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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **ITA 1105/2017**

THE PR.COMMISSIONER OF INCOME TAX-4 ..... Appellant

Through: Mr.Deepak Anand, Junior Standign Cousnel for Mr.Zoheb Hossain, Senior Standing Counsel for the Revenue.

versus

GUJARAT GUARDIAN LTD. ..... Respondent

Through: Mr.Ajay Vohra, Senior Advocate with Mr.Aniket D. Agrawal, Ms. Kannopriya Gupta and Mr.Neeraj Jain, Advocates.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE TALWANT SINGH

O R D E R

% **07.08.2019**

1. The Revenue is in appeal against an order dated 3rd October, 2016 passed by the Income Tax Appellate Tribunal (ITAT) in ITA No. 3554/Del/2014 and 3595/Del/2014 for the Assessment Year AY) 2009-10.

2. While admitting this appeal for hearing on 5thDecember,2017, the following question of law was framed for consideration:

> *"Did the ITAT fall into error in overlooking the mandate of Section 80AC read with Section 80IA (7) in the proceeding to allow the benefit of Section 80IA to the assessee, in the circumstances of this case?"*

3. The brief background is that the Respondent had set up Windmill Project-I at Satarpur, Gujarat in the Financial Year 2003-04 and Windmill Project-II at Bamansa, Gujarat during FY 2004-05. The Respondent claimed Assessment Year (AY) 2009-10 is the first year of claim of deduction under Section 80IA of the Income Tax Act, 1961 ('Act') in respect of these Windmills. This benefit is available for ten consecutive years out of fifteen years of beginning from the year in which the undertaking begins to generate powers in terms of 80IA (1) and (2) of the Act.

4. The original return of income for AYs 2009-10 was filed on 29th September, 2009 after setting-off unabsorbed depreciation from the above two windmill units [even though the same had been fully absorbed against the profits from the float glass business of the Respondent/Assessee for earlier years]. Accordingly deduction was claimed under Section 80IA of the Act at Rs.2,02,18,687/- in respect of the Windmill and the Project-I and nil in respect of Windmill Project-II.

5. The Assessee placed reliance on the decision of the Madras High Court ***Velayudhawamy Spinning Mills v. ACIT (2010) 231 CTR 368 (Madras)*** seeking enhancement of the claim of deduction under Section 80IA of the Act to the extent of Rs.23,38,40,683/- i.e. without setting-off unabsorbed depreciation pertaining to the said Projects already adjusted in the respective years against income from the other business of the Respondent. Relying on the judgment of Supreme Court in ***Goetze India Ltd. v. CIT [2006] 284 ITR 323 (SC)***, the AO rejected the revised claim. The Commissioner of Income Tax (Appeal) [CIT(A)] by an order dated 31st March, 2004 under Section

250(6) of the Act admitted the revised claim of deduction under Section 80IA of the Act. However, the CIT (A) on merits rejected the enhancement of the deduction on a different ground.

6. Both the Revenue and Assessee filed cross-appeals before the ITAT. By the impugned order the ITAT has allowed the appeal of the Assessee and dismissed the appeal of the Revenue. The ITAT has upheld admissibility of the revised claims on merits.

7. We noticed that this Court confined the scope of the appeal to only one question namely whether in allowing the benefit under Section 80IA to the Assessee, the ITAT had overlooked Section 80AC read with 80IA (7) of the Act.

8. Section 80AC of the Act states that the deduction under 80IA would not be allowable to an Assessee 'unless he furnishes a return of his income for such assessment year on or before the period specified under Section 139(1) of the Act'. Under Section 80IA (7), the deduction under sub-Section 1 of 80IA shall not be admissible 'unless the accounts of the undertaking for the previous year relevant to the assessment year for which the deduction is claimed have been audited by an accountant' and the Assessee furnishes on furnishing his return of income, the report of such audit in the prescribed form duly signed and verified by such accountant.

9. The admitted position that the Assessee did not furnish such audited report form as originally filed. It has been explained by the Assessee that in

view of Rule 12(2) of Income Tax Act, 1962, which required returns filed electronically not to be accompanied by any document, the audit reports under Form No. 10CCB of Windmill Project I and II were in fact not required to be filed along with return of income of 2009-10. The requirement was subsequently introduced by amending the Rules by the Income Tax (Seventh Amendment) Rules 2013 with effect from 1st April, 2013. As a result these audit reports were filed in the course of assessment by letter dated 9th November, 2011 and this has not been disputed by the Revenue.

10. On the question whether the claim can be raised in a revised return, it seems to be answered in favour of the Assessee and against the Revenue by the judgment of this Court in ***CIT v. Jai Parabolic Springs Limited [2008] 306 ITR 42 (Del)***. In the said decision this Court has recognized that the powers of the ITAT are wide enough to admit a claim for deduction to be made by way of a revised return. Likewise in ***CIT Sam Global Securities Ltd [2014] 368 ITR 682 (Del)***, a similar plea on behalf of the Assessee was accepted by this Court.

11. Consequently, this court answers the question in favour of the Assessee and against the Revenue. The appeal is accordingly disposed of.

S. MURALIDHAR, J.

TALWANT SINGH, J.

AUGUST 07, 2019
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