INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "B", PUNE

Before Shri G.S.Pannu, Accountant Member And
Shri R.S. Padvekar, Judicial Member

ITA No. 1831/PN/2013
(Assessment Year : 2010-11)

ACIT, Circle-1, Aurangabad .. Appellant

Vs.

M/s. Yeshshree Press Comps.
Pvt. Ltd., Plot No.B-48,
MIDC Waluj, Aurangabad.
PAN No.AAACY0908Q .. Respondent

Assessee by	:	Shri Nikhil Pathak
Department by	:	Shri P.S. Naik
Date of Hearing	:	16-09-2014
Date of Pronouncement	:	17-09-2014

ORDER

PER R.S. PADVEKAR, JM :

This appeal is filed by the Revenue challenging the impugned order of the Ld.CIT(A) Aurangabad dated 31-07-2013 for the A.Y. 2010-11.

2. The first issue is in respect of deduction u/s.80IA(4) r.w.s. 80IA(5) of the Act. Briefly stated facts are as under. The assessee is a private limited company which is in the business of Automobile Press Components and Wind Mill Power Generation. The assessee filed the return of income for the A.Y. 2010-11 declaring total income of Rs.4,23,,24,880/-. The assessee has claimed the deduction of Rs.19,37,945/- from the business of generation of Wind Mill Power u/s. 80IA(4) of the Act. The Assessing Officer has reservation in allowing the deduction to the assessee as assessee has started generation of power on 30-04-2000 and in his opinion he should have started claiming the deduction from the A.Y. 2001-02, the terminal

year till which this deduction is available which is A.Y. 2010-11 for the period of 10 consecutive assessment years. The Assessing Officer also referred to Sec. 80IA(5) and observed that initial assessment year in context of Sec. 80IA(5) signifies the year in which the eligible business commences. The A.Y. 2009-10 is the first year in which the assessee has claimed the deduction u/s. 80IA(4)(iv)(a) of the Act from the profits of the Wind Mill Power Generation. In the A.Y. 2010-11 also the Assessing Officer disallowed the claim of the assessee u/s.80IA of Rs.1,93,27,947/- as in the A.Y. 2009-10. The Ld.CIT(A) allowed the claim of the assessee following his order for the A.Y. 2009-10.

Now the Revenue is in appeal before us.

3. We have heard the parties. The Ld. Counsel submits that the assessee claimed the deduction for the first time in the A.Y. 2009-10 which was denied by the Assessing Officer but allowed by the Ld.CIT(A) and the Hon'ble Tribunal confirmed the order of the Ld.CIT(A). As the assessee has been allowed the deduction in A.Y. 2009-10, hence, the order of the Ld.CIT(A) for A.Y.2010-11 may be confirmed as it has already been decided in favour of the assessee in the immediate preceding assessment year. The Ld. Counsel filed a copy of the order of this Tribunal in assessee's own case for A.Y. 2009-10 in ITA No.2198/PN/2012 dated 24-12-2013. The Ld. Departmental Representative fairly conceded that the issue stands decided in favour of the assessee.

3.1 In the A.Y. 2009-10, for the identical reason, the Assessing Officer denied the deduction to the assessee but the Ld.CIT(A) allowed the claim of the assessee. The Revenue challenged the order of the Ld.CIT(A) but without success. The operative part of the order of the Tribunal is as under :

