IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "B", PUNE

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

ITA.No.720/PN/2012
(Asstt. Year : 2008-09)

M/s.Sharada Construction & Investment Co.,
Sharada Centre, 11/1, Erandwane,
Pune – 411004. .. Appellant
PAN: AADFS6325H

Vs.

Addl.CIT, Range-3,
Pune. .. Respondent

Assessee by	:	Shri Nikhil Pathak/ Shri Suhas Bora
Department by	:	Smt.S.Praveena
Date of Hearing	:	24.04.2013
Date of Pronouncement	:	29.04.2013

ORDER

PER R.S.PADVEKAR, JM:

In this appeal the assessee has challenged the impugned order of the Ld. CIT(A)-II, Pune, dated 23.12.2011 for the A.Y. 2008-09. The assessee has taken the following effective grounds:

1. Ground No.1
   Disallowance of deduction u/s.80IA : Rs.15,52,899/-

   a) On the facts and circumstances of the case and in law the Ld. CIT(A) erred in confirming the disallowance of claim of Rs.15,52,899/- made u/s.80IA by holding that regardless of the exercise of option by assessee of choosing the initial assessment year, the unabsorbed losses/depreciation relating to eligible undertaking are to be taken into account in determining the quantum of deduction u/s.80IA even though these may have been actually set off against the profits of the assessee from other sources.
   b) Your Appellant submits that the Ld. CIT(A) ought to have held that w.e.f. 1-4-2000, sec.80IA(5) is applicable only

when the assessee chooses to claim deduction u/s 80IA for the first time by exercising option available u/s.80IA(2) as this will be the year in which the undertaking has to be treated as a separate sole source of income within the meaning of section 80IA(5) and therefore depreciation and loss of earlier year cannot be notionally carried forward to be set off against income of that year for computing deduction u/s 80IA.

c) Your Appellant prays that deduction as claimed by the assessee may kindly be allowed.

2. Ground No.2
Treating income received from renting of terrace of building as income under the head “Income from other sources”

a) On the facts and circumstances of the case and in law the Ld. CIT(A) erred in confirming the treatment of income received from renting of terrace of building as falling under the head “Income from other sources” as against the claim of the assessee that it falls under the head “Income from house property”.
b) Your appellant prays that the claim of the assessee that the income falls under the head “Income from house property” be upheld.

2. The facts which are revealed from the record are as under. The assessee is carrying out business activity as promoters and developers and also is engaged in the wind power generation. Assessee filed the return of income for the A.Y. 2008-09 declaring total income at Rs.2,36,45,840/-. The assessee’s case was selected for scrutiny and assessment has been completed u/s.143(3) of the Act. The Assessing Officer made the disallowance in respect of deduction claimed u/s.80IA(4) of the Act to the extent of Rs.15,52,899/- which was claimed on account of power generation from the windmill. The Assessing Officer also treated the rent/income received by the assessee for the use of the terrace to the extent of Rs.7,20,000/- as income from other sources, rejecting the claim of the assessee that the said income is to be assessed under the head ‘Income from House Property’. Assessee challenged both the disallowances before the Ld. CIT(A) by filing the appeal. The Ld. CIT(A) has noted that the first notice of hearing was sent to the assessee by RPAD on 27.07.2011 fixing the case for hearing on 18.08.2011, but there was no response from the assessee to the

said notice. Another notice was issued on 05.10.2011 fixing the hearing of the appeal on 28.10.2011, but on the appointed day none attended. Again another notice was sent to the assessee on 08.11.2011. The Ld. CIT(A) has observed that the assessee received all the notices sent by RPAD. The Ld. CIT(A), therefore, issued the final notice requiring the assessee to attend on 19.12.2011. As noted by the Ld. CIT(A), even the assessee did not respond to that notice. The Ld. CIT(A), therefore, proceeded to dispose of the appeal ex parte.

3. We have heard the parties and perused the record. In this case it is not disputed that the Ld. CIT(A) has sent 3-4 notices to the assessee as noted in the impugned order. The Ld. Counsel submits that in the interest of justice one more opportunity may be given to the assessee as assessee was having some genuine difficulties for not attending before the Ld. CIT(A). As per the notings made by the Ld. CIT(A) in the order, though in our opinion assessee does not deserve to be given any more opportunity, but considering the fact that the Tribunal is the last fact finding authority as well as on the question of law, hence in the interest of justice we give one more opportunity to the assessee to present before the Ld. CIT(A) and represent its case. We accordingly set aside the order of the CIT(A) on the issues raised before us and direct Ld. CIT(A) to dispose of the appeal by giving opportunity to the assessee by proper service of notice by RPAD. Assessee is also directed to cooperate for the disposal of the appeal.

4. In the result, assessee's appeal is allowed for statistical purposes.

Pronounced in the open court on this the 29th day of April, 2013.

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

gsps

Pune, dated the 29th April, 2013

Copy of the order is forwarded to:

1. The Assessee
2. The Addl.CIT, Range-3, Pune.
3. The CIT(A)-II, Pune.
4. The CIT-II, Pune.
5. The DR “B” Bench, Pune.
6. Guard File.

By Order

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Private Secretary,
Income Tax Appellate Tribunal,
Pune.