आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ - अहमदाबाद ।

**IN THE INCOME TAX APPELLATE TRIBUNAL**
**AHMEDABAD – BENCH 'A'**

**BEFORE SHRI RAJPAL YADAV, VICE-PRESIDENT**
**AND**
**SHRI WASEEM AHMED, ACCOUNTANT MEMBER**

**आयकर अपील सं./ ITA No.45/Ahd/2019**
**Asstt.Year : 2010-11**

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| DCIT, Cir.1(1)(2)<br>Ahmedabad. | Vs | M/s.Chiripal Industries Ltd.<br>2nd Floor, Chiripal House<br>Shivranjani Cross Road<br>Satellite<br>Ahmedabad 380051.<br>PAN : AAACC 8513 B |

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| **अपीलार्थी/** (Appellant) | | **प्रत्यर्थी/** (Respondent) |

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| Revenue by : | Shri S.S. Shukla, Sr.DR |
| Assessee by : | Shri Gaurav Nahata, AR |

सुनवाई की तारीख/Date of Hearing : 10/09/2021
घोषणा की तारीख /Date of Pronouncement : 15/09/2021

**O R D E R**

**PER RAJPAL YADAV, VICE-PRESIDENT:** Revenue is in appeal before the Tribunal against order of the ld.CIT(A)-1, Ahmedabad dated 11.10.2018 passed for the Asstt.Year 2010-11.

2. Only issue raised by the Revenue in this appeal is that the ld.CIT(A) has erred in deleting the addition of Rs.2,74,36,169/- made on account of deduction claimed under section 80IA(4) of the Income Tax Act, 1961.

3. Brief facts of the case, as emerging from orders of the Revenue authorities are that the assessee is engaged in the activity of Power

Generation. It has filed return of income on 14.10.2010 declaring total income at Rs.14,81,15,160/- after claiming deduction of Rs.2,74,36,139/- under section 80IA of the Act. The assessment was completed under section 143(3) of the Act on 25.3.2013 and determined total income at Rs.15,65,84,722/-. Thereafter, case of the assessee was selected for scrutiny assessment by issuing of notice under section 148 of the Act on 29.3.2017. From the details submitted by the assessee, the ld.AO observed that the assessee has shown total value of the machinery and plant used for its activity at Rs.766.64 lakhs, of which Rs.711.23 lakhs was of old plant & machinery belonged to erstwhile concern i.e. Shanti Processor Ltd. installed prior to 01.04.2005. In other words, according to the AO, the plant set up by the assessee was not new power plant, but it was set up by transfer of old and previously used machinery, value of which was more than 90% of the total value of plant. Therefore, claim of the assessee under section 80IA was not allowable. It was explained by the assessee that the erstwhile company, M/s.Shanti Processor Ltd. was amalgamated with the assessee-company, and the assessee has taken over entire new plant & machinery purchased by it; that the amalgamating company was eligible to claim deduction under section 80IA as it complied with all the requisite conditions; that the amalgamating company has not claimed deduction under section 80IA of the Act, and therefore, deduction was rightly claimed by the assessee-company within provisions of section 80IA(2) of the Act. The ld.AO did not accept contentions of the assessee in the absence of complete details with regard to amalgamating company's entitlement to the claim of deductions under section 80IA *qua* the specific plant & machinery, and whether the impugned new plant & machinery purchased by the

amalgamating company were the same as were taken over by the amalgamated company. He, accordingly, disallowed claim of deduction of Rs.2,74,36,169/- under section 80IA(4) of the Act and added to the income of the assessee. Aggrieved by action of the ld.AO, the assessee went in appeal before the ld.first appellate authority. The ld.CIT(A), however, after detailed analysis of the issue and after following decisions of his predecessor in the assessee's own case for the assessment years 2009-10, 2011-12, 2013-14 and 2014-15 on identical issue, allowed claim of the assessee and deleted the addition. Dissatisfied with order of the ld.CIT(A), the Revenue is before us.