> *"4. We have heard the parties. We find that the issue stands covered in favour of the assessee by the decision of the ITAT, Pune in the case of Laxmi Rikshaw Body Pvt. Ltd. (supra) the identical controversy has come for the consideration and Tribunal has held as under:*
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> *9. Now let us examine the legal position in respect of the claim in the A.Ys. 2005-06, 2006-07 and 2008-09. As discussed here-in-above in assessee's own case the Tribunal has examined the issue in controversy regarding the initial assessment year and as well as whether the losses or depreciation of the power generation unit which have already been set off against the other income in the preceding years can be nationally brought forward and set off for determining the quantum of deduction. The operative part of the Tribunal order in ITA No. 134/PN/2011 (A.Y. 2007-08) dated 30-03-2012 in assessee's own case is as under:*
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>> *"7. The Commissioner of Income-tax (Appeals), however, has not upheld the stand of the Assessing Officer. The plea of the assessee was that as per the provisions of section 80IA(2) of the Act, deduction can be claimed at the option of the assessee for any 10 consecutive assessment years out of 15 years starting from the year in which the undertaking has started generation of power. Therefore, as per the assessee the Legislature has not intended that the initial year (as referred to in section 80IA(5)) to be first year of operation, but the assessee had an option to select such initial assessment year, not falling beyond 15 years starting from the previous year in which the undertaking starts generation of power. It was therefore held that the losses pertaining to the assessment years 2003-04 and 2004-05 which were sought to be adjusted by the Assessing Officer, was not justified inasmuch as such assessment years were prior to the initial assessment year selected by the assessee and, therefore, the contention of the assessee has been upheld by the Commissioner of Income-tax (Appeals). In support, the Commissioner of Income-tax (Appeals) referred and relied upon the decision of the Chennai Bench of the Tribunal in the case of Mohan Breweries & Distilleries Ltd. v CIT 116 ITD 241 (Chennai). He accordingly directed the Assessing Officer to allow the claim of deduction under section 80IA(4)(iv)(a) of the Act, as claimed by the assessee. Aggrieved with the aforesaid, the Revenue is in appeal before us.*
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>> *8. It was a common point between the parties that similar issue was considered by our co-ordinate Bench in the case of Serum International Ltd. Pune (supra), wherein the Tribunal has decided this issue against the Revenue and in favour of the assessee. The relevant portion of the order of the Tribunal in the aforesaid decision is extracted below:*
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>> *"13. Having been considered the above submissions, we find that the issue raised in Ground No. 1 as to what would be the initial A.Y for the purposes of Section 80IA(5) of the Act has been decided in favour of the assessee by the Pune Bench of the Tribunal in the case of Poonawalla Stud and Agro Farm Pvt. Ltd. Vs. ACIT (Supra). In that case after discussing the issue in detail, the Tribunal has come to the conclusion that the initial 'A. Y' for the purpose of claiming deduction u/s. 80IA was the first year in which the assessee claimed the deduction u/s.*

80IA (1) after exercising his option as per the provisions of 80IA (2) of the Act. It was held that the Ld. CIT(A) has erred in holding that the initial A. Y for the purposes of Section 80IA(2) r.w.s. 80IA (5) was the year in which the assessee started generating electricity from the wind mill activity. We also find that the issue raised in Ground No. 2 regarding the eligibility of the assessee to claim deduction u/s. 80IA undiminished by unabsorbed losses and depreciation also set off in earlier years against the other income, is fully covered by the decision of Hon'ble Madras High Court in the case of Velayudhaswamy Spinning Mills (P) Ltd Vs. ACIT (Supra) holding that as per Sub-section (5) of Section 801 A, profits are to be computed as if such eligible business is the only source of income of the assessee. When the assessee exercises the option, only the losses of the years beginning from the initial A. Y. are to be brought forward and not the losses of the earlier years which have been already set off against the income of the assessee. The Hon'ble Madras High Court has been further pleased to hold that revenue cannot notionally bring forward any loss of earlier years which had already been set off against the other income of assessee and set off against the correct income of the eligible business. Fiction created by Sub-section (5) of Section 80IA does not contemplate such notional set off, held the Hon'ble High Court. The Hon'ble Madras High Court in that decision has also referred the decision of Hon'ble Supreme Court in the case of Liberty India Vs. CIT (Supra) and the decision of Special Bench of the Tribunal in the case of Goldman Shares & Finance (P) Ltd. (Supra). There is no dispute that even a decision of non-jurisdictional High Court is a binding precedent for the Tribunal until a contrary decision is given by any other competent High Court. In this regard, we find strength from the recent decision of Hon'ble jurisdictional Bombay High Court in the case of Commissioner of Central Excise Vs. Valson Dyeing, Bleaching and Printing Works (Supra) wherein the Hon'ble Bombay High Court has been pleased to hold in a case of excise matter that Tribunal is bound by the decision of High Court, even of a different State, so long as there is no contrary decision of any other High Court. The Hon'ble Bombay High Court has been pleased to hold further that the Tribunal had no option but to follow the judgment of the Madras High Court. An authority like an Income Tax Tribunal acting anywhere in the country has to respect the law laid down by the High Court, though of a different State, so long as there is no contrary decision of any other High Court on that question. We thus respectfully following the ratio laid down by the Hon'ble jurisdictional High Court in the case of Commissioner of Central Excise Vs. Vakson Dyeing, Bleaching and Printing Works (Supra) hold that the Tribunal is bound by the decision of the Hon'ble Madras High Court on an identical issue in the case of Velayudhaswamy Spinning Mills (P) Ltd Vs. ACIT (Supra). We thus respectfully following the decision taken by the Hon'ble Madras High Court in that case on an identical issue under almost similar facts, hold that when the assessee exercising the option, only the losses of the year beginning from the initial A. Y. are to be brought forward and not the losses of earlier year which have been already set off against the other income of the assessee. The revenue cannot notionally bring forward any loss of earlier years which has already been set off against any other income of the assessee and set off the same against the current income of the eligible business. We thus set aside the orders of the authorities below and direct the A. O to allow the claimed deduction u/s. 80IA without bringing the notionally brought forward any loss or depreciation of earlier years which has *already been set off against other income of the assessee. The decision of Pune Bench of the Tribunal in the case of Prima Paper Engineering P. Ltd. Vs. I TO (Supra) cited by the Ld. DR is also not helpful to the revenue since firstly the decision of the Hon'ble Madras High Court in the case of Velayudhaswamy Spinning Mills (P) Ltd. Vs. ACIT (Supra) on the issue was not cited before the Bench and secondly the Id. AR fairly agreed that the issue raised was covered against the assessee by the decision of Special Bench in the case of ACIT Vs. Goldmine Shares & Finance (P) Ltd. (Supra) followed by the authorities below. The Id. AR therein thus contended that though the issue may be decided against the assessee in view of the Special Bench of the Tribunal in the case of ACIT Vs. Goldmine Shares & Financial (P) Ltd., but it should not be construed as acquiescence from the side of the assessee as the legal position on the subject is yet not settled. The Ground No. 2 is thus decided in favour of the assessee".*

