

OD-9

IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION [INCOME TAX]
ORIGINAL SIDE

ITAT/91/2023
IA NO.GA/2/2023

PRINCIPAL COMMISSIONER OF INCOME TAX-2, KOLKATA
-Versus-
M/S. DEEPAK INDUSTRIES LTD.

BEFORE:

The Hon'ble T.S. SIVAGNANAM, CHIEF JUSTICE

-And-

The Hon'ble JUSTICE AJAY KUMAR GUPTA

Date : 19th June, 2023.

Appearance :
Mr. Soumen Bhattacharjee, Adv.
..for the appellant.

Mr.J.P. Khaitan, Sr. Adv.
Mr. A.P. Agarwalla, Adv.
...for the respondent.

The Court : This appeal by the revenue filed under Section 260A of the Income Tax Act, 1961 (the 'Act') is directed against the order dated 23rd June, 2022 passed by the Income Tax Appellate Tribunal, "C" Bench, Kolkata (Tribunal) in ITA No. 264/Kol/2020 and C.O. No. 05/Kol/2021 for the assessment year 2015-16.

The revenue has raised the following substantial questions for consideration :

- a) On the facts and in the circumstances of the case and in law, whether the Hon'ble ITAT has erred in law in relying on the order u/s 143(3) of the Income Tax Act, 1961 for the A.Y. 2008-09 to 2013-14 and ignoring the fact that the case was not referred to TPO for Transfer Pricing proceeding in A.Y.s 2008-09 to 2013-14 ?
- b) On the facts and in the circumstances of the case and in law, whether the Hon'ble ITAT has perversely erred in law by applying the principle of consistency, by citing case law of Radhaswami Satsang vs C.I.T in 193 ITR 321 (SC) which is not applicable in the instant case, since TP proceedings were never made in earlier A.Y.s 2008-09 to 2013-14 ?
- c) On the facts and in the circumstances of the case and in law, whether the Hon'ble ITAT has erred in law as well as in facts by violating rule 10B & 10C of Income tax Rule, 1962 by not undertaking adequate 'comparability' analysis and 'reliable and accurate adjustments' in deleting the adjustments made by the TPO ?
- d) On the facts and in the circumstances of the case and in law, whether the Hon'ble ITAT has erred in law as well as in facts by deleting the adjustments erroneously without taking into consideration the extraordinary difference in operating profitability between eligible and non-eligible unit of the assessee for determining the Arm's Length Price ?
- e) On the facts and in the circumstances of the case and in law, whether the Hon'ble ITAT has erred in law as it failed to appreciate that, by transferring the more profitability of the assessee to eligible unit, the assessee is taking

advantage to claim more deduction under section 80IC of the Income tax Act ?

We have heard Mr. Soumen Bhattacharjee, learned standing counsel appearing for the appellant/revenue and Mr. J.P. Khaitan, learned senior counsel, assisted by Mr. A.P. Agarwalla, learned Advocate for the respondent/assessee.

On the last hearing date the learned senior Counsel for the respondent/assessee submitted that the tax effect in the instant case is less than Rs.1 Crore, that is, Rs.65,05,587/- and therefore the revenue cannot pursue this appeal on the ground of low tax effect. In order to afford an opportunity to the revenue to come back on the said question, the matter stood adjourned by order dated 12th May, 2023. It appears that no specific written instructions have been given to the learned standing Counsel for the appellant in this regard. Nevertheless, the Court examined the matter.

As could be seen from the assessment order dated 18th January, 2019 passed under Section 143(3) of the Act, the particulars with regard to profit of Section 80IC unit has been given as hereunder :-

<u>Particulars</u>	<u>Amount (Rs)</u>
Profit of the 80IC Unit	Rs. 18,84,12,027/-
Less: Total adjustment as above	<u>Rs. 6,57,13,000/-</u>

Total	Rs. 12,26,99,027/-
Less: Other Income (Interest)	<u>Rs. 5,16,60,474/-</u>
Total	<u>Rs. 7,10,38,553/-</u>
Deduction u/s 80IC @ 30% of above profit	Rs. 2,13,11,566/-

Hence, the deduction u/s 80IC will be reduced to Rs. 2,13,11,566/- as against the claim of the assessee of Rs. 4,10,25,466/-. Penalty u/s 271(1)(c) is initiated for furnishing inaccurate particulars of income.

From the table above, it is seen that the deduction under Section 80IC at 30% of the profit is Rs.2,13,11,566/- as against the claim of the assessee of Rs.4,10,25,466/-. If this is taken, the tax effect will be less than the threshold limit of Rs.1 Crore. However, on perusal of the order passed by the Commissioner of Income Tax (Appeals) 22, Kol [CIT(A)] dated 31st October, 2019, the tax amount is mentioned as Rs.1,03,10,590/-. In our view, the said computation is on account of mistake computed while not rightly noting on what amount the tax has to be computed. If we peruse the income tax computation form for the relevant assessment year, under the heading Final Details, the followings have been mentioned :-

FINAL DETAILS

1. Total tax and Interest Payable	8005462
2. Interest u/s 244A	0
3. Interest made u/s 244A recovered	- 11,18,954

4. Delay period attributable to Assessee	
5. Interest u/s 234D	11,86,174
6. Interest u/s 220	
	DEMAND/REFUND
1. Net amount payable/ In Words Rupees:	1,03,10,590

As could be seen from the above table, the total tax is Rs.80,05,462/-. Thus it is clear that the tax effect in the instant case is less than the threshold limit fixed by the CBDT. Hence the revenue cannot pursue this appeal.

Accordingly, the appeal stands disposed of on the ground of low tax effect and the substantial questions of law are left open.

The stay application IA No.GA/2/2023 also stands disposed of.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

(AJAY KUMAR GUPTA, J.)