4. Before us, while the ld.DR supported order of the AO, the ld.counsel for the assessee defended in support of order of the ld.CIT(A). He further submitted that continuously for the last four years, similar claim has been agitated before the ld.first appellate authority and before the Tribunal, and the claim of deduction under section 80IA has been allowed to the assessee. In this year also, claim is similar, facts are identical and therefore there is no reason to deviate from the view taken by the Tribunal on the issue on hand. The ld.CIT(A) has rightly appreciated the factum of earlier years' claim and allowed the claim of the assessee on the basis of the Tribunal's order passed in the assessee's case. The ld.counsel for the assessee has filed copy of order of the Tribunal in the case of the assessee for the asstt.Years 2010-11 to 2012-13 order dated 10.12.2018 passed in ITA No.2092/Ahd/2015 and others involving identical issue.

5. We have considered submission of the ld.representatives and gone through the material placed on record and also earlier orders of the Tribunal passed in the case assessee's case for the Asstt.Years 2009-10, 2011-12, 2013-14 and 2014-15 on similar issue. We find that the ld.CIT(A) while allowing claim of the assessee has followed earlier orders for the assessment years' cited above. The relevant part of the CIT(A)'s order reads as under:

> *"3.3. I have carefully considered the Assessment Order and submission filed by the Appellant. The assessee company is an amalgamated company wherein Shanti Processor Ltd was merged with the assessee company w.e.f 01/04/2005 as per the order of Hon'ble High Court of Gujarat dated 31/03/2006. The power plant was installed in Shanti Processors Ltd. The Assessing Officer has disallowed the claim of appellant appellant had fulfilled all the conditions. As stated above, the plant & machinery valuing Rs. 7,11,23,416/- were installed in the factory of erstwhile Shanti Processor Ltd. which was transferred to Chiripal Industries Ltd. on amalgamation by the order of Gujarat High Court. The power plant was originally installed, by the erstwhile owner during financial year 2005-06. The original cost of the said plant which included coal handling system, boilers, steam turbine and electrical fittings was of Rs.7,11,23,416/-. This value represents the cost to the previous owner mainly incurred during F.Y.2004-05 the installation of which was during F. Y. 2005-06. As per the provisions of section 80IA(12) when any undertaking of an Indian Company which is entitled to deduction under this section is transferred before the expiry of the period specified in this section to another Indian Company then as per clause (b) the provision of this section shall apply to the amalgamated Company as they would have applied to the amalgamating Company if the amalgamation had not taken place. The crucial point is that the provisions of subsection (12) would only apply if the amalgamating Company was eligible for claiming deduction u/s 80IA. The facts, assessment order as well as written submission put forth by the A. R., it would be proper to look into the relevant provision of the Act which reads as follow:-*
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> > *80IA (12) Where any undertaking of an Indian Company which is entitled to the deduction under this section is transferred, before the expiry of the period specified in this section, to another Indian Company in a scheme of amalgamation or demerger -*
> >
> > *(a) no deduction shall be admissible under this section to the amalgamating or the demerged company for the previous year in which the amalgamation or the demerger takes place; and*
> >
> > *(b) the provisions of their section shall, as far as may be, apply to the amalgamated or the resulting company as they would have applied*

*to the amalgamating or the demerged company if the amalgamation or demerger had not taken place.*

*3.5. It is seen that Shanti processors Ltd was amalgamated with the appellant company w.e.f. 01/04/2005 as per scheme approved by Hon'ble Gujarat High court vide order dated 31/03/2006 and the majority of plant and machinery i.e. Rs.7,11,23,416/-(out of total addition of Rs.7,66,75,468/-) was acquired by amalgamating company which was not used and was shown in WIP In the balance sheet of amalgamating co., which were transferred to the appellant on amalgamation. The A. O. has presumed that addition of Rs.7,11,23,416/- was old plant and machinery in the hands of the appellant since the appellant had not purchased it, which is not correct interpretation of law. The AO has nowhere stated that the machinery which was purchased is old meaning thereby that Shanti processors ltd had purchased new machinery and all the bills were also submitted before the AO. New machinery cannot be termed as old merely on its transfer due to an amalgamation by the order of the High Court. The appellant has vehemently stated that, if the interpretation is done in this manner then in all the amalgamation cases benefit will not be available to resultant company as there is a transfer of machinery in all the cases. Further,. a machinery does not become old on transfer vide order of high court as the existing company gets merged with the new company and the existence of the existing company is no more. The A.O. has not brought on record evidence to substantiate his argument by showing that particulars machinery was purchased by Shanti processor Ltd which was already used. Therefore, new machinery purchased by Shanti Processors Ltd cannot be termed as old machinery since due to scheme of amalgamation; appellant is legally entitled to claim deduction. Therefore, on amalgamation, the appellant became entitled to all the benefits which were available to the amalgamating company namely Shanti Processors Ltd. It is also noted that similar claim was made by the appellant in the assessment year 2009-10, which was first year of its claim and the same 'was allowed meaning thereby the A.O. was satisfied that the appellant had fulfilled all the conditions. There is no change in facts and therefore, it is not proper to again revisit the eligibility of claim more so when there is no change in facts. The decision relied upon by the A.R. in the cases of Dynemic Products Ltd as well as that of Income Tax Officer v/s. Last Peak Data Pvt. Ltd. ITA no. 154&155/Kol/2013(supra), wherein it is held as under:*

