>
(ii)	<u>Relating to the year 1995-96</u>	
	Write back of depreciation	6188321
	Write back of expenses (Net of Sales Proceeds & Stocks) accounted as Pre-operative expenses now	543137
		<u>543137</u>
(iii)	<u>Relating to the year 1996-97</u>	
	Interest capitalized	37585970
	Write back of expenses (Net of Sales Proceeds & Stocks) accounted as Pre-operative expenses now	(-) 3109605
		<u>34476365</u>
	Corresponding adjustments in Fixed Assets Now carried out (i) + (ii) + (iii)	35010212

3. I also rote that in the annual audited accounts; of the appellant at entity level, the assessee had made following disclosure in Clause (13) of the Notes on Accounts:

"13 High Tensile unit was commissioned in 1993 and the related expenses, cost of Plant & Machinery and. cost of other Assets were capitalized in usual course. However, due to certain technical bottlenecks, teething problems and non-stabilization of feasible production, certain correction and remedial measures certain adjustments in Financial accounts to reflect the correct position. The following adjustments are made in this account for 1996-97 including relating to the period for 1994-95 and 1995-96 affecting profit and loss accounts accordingly:

ITEMS	YEAR	AMOUNT	TOTAL
Depreciation	1994-95	19,148/-	
-do-	1995-96	61,88,321/-	
			62,07,469/-
Interest on Borrowed fund	1996-97	3,75,85,970/-	3,75,85,970/-
Other expenses (net) including net cost of production not meant for sale	1994-95	(-) 9,284/-	
	1995-96	5,43,131/-	
	1996-97	(-) 31,09,605	
			25,75,758/-
			4,12,17,681/-

4. Admittedly, these annual audited financial statements were available before the Ld.AO at the time when the assessment order u/s 143(3), order u/s 143(3)/25t as also the order u/s 154 was passed. From plain reading of the disclosures made in the Notes on Accounts, it was very much apparent that the interest capitalization of Rs.3,50,10,212/- for which the Ld. CIT(A) had allowed deduction did not pertain to Steel Unit II which qualified for deduction u/s 80IA of the Act. I therefore find merit in the submissions made by the Ld. A.Rs that the Ld. AO passed the impugned order u/s 154 on assumption of wrong facts, The material on record indicate that in arriving at profits of the eligible undertaking no deduction for interest of Rs.3,50,10,212/- was allowed by the Ld. AO while passing the order u/s 143(3)/251 dated 17.01.2001. In the circumstances therefore, there was no cause for the Ld.AO to initiate proceedings u/s 154 for rectifying any mistake apparent from record in the order dated 17.01.2001.

5. For the foregoing reasons therefore, I hold that the order u/s 143(3)/251/154 dated 30.03.2005 was passed on assumption of wrong facts and consequently therefore it was bad in law. Accordingly the order dated 30.03.2005 passed u/s 143(3)/251/154 is hereby cancelled.

In the final result, appeal filed by the appellant is treated as "allowed".

4. Aggrieved by the aforesaid action of the Ld. CIT(A) the revenue is before us.

5. Assailing the action of the Ld. CIT(A) the Ld. DR, Shri Supriyo Pal submitted that there is confusion in the facts which need to be verified by the AO properly. According to him, therefore, the issue may be sent back to the AO for verification. Per contra, the Ld. AR Shri Akkal Dudhewewala submitted that the claim of deduction of interest of Rs.3,50,10,212/- was pertaining to the Hitech Steel Unit which was not the eligible unit u/s. 80IA of the Act and the AO wrongly assumed that interest expenditure pertained to the eligible unit which was granted deduction u/s 80IA of the Act. Therefore, the AO erred in initiating the rectification u/s. 154 of the Act on wrong assumption of fact that deduction of interest of the sum of Rs.3,50,10,212/- pertained to the eligible Steel Unit-II (section 80IA

of the Act) when it actually pertained to non-eligible Hitech Steel Unit and therefore, the mistake happened. And the Ld. CIT(A) has rectified the same by passing this impugned order and, therefore, he does not want us to interfere with the order passed by the Ld. CIT(A).

