

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES "C", BANGALORE**

Before Shri George George K, JM & Shri B.R.Baskaran, AM

ITA No.29/Bang/2019 : Asst.Year 2010-2011

ITA No.30/Bang/2019 : Asst.Year 2011-2012

M/s.Jindal Aluminium Limited Jindal Nagar, Tumkur Road Bangalore – 560 073. PAN : AAACJ4324M.	v.	The Dy.Commissioner of Income-tax, LTU Bangalore.
(Appellant)		(Respondent)

Appellant by : Smt.Saumya, Advocate.
Respondent by : Smt.R.Premi, JCIT-DR

Date of Hearing : 15.12.2020	Date of Pronouncement : 15.12.2020
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ORDER

Per George George K, JM

These appeals at the instance of the assessee are directed against common order of the CIT(A) dated 19.11.2018. The relevant assessment years 2010-2011 and 2011-2012.

2. Common issue is raised in these appeals, hence, they were heard together and are being disposed of by this consolidated order.

3. The solitary issue argued by the learned AR is that the CIT(A) has erred in confirming disallowance of part of deduction claimed u/s 80IA of the I.T.Act.

4. The brief facts of the case are as follow:

The Assessing Officer had disallowed deduction claimed u/s 80IA of the I.T.Act for assessment years 2010-2011 and 2011-2013 amounting to Rs.5,32,639 and Rs.6,03,358,

respectively. According to the A.O., common administrative expenses such as managerial remuneration, audit fees, staff welfare expenses, advertising and selling expenses are to be apportioned between 80-IA unit and non 80-IA units. The expenses were apportioned in the ratio of turnover for both the years and disallowed.

5. Aggrieved by the disallowance of deduction u/s 80IA, the assessee preferred an appeal to the first appellate authority. The CIT(A) confirmed the view taken by the Assessing Officer. The relevant finding of the CIT(A) reads as follow:-

“6.1 The submission of the appellant has been considered. The AO has advanced justifiable reasons in support of his decision to apportion and disallow proportionate administrative expenses in respect of eligible business. It is seen that the CIT(A) for AY 2012-13 has upheld the disallowance on account of managerial remuneration, audit fees, staff welfare expenses, legal and professional expenses and has only allowed relief as regards advertisement and selling expenses. It is not the contention of the appellant that it has challenged this decision of the CIT(A) before the ITAT. Thus, apparently the appellant has accepted the disallowance of these expenses for AY 2012-13. Having considered the facts, I am of the view that the disallowance made by the A.O. in respect of advertisement and selling expenses is not justifiable in view of the fact that the appellant has sold power under the Power Purchase Agreement to the agencies of Government of Karnataka such as KPTCL / BESCOm and it cannot sell to outside private parties. Therefore, there was no need for any advertisement to solicit new customers. Therefore, the disallowance made by the A.O. is sustained minus the amount in respect of advertisement and selling expenses. This ground, therefore, is partly allowed for both the years.”

6. Aggrieved by the order of the CIT(A), the assessee is in appeal before the Tribunal. The learned AR submitted that the CIT(A) has erred in not allowing full deduction u/s 80IA of the I.T.Act. It is submitted that the authority below ought to have

appreciated that separate books of account were maintained for each of the windmills and the assessee has filed profit and loss account of each windmill along with Form No.10CCB. Therefore, it was stated that no common administrative expenses on proportionate basis is to be disallowed with regard to deduction claimed u/s 80IA of the I.T.Act. Further, the learned AR submitted that the primary reason for the first appellate authority to confirm the view of the A.O. was that identical issue for assessment year 2012-2013, the CIT(A) had decided against the assessee and no appeal was preferred to ITAT. This observation of the CIT(A), according to the learned AR, is factually incorrect, since the assessee had filed appeal for assessment year 2012-2013 to the ITAT and the ITAT in ITA No.324/Bang/2017 (order dated 25.09.2020), had restored the matter to the CIT(A).

7. The learned Departmental Representative supported the orders passed by the Income Tax Authorities.

8. We have heard the rival submissions and perused the material on record. The Tribunal on identical facts for assessment year 2012-2013, had restored the matter to the CIT(A). The relevant finding of the ITAT for assessment year 2012-2013, reads as follow:-

“4. In view of the above discussion, we set aside the order of CIT(A) and restore the matter back to his file for a fresh decision simultaneously with decision on this issue in Assessment Year 2008-09 if it is still pending before CIT(A) because in that year, the matter was remanded by the Tribunal to the file of CIT(A). In case, by the time this order reaches to the file of CIT(A), the issue is already decided by CIT(A) in Assessment Year 2008-

09 then in the present year, he should decide the issue afresh in line with his final decision in Assessment Year 2008-09. In view of this, no further adjudication is called for at the present stage.”

8.1 Since the facts are identical for these assessment years and the assessment year 2012-2013, we direct the CIT(A) to consider the issue afresh. It is ordered accordingly.

9. In the result, the appeals filed by the assessee are allowed for statistical purposes.

Order pronounced on this 15th day of December, 2020.

Sd/-
(B.R.Baskaran)
ACCOUNTANT MEMBER

Sd/-
(George George K)
JUDICIAL MEMBER

Bangalore; Dated : 15th December, 2020.
Devadas G*

Copy to :

1. The Appellant.
2. The Respondent.
3. The CIT(A)-14, Bengaluru
4. The Pr.CIT-LTU, Bengaluru.
5. The DR, ITAT, Bengaluru.
6. Guard File.

Asst.Registrar/ITAT, Bangalore