> *"Amalgamation of another company with* assesses- *Admittedly, amalgamating company LP Ltd. was enjoying STP unit status- Thus there is no question of the assessee having been formed by splitting up or reconstruction of a unit already in existence-Assessee was already an existing unit- LP Ltd. had not availed deduction under s. 10A for period beyond ten years before amalgamation with the assessee-Therefore, there is no violation of the conditions laid down in s. 10AA(4)(ii) and (Hi) by the assessee".*

*The ratio of the above case laws supports the case of the appellant. The identical issue has been decided in favour of the appellant in A.Y.2011-12 vide Appeal No.CIT(A)~VI/ACIT(OSD),R-1/14/2014-15 dated 27/01/2016,*

*A.Y.2013-14 vide Appeal* No.CIT *(A)-1/DCIT Cir.1(1)(2)/124/2016~17 dated 28/09/2017 and in A.Y.2014-15 vide Appeal No.CIT(A)-1/DCIT Cir. 1(1)(2)/361/2016-17 dated 29/09/2017. Under these facts and following the order of earlier years, I am inclined with the contention of the A.R. that deduction claimed cannot be denied. Accordingly, A.O. is directed to allow the claim u/s. 801A as claimed by the appellant.* ***The ground of the appeal is allowed."***

6. After going through order of the ld.CIT(A) and the Tribunal, we find that the impugned issue is no more remain *res integra* with the Tribunal, because, the Tribunal on identical set of facts for the earlier years cited (supra) had allowed claim of the assessee. The Tribunal has discussed the issue at length both on facts and in law. However, for clarity, we reproduce below the relevant part of the order of the ITAT passed in ITA No.2092/Ahd/2015 and others reads as under:

*"25. We have heard both the sides and perused the material on record carefully. It was undisputed fact that that entire plant was new one and machinery were purchased by Shanti Processor Ltd which was amalgamating company and since the same were not used prior to 01/04/2005 and in the assessment order u/s. 143(3) for A.Y.2009-10 & A.Y.2010-11 the assessing officer had allowed the deduction on identical issue and similar facts.*

*The assessee has started the generation of energy in the previous year relevant to A.Y. 2006-07 and started claiming deduction u/s. 80IA(4) of the Act from assessment year 2009-10, which was first year of its claimed and the same was allowed meaning thereby the A.O. was satisfied that the assesseet had fulfilled all the conditions. It is also noticed that the assessee has explained its entitlement for the impugned claim of deduction under section 80IA(12) as under:-*

*"The power plant, in question, was transferred to assessee company under the scheme of Amalgamation of two companies viz Shanti Processors Ltd & Chiripal Petro chemicals Ltd. M/s Shanti Processors Ltd. was amalgamating company & Chiripal Petro Chemicals Ltd. was amalgamated Company under the provisions of the Companies Act, 1956. The scheme of Amalgamation was approved by Hon'ble High Court of Gujarat, vide its order dated 31/03/2006 w.e.f. 01/04/2005. It is also added that name of the company Chiripal Petro Chemicals Ltd. was changed to Chiripal Industries Ltd. as per approval of Registrar of Companies of Gujarat (A copy of both the orders are enclosed herewith for your honour's kind perusal and record purpose.) At this point, the assessee company would like to submit the definition of amalgamation , tax*

*concessions available to amalgamated company and other provisions, for your honours kind perusal as under:*