The above decision has been further followed by our co-ordinate Bench in a subsequent decision in the case of Lap Finance & Consultancy P. Ltd. (supra). Therefore, following the precedents, we confirm the order of the Commissioner of Income-tax (Appeals) on this Ground. The Revenue fails on this Ground of appeal.

10. We, therefore, following the order of the Tribunal in assessee's own case in the A.Y. 2007-08 hold that there cannot be notional carry forward of the losses or depreciation which have already been set off in the preceding years for determining the quantum of deduction u/s. 80IA(4)(iv)(a) of the Act. We, accordingly, confirmed the orders of the Ld. CIT(A) for the A.Ys. 2005-06, 2006-07 and 2008-09. The Assessing Officer is directed to re-work out the quantum of the deduction in all the assessment years without notionally setting off of the losses or depreciation pertaining to the power generation unit in all the assessment years as per the decision of the Tribunal in assessee's own case for the A.Y. 2007-08.

5. In the present case on examination of the chart given in the assessment order we find that the losses pertaining to the preceding years have already been set off by the assessee against the other business income / other income and there is no carry forward losses in the A.Y. 2009-10 remained to be set off pertaining to the Wind Mill Power Generation Unit. In our opinion, the Ld. CIT(A) has rightly allowed the claim of the assessee as it is squarely covered by the decision of this Tribunal in the case of Laxmi Rikshaw Body Pvt. Ltd. (supra). We find no reason to interfere with the order of the Ld. CIT(A). Accordingly, same is confirm."

3.2 We, therefore, following the order of the Tribunal in assessee's own case in the A.Y. 2009-10, confirm the order of the Ld.CIT(A) on this issue as A.Y. 2010-11 is a continuing assessment year. Accordingly, ground Nos.1 to 3 are dismissed.

4. With regard to ground Nos. 4 to 6 taken by the Revenue, the Ld. Counsel submits that these grounds are not decided in favour of

the assessee by the Ld.CIT(A). He further submits that so far as the issue of disallowance u/s.14A r.w.Rule 8D is concerned, the assessee has not pressed the said ground before the Ld.CIT(A). He further submits that ground No. 6 is not at all arising from the order of the Ld.CIT(A). Hence, ground Nos. 4 to 6 are totally misplaced and infructuous. The Ld. Departmental Representative also conceded the same. As ground Nos. 4 to 6 are infructuous as wrongly taken by the Revenue and the same are dismissed.

5. In the result, Revenue's appeal is dismissed.

Pronounced in the open court on 17-09-2014.

Sd/-	**Sd/-**
(G.S.PANNU)	**(R.S. PADVEKAR)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Pune Dated: 17th September 2014
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Copy of the order forwarded to :

1. Assessee
2. Department
3. CIT(A), Aurangabad
4. CIT, Aurangabad
5. The D.R, "**B**" Pune Bench
6. Guard File

By order

// True Copy //

Senior Private Secretary
ITAT, Pune Benches, Pune