6. We have heard both the parties and perused the records. We note that the assessee company has three steel units: (a) Steel Unit-I, (b) Steel Unit-II & (c) Hi tech Steel Unit. The assessee claimed deduction u/s. 80IA only in respect of Unit-II steel division of an amount of Rs. 1,15,46,638/-. This claim of the assessee was allowed by the AO in the original assessment order passed u/s 143(3) on 15.03.2000 by assessing the total income at Rs.10,03,18,170/- by *inter alia* disallowing the separate claim of deduction of interest of Rs.3,50,10,212/- made by the assessee in the return of income which was otherwise capitalized in the stand alone account of Hitech Steel Unit. On appeal, the Ld. CIT(A) allowed and deleted the addition. And the AO gave effect to the Ld. CIT(A)'s order dated 17.01.2001 and recomputed the total income at Rs.6,26,86,780/-. Thereafter the AO initiated the action u/s. 154 of the Act to rectify the computation of deduction u/s. 80IA of the Act. According to AO, the interest of Rs.3,50,10,212/- which was allowed/deleted by the Ld. CIT(A) was required to be deducted from the eligible profits of steel-II Unit. The AO accordingly passed an order dated 30.03.2005 where he reduced the claim of deduction u/s. 80IA from Rs.1,15,46,638/- to Rs.10,42,405/- [Rs.3,84,88,795 - Rs.3,50,10,212/- = Rs.34,74,683 x 30%]/-. And thereby disallowed the deduction granted u/s 80IA of the Act by the original assessment order at Rs.1,15,46,638/- to Rs.10,42,405/-. Consequently the AO made an addition of Rs.1,05,03,063/- [Rs.1,15,46,638 - Rs.10,42,405]. So the AO recomputed the total income at Rs.7,31,89,840/- [Rs.6,26,86,786 + Rs.1,05,03,063]. On appeal *albeit* in the second round, the Ld. CIT(A) passed the impugned order wherein he allowed the appeal and cancelled the rectification order passed by the AO u/s. 154 of the Act dated 30.03.2005. For giving the relief, the Ld. CIT(A) noted that the capitalization of interest of Rs. 3,50,10,212/- pertained Hi-tech Steel Unit of the assessee and it has nothing to do with the Unit-II Steel Division which is the eligible unit for Section 80IA deduction. The AO on this wrong assumption i.e, interest of Rs. 3,50,10,212/- pertained the Unit-II

Steel Division which is the eligible unit for deduction under Section 80IA of the Act, has disallowed the section 80IA deduction allowed in the original assessment proceedings from Rs.1,15,46,638/- to Rs.10,42,405/-. Due to mis-appreciation of facts the AO passed the rectification order u/s. 154 of the Act dated 30.03.2005, which has been rightly cancelled by the Ld. CIT(A) by passing the impugned order. We note that interest claim of assessee of Rs.3,50,10,212/- pertained to non-eligible unit for the purpose of section 80IA of the Act and which pertained to the Hi Tech Unit which was admittedly maintaining stand alone account. And the AO erred in rectifying the order dated 17.01.2001 wherein the total income was computed at Rs.6,26,86,780/-. The AO on wrong assumption of facts has passed the erroneous order dated 30.03.2005. We note that the Ld. CIT(A) has clearly given a finding that the interest expenditure of Rs.3,50,10,212/- allowed by his predecessor Ld. CIT(A) as deduction do not pertain to the eligible Steel Unit-II and clarified that it pertained to Hi tech Unit, which finding of fact has not been challenged by the revenue. Since this crucial fact which the AO has wrongly assumed the error happened. So therefore, we do not find any merit in the revenue's appeal and we confirm the order of the Ld. CIT(A) and dismiss the appeal of the revenue.

7. The ground no. 2 raised by the revenue reads as under:

2. *Whether in the facts and circumstances of the case and in law the Ld. CIT(A) was justified in cancelling the order u/s 143(3)/251/154 dated 30.03.2005 made by the AO whereas Ld. CIT(A)-XX, Kolkata has confirmed the order u/s 154.*

In the second ground of appeal, the Revenue has objected to the Ld. CIT(A)'s action of allowing the assessee's appeal in the second round of proceedings without appreciating the fact that in the first round the earlier CIT(A)-XX, Kolkata had confirmed the order of the AO. On this issue, the Ld. AR of the assessee has rightly pointed out that this ground has no merit at all as the order dated 10.12.2012 passed by the CIT(A)-XX, Kolkata in the first round of appellate proceedings had been set aside by this Tribunal by their order in ITA No. 259/Kol/2013 dated 07.09.2016 wherein it had been observed that the Ld. CIT(A)-XX, Kolkata had not verified several factual aspects pointed out by the assessee and that he had dismissed the appeal by passing cryptic order without giving any cogent reason. This

Tribunal had accordingly set aside the order and remitted back the matters to the CIT(A) with the direction to Ld. CIT(A) to decide the issue afresh by passing a reasoned order after verifying all factual aspects of the case (supra). We thus note that the first round order of the CIT(A)-XX, Kolkata dated 10.12.2012 does not survive since it has been set aside by this Tribunal and therefore the Ld. CIT(A)-10, who passed the impugned order, was not required to look into it or get influenced in any manner by the earlier order of his predecessor. For the aforesaid reasons, this ground taken by the Revenue is misconceived and is ludicrous and is held to be untenable, so stands dismissed.

8. In the result, the appeal of revenue is dismissed

Order is pronounced in the open court on 4th October, 2021.

Sd/-
(Manish Borad)
Accountant Member

Sd/-
(A. T. Varkey)
Judicial Member

Dated: 04.10.2021

SB, Sr. PS

Copy of the order forwarded to:

1. Appellant- DCIT, Circle-3(1), Kolkata
2. Respondent – M/s MSL Industries Ltd., P-22, Swallow Lane, Kolkata-700001.
3. CIT(A)- XX, Kolkata
4. CIT- Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar/DDO
ITAT, Kolkata Benches, Kolkata