*A. Definition of amalgamation :*

*According to section 2(1B) of the Income-tax Act, 1961 (hereinafter referred to as the Act), amalgamation in relation to companies means the merger of one or more companies with another company or the merger of two or more companies to form one company (the company or companies which so merge being referred to as the amalgamating company or companies and the company with which they merge or which is formed as a result of the merger, as the amalgamated company) in such a manner that:-*

*a. All the property of the amalgamating company or companies immediately before the amalgamation becomes the property of the amalgamated company by virtue of amalgamation.*

*b. All the liabilities of the amalgamating company or companies immediately before the amalgamation become the liabilities of the amalgamated company by virtue of amalgamation.*

*Shareholders holding not less than 3/4th in value of the shares in amalgamating company or companies (other than shares held there is immediately before the amalgamation or by a nominee for the amalgamated company or its subsidiary) become shareholders of the amalgamated company by virtue of the amalgamation, otherwise than as a result of the acquisition of the property one company by another company pursuant to the purchase of such property by the other company as a result of distribution of such property to the other company after the winding up of first mentioned company.*

*B. Tax concessions to the amalgamated company:*

*The amalgamated company shall be eligible for tax concessions only if the following two conditions are satisfied:*

*i. The amalgamation satisfies all the three conditions laid down in section2(lB) and*
*ii. The amalgamated company is an Indian company.*

*If the above conditions are satisfied the amalgamated company shall be eligible for following tax concessions:*

*(a) Expenditure on Scientific Research Section 35(5):*

*(b) Expenditure on acquisition of patent rights or copy rights Section 35A(6):*

*(c) Expenditure of know-how Section 35AB(3):*

*(d) Treatment of preliminary expenses Section*

*(e) Amortization of expenditure in case of amalgamation Section*

*(f) Treatment of capital expenditure on family planning Section 36(1)(ix):*

*(g) Treatment of Bad debts section 36(1)(vii):*

*(h) Deduction available u/s 80IA & 80IB:*

*(i) Carry forward and set off Business Losses & unabsorbed depreciation of the amalgamating company."*

*We observe the assessing officer has not disproved these material facts and disallowed the claim of deduction on presumption basis without considering the relevant legal provision as elaborated in the findings of the Ld.CIT(A). The relevant legal provision has already been elaborated by the Ld. CIT(A) in his findings that as per the provisions of section 80IA(12) when any undertaking of an Indian Company which is entitled to deduction under this section is transferred before the expiry of the period specified in this section to another Indian Company then as per clause (b) the provision of this section shall apply to the amalgamated Company as they would have applied to the amalgamating Company if the amalgamation had not taken place and the provisions of sub- section (12) would only apply if the amalgamating Company was eligible for claiming deduction u/s 80IA. It is demonstrated from the above facts and circumstances that the assessing officer has disallowed the claim of the assessee on presumption basis that addition of Rs. 71,12,34,167- was old plant and machinery without bringing on record evidence to substantiate that specified machinery was purchased by Shanti processor Ltd and the assessing officer has also failed to disproved the material fact that similar claim was allowed to the assessee in the assessment year 2009-10 on fulfilling of all the conditions.*

*In the light of the above facts, legal findings and elaborated findings of the Ld.CIT(A) as supra in this order we do not find any error in the decision of the Ld.CIT(A),therefore the appeal of the revenue is dismissed."*

After going through the above order of the ITAT, we find ITAT has arrived at a conclusion that when any undertaking of an Indian Company which is entitled to deduction under this section is transferred before expiry of the period specified in this section to another Indian Company, then as per clause (b) the provision of this sections shall apply to the amalgamated company, as they would have applied to the amalgamating company. In other words, the provision makes it clear that ambit of this section is extended to the cases where eligible

enterprise is transferred, then the transferee company i.e. amalgamated company will become entitled to deduction. The ld.CIT(A) appreciated the facts both on facts and in law as well as weighed earlier decisions of his predecessor and allowed the claim of deduction under section 80IA. Therefore, basing decisions of the Tribunal on identical issue on the assessee's own case cited (supra), we uphold order of the ld.CIT(A) and dismiss the ground of appeal of the Revenue.

7. In the result, appeal of the Revenue is dismissed.

**Pronounced in the Open Court on 15th September, 2021**

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| **Sd/-** | **Sd/-** |
| **(WASEEM AHMED)** | **(RAJPAL YADAV)** |
| **ACCOUNTANT MEMBER** | **VICE-PRESIDENT** |