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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**INCOME TAX APPEAL NO.1943 OF 2017
WITH
INCOME TAX APPEAL NO.523 OF 2018**

The Pr. Commissioner of Income Tax
(Central) Pune
6th Floor, Ayakar Sadan, Bodhi Tower
Salisbury Park, Pune 411 037

...Appellant

VERSUS

Punit Chettiar alias Punit Balan
Unit No.605, Sai Chambers, 5th Floor,
Wakdewadi, Pune Mumbai Road,
Pune-411003.
AALPC5158J

...Respondent

Mr.Suresh Kumar for the Appellant.
Mr. Prayag Jha a/w. Mr. Prateek Jha for the Respondent.

**CORAM : K. R. SHRIRAM &
FIRDOSH P. POONIWALLA, JJ.
DATE : 05TH JULY 2023**

JUDGMENT (Per Firdosh P. Pooniwalla, J.) :

1. The present Appeals challenge a Common Order dated 25th November 2016 passed by the Income Tax Appellate Tribunal ("ITAT"). Income Tax Appeal (ITA) No. 1943 of 2017 challenges a part of the said Order passed by the ITAT in ITA No.1306 of 2013 in

respect of Assessment Year 2009-10 and Income Tax Appeal No. 523 of 2018 challenges a part of the said Order passed by the ITAT in ITA No. 1307 of 2013 in respect of Assessment Year 2010-11.

2. The facts in Income Tax Appeal No.1943 of 2017 are that the Assessing Officer (“AO”), during the course of the assessment proceedings, found that the Assessee had claimed deduction under Section 80IA(4)(iii) of the Income Tax Act, 1961 (“the Act”) to the tune of Rs.3,70,52,575/- for its Sai Trinity project situated at Survey No. 146, Hissa No.2/1A+2B/1+2/1B, Pashan, Pune. During the course of the survey action under Section 133A of the Act at the office premises of M/s. Sai Constructions Pvt. Ltd. at 604, 605, Sai Chambers, Wakdewadi, Pune, on 20th January 2010, certain loose papers and documents were impounded wherein page No. 102 of Bundle No.B was a copy of the letter dated 4th March 2009 from the Under Secretary, Ministry of Commerce and Industry, Government of India, to the Assessee which stated that, on the basis of the State Government’s Report dated 23rd April 2008, the building in which the Industrial Park was being developed by the Assessee’s proprietary concern, M/s. S Balan, did not belong to an individual but belonged to a partnership firm named M/s. S Balan & Co.

Further, the said letter mentioned that the building was divided into three different wings and only a part of that building (Central Wing) was being developed as an Industrial Park, thus it could not be stated that an Industrial Park was being developed as a whole and accordingly the case of the Assessee was not eligible under the Industrial Park Scheme, 2002. Further, during the course of survey action, in the Statement recorded on 20th January 2010, the Assessee stated that he was withdrawing the claim for deduction under Section 80IA(4)(iii) subject to the outcome of the Review Application filed before the Ministry of Commerce and Industry.

3. The AO found that, in the Return filed under Section 153A for Assessment Year 2009-10 and Assessment Year 2010-11, the Assessee had claimed deduction under Section 80IA(4)(iii). The AO sought the explanation of the Assessee and found the explanation to be not acceptable because on the basis of the said letter from the Under Secretary, Ministry of Commerce and Industry, the Assessee was not eligible for the said deduction. The AO also found that the pendency of the Review Application of the Assessee before the concerned authority did not make the Assessee eligible for the said deduction. The AO further noted that the

Assessee had retracted his Statement dated 20th January 2010 by filing an Affidavit dated 25th November 2011 stating that the admission was not made by him. However, the AO held that, though the Assessee had retracted the Statement, the same bore his signature, the retraction was not made immediately after the search and was made after 22 months. The AO further held that the Assessee could not prove any threat or coercion while recording the Statement on 20th January 2010. In view of the above, the AO, by an Order dated 30th December 2011, disallowed the deduction claimed under Section 80IA(4)(iii).

4. The Assessee challenged the said Order dated 30th December 2011 by filing an Appeal before the Commissioner of Income Tax (Appeals) [CIT (A)]. The Assessee submitted that he had challenged the decision of the Empowered Committee of the concerned Ministry and the said Committee vide its Order dated 11th June 2012, after considering the issue, granted approval to the Assessee's project. The Assessee filed a letter dated 12th May 2012, received from the Ministry of Commerce and Industry, under Rule 46A(1) (c) of the Income Tax Rules, with a prayer for admission of the same as additional evidence stating that the said letter could not

be produced before the AO as it was not in existence at that time. The said additional evidence was forwarded by the CIT (A) to the AO for rebuttal with respect to the claim of the Assessee for deduction under Section 80IA(4)(iii) for Assessment Years 2009-10 and 2010-11. The AO forwarded his Remand Report which was controverted by the Assessee.

5. The Assessee, in its Reply to the Remand Report, submitted that the observation of the AO that the Assessee had not completed the Industrial Park even upto the date of scrutiny assessment was factually not correct as the Assessee started earning income from the Industrial Park from Financial Year 2006-07, relevant to Assessment Year 2007-08, but due to losses incurred did not have positive gross total income for Assessment Years 2007-08 and 2008-09 due to which the said deduction was not claimed. The Assessee further submitted that it claimed the said deduction for the first time in Assessment Year 2009-10 when positive gross total income was available. As regards the objections of the AO that the building in which the Industrial Park was being developed by the Assessee's proprietary concern did not belong to an individual but belonged to a partnership firm named M/s. S Balan & Co., the

Assessee submitted that the same was factually not correct. It was stated that the Sai Trinity building was originally completed as a bare shell and, thereafter, wings B & C of the building were taken over by the partner S. Balan from the firm and in his individual capacity he incurred the entire cost of completion of the building. It was further submitted that the Industrial Park was situated in these two wings only which belonged to Mr. S. Balan as an individual and not to the said firm.

6. As regards the objection of the AO that fresh approval had to be taken, as required under the Industrial Park Scheme, 2002, was concerned, the Assessee submitted that the park had become operational within the extended period of one year available upto 21st September 2006 and the Assessee had already started offering income from the Industrial Park since Financial Year 2006-07, relevant to Assessment Year 2007-08 onwards.

7. Based on the submissions advanced by the Assessee the CIT(A), by an Order dated 28th February 2013, allowed the claim of deduction made by the Assessee under Section 80(IA)(4)(iii).

8. Aggrieved by the said Order passed by the CIT(A), the Revenue filed the said Income Tax Appeal No. 1306 of 2013 before the ITAT. By the said Order dated 25th November 2016, the ITAT dismissed the said Appeal of the Revenue.

9. So far as Income Tax Appeal No. 523 of 2018 is concerned, the facts therein are almost identical to the facts in Income Tax Appeal No. 1943 of 2017, except that the same was in respect of Assessment Year 2010-11 and the claim for deduction, under Section 80IA(4)(iii) of the Act, was in a sum of Rs. 3,85,15,218/-.

10. In both the Appeals before us, Mr. Suresh Kumar, the learned Counsel for the Revenue, has proposed the following substantial question of law:-

“Whether on the facts and in circumstances of the case and in law, the Hon’ble ITAT has erred in ignoring the provisions of section 80IA(2) while adjudicating the issue of claim of deduction u/s 80IA(4) in favour of the assessee for the impugned assessment year?”

11. From the aforesaid facts it can be seen that the AO had

disallowed the claim of deduction under Section 80IA(4)(iii) of the Act primarily on the basis of the said letter dated 4th March 2009, from the Under Secretary, Ministry of Commerce and Industry, and the Assessee's admission of the aforesaid fact in the Statement recorded during the survey action under Section 133A of the Act. The said letter had referred to Registration No. 63/S1A/IP/2006 dated 12th May 2006 and noted that, on the basis of the State Government's Report dated 23rd April 2008, the building in which the Industrial Park was located belonged to a partnership firm, i.e. M/s. S Balan & Co, and not to an individual, and that the Industrial Park was not developed as a whole as only a part of the building was being developed and hence the same was not eligible under the Industrial Park Scheme, 2002. It can also be seen that the Assessee had stated that the Review Application filed by him was pending with the Ministry of Commerce and Industry and subject to the same had withdrawn his claim for deduction. However, subsequently, the Assessee filed an Affidavit denying the said claim as being withdrawn as the matter was subjudice before the Empowered Committee.

12. We are of the view that the Assessee had fulfilled the

conditions specified under Section 80IA(4)(iii). The conditions specified by Section 80IA(4)(iii) are as follows:-

“(1) The assessee develops, develops and operates or maintains and operates an industrial park.

(2) The industrial park should be notified by the Central Government.

(3) The notification should be in accordance with the scheme framed and notified by that Government for the specified period.”

13. Section 80IA(4)(iii) thus provides for deduction of the profit derived by the Assessee from development or operation of an Industrial Park notified by the Central Government. The eligibility period of development of such an Industrial Park was initially between 1st April 1997 to 31st March 2006. However the Finance Act, 2006 extended the period to 31st March 2011. The responsibility of verifying the authenticity of the Assessee's claim vested in the concerned Ministry of the Central Government and the role of the Assessing Officer in that regard is limited. The Industrial Park Scheme, 2002, as notified from time to time by the Central Government, is a code in itself and lays down the criteria of eligibility, procedure of approval, conditions to be specified by the developer etc. and once the concerned ministry grants the approval, it is incumbent on the part of the AO to grant the deduction. The AO may look into the other technical requirements of

the provisions contained in Section 80IA, i.e., the deduction is to be computed if the eligible business, i.e., the Industrial Park, is the only source of income for the Assessee, the Assessee must submit an Audit Report and if the income from eligible business is arising from connected parties, then the AO can rework the deduction.

14. In the present case, the eligible business, as per Section 80IA(5), i.e. the Industrial Park, is the only source of income for the Assessee. The Assessee has submitted the Audit Report as required under Section 80IA(7). The AO has not disputed these aspects as is evident from the Assessment Order dated 30th December 2011. In the light of the same, the letter of approval dated 11th June 2012 filed by the Assessee assumes importance as the Empowered Committee has accepted the representation made by the Assessee and approved the project as an Industrial Park, which entitles the Assessee for the deduction.

15. Further, by virtue of the provisions of sub-section (4) of Section 250 of the Act, the CIT (A) had the power to accept additional evidence in the form of the said letter dated 11th June 2012, especially since the same was not available when the AO had

passed the said Order dated 30th December 2011.

16. Further, the Empowered Committee had reconsidered its earlier rejection and granted approval for the units on 11th June 2012 with reference to the date of the application, i.e., 12th May 2006. The Assessee had also clarified the issue regarding the development of the Industrial Park by an individual and not by the partnership firm, which is also evident from the approval granted by the Ministry of Commerce and Industry. It is further seen from the record that the Assessee applied for approval of the Industrial Park in Sai Trinity building under 'non automatic' approval route on 8th December 2005 and received the approval on 9th December 2005. The Assessee had thereafter applied for reduction in number of units on 26th April 2006. The Industrial Park was commissioned in September 2006. The material on record indicates that, on the basis of an erroneous State Government Report about the ownership of the property in which the Industrial Park was constituted, the Ministry of Commerce and Industry rejected the approval vide its letter dated 4th March 2009. It was the same letter which was found during the survey action and on the basis of which the claim for deduction made by the Assessee was rejected by the AO. However, prior to the search and survey action, the Assessee

had applied for a Review of the rejection to the Empowered Committee on 24th April 2009. The Empowered Committee, after reconsideration of the earlier rejection, had granted approval for three units on 11th June 2002 to Mr. S. Balan, the Assessee, which was effective from 12th May 2006. The objection of the AO that the Industrial Park was being developed by the partnership firm is also not factually correct, in view of the explanation offered by the Assessee and also the letter issued by the Competent Authority. Once the Central Government grants the approval, it is incumbent on the part of the AO to grant the claim of deduction.

17. We find that the ITAT has correctly arrived at the aforesaid findings. Further, in its Order, the ITAT has referred to its previous decision on a similar issue in the case of M/s. Kolte Patil Developers Ltd. Vs. DCIT¹. Mr. Jha, the learned Counsel for the Assessee, pointed out to us that the said decision referred to by the ITAT was challenged by the Revenue in this Court by filing Income Tax Appeal No.838 of 2016 and by an Order dated 11th February 2019² this Court had dismissed the said Appeal. The relevant portion of paragraph 5 of the said Order dated 11th February 2019 of

1 ITA Nos.1411 to 1415/PN/2013 and ITA Nos.1478 to 1483/PN/2023.

2 2019 SCC Online Bom 7251

this Court reads as under:-

“ ... Section 80IA(4) of the Act recognizes deductions to the assessee who is an undertaking which develops and operates or maintains and operates and Industrial Park. The assessee fulfilled the said requirement as also the other procedural requirement laid down in the scheme. Rule 18C(i) itself as noted provided that the benefit would be available to an undertaking which begins to develop such Industrial Park. In the present case, the assessee had already developed the Industrial Park and as many as 21 units were already operational as admitted by the revenue. These units were sold during the assessment year in question. The profit arising out of such sale was accounted for in the said year and offered to tax. It was therefore, that the assessee was entitle to deduction in respect of such profit....”

18. For all the aforesaid reasons, we are of the view that the present Appeals do not raise any substantial question of law and that no interference is called for in those parts of the Common Order dated 25th November 2016 which are impugned in the present Appeals.

19. Hence, the Appeals are hereby dismissed.

(FIRDOSH P POONIWALLA., J.)

(K. R. SHRIRAM, J.)