



For the purpose of claiming deduction u/s 80IA of Income Tax Act, 1961 is it mandatory to maintain separate books of accounts?

Issue:

If assessee does not maintain separate set of books will it attract rejection of deduction claimed u/s 80IA of Income Tax Act, 1961?

Proposition

1. X Ltd. has commissioned a Windmill Project with intention of captive consumption of power for its manufacturing activities.
2. It does not maintain separate set of books for the windmill project.
3. It is proposed that maintaining separate set of accounts is not pre-condition for claiming deduction u/s 80IA.

Extracts from Section 80IA

Section 80IA (1)

Where the gross total income of an assessee includes any profits and gains derived by an undertaking or an enterprise from any business referred to in sub-section (4) of this section, there shall, in accordance with and subject to provisions of this section, be allowed in computing the total income of the assessee, a deduction of an amount equal to hundred percent of profits and gains derived from such business.

Section 80IA (5)

Notwithstanding anything contained in any other provision of this Act, the profits and gains of an eligible business to which the provisions of sub-section (1) apply shall, for the purpose of determining the quantum of deduction under sub-section for the assessment year immediately succeeding the initial assessment year or any subsequent assessment year, be computed as if such eligible business were the only source of income of the assessee during the previous year relevant to

the initial assessment year and to every subsequent year up to and including the assessment year for which the determination is to be made.

Section 80IA (7)

The deductions under sub-section (1) from profits and gains derived from the undertaking shall not be admissible unless the accounts of the undertaking for the previous year relevant to the assessment year for which the deduction is claimed have been audited by an accountant, and the assessee furnishes, along with the return of income, the report of such audit in prescribed form duly signed and verified by such accountant.

View against the proposition

A perusal of section 80-IA(1) makes it very clear that deduction is to be allowed on the profits and gains of the business of generation of power, viz., the eligible business. Provisions of section 80-IA(5) which has a non obstante clause mandates that the profit of the eligible business be computed as if it were the only source of income of the assessee. It cannot be disputed that even going by the provisions of section 80-IA (5), that the expenditure incurred in earning the income from the eligible business has to be deducted and only on the net income, deduction under section 80-IA has to be allowed.

The assessee cannot claim deduction u/s 80IA relying on the Apex Court judgment in case of **Arisudhana Spinning Mills Ltd. vs. CIT**. In the case, the assessee had not maintained separate books for manufacturing and trading activities. The Apex Court upheld the findings of the Hon'ble High Court and ITAT that assessee should have maintained separate books for trading activities. The manufacturing and trading are two different activities and as per the apex court decision, assessee should have maintained separate books to claim deduction u/s 80IA.

Certification is required for incentive reliefs under section 80HH (5) and 80I (7). Where the assessee does not keep separate accounts for the industrial

undertaking and had not submitted audit certificate for them separately, the Tribunal disallowed the claim. Though such separate accounts would make the task of identification of eligible profits easier. Eligible income of each undertaking has to be computed independently as though it is separate business was pointed out in **CIT v. Dewan Kraft System Pvt. Ltd.** [2008] 297 ITR 305 (Delhi).

View in favor of proposition

Analyzing Chapter VIA, we find that section 80IB/80 IA are the code by themselves as they contain both substantive as well as procedural provisions. Inferring section 80IA no such provision is found where it is mentioned that to avail such deduction it is mandatory to maintain separate set of books whereas in sub-section (7) the pre-condition mentioned for claiming deduction as per sub-section (1) such accounts need to be audited by an accountant.

A relief provided by the statute cannot be easily availed of unless the strict requirement for such relief is complied with. This is a reasonable proposition, though the courts have taken view that such provisions, in order that they may serve their objectives better should be liberally interpreted.

Moreover windmills are used for generation of electricity which is sold to the electricity board. No hydel or mechanical power is required to run the windmills. They are run on the natural resource, namely, the winds. Therefore no expenditure is required to be incurred to run them. The expenditure on repairs, maintenance and insurance in any case is allowable against the income from manufacturing activity as the electricity generated is to be used for captive consumption. If such electricity was not generated by assessee himself he would have to pay a sum to another undertaking indulged in business of generating power.

This issue was considered in **CIT v. Madurai Pandian Engineering Corporation Ltd.** [1999] 239 ITR 64I (Mad). The High Court found that the assessee has fulfilled all the prescribed conditions and that the relief due to the assessee could not be denied merely because the assessee had not kept separate accounts.

There are a number of decisions of the High Courts that maintenance of separate book is not a pre-condition for the relief as in **CIT v. Indian Aluminium Co. Ltd.** 88 ITR 257 (Cal).

The preponderant view of the courts on the subject is in favor of the liberal view favoring the taxpayers as held in **CIT v. Hindustan Malleables and Forgings Ltd.** [1991] 191 ITR 70 (Patna); **International Instruments Pvt. Ltd. v. CIT** [1980] 123 ITR 11 (Delhi).

Squarely similar issue was covered in the case of **Sushee Infra Pvt. Ltd. v. Department of Income Tax, 2015** where the assessee was in infra development activity, the nature of expenditures were similar and it was maintaining the books on contract basis and the revenue is recognized from long term construction contracts on the percentage of completion method as ITA No. 1828 /Hyd/2014 Sushee Infra Pvt. Ltd. mentioned in Accounting Standard (AS) - 7 'Construction Contracts' notified by the Companies Accounting Standard Rules, 2006. Percentage of completion was determined on the basis of surveys performed. From the above, the profit generated by each project could be determined by applying the percentage of completion method under projects eligible for deduction u/s 80IA or non eligible projects. In our considered view, this cannot be the reason to deny the benefit to the assessee u/s 80IA of the Act. Since the assessee is dealing in the numerous projects at the same time and also the projects are not time bound, it is impractical to present books of account on project wise and year wise. The method adopted by the assessee is based on the accounting standard approved by the ICAI. These standards are tested and proven method. Considering the above findings, we observe that assessee is following the proper method of accounting and appropriate books to claim deduction u/s 80IA of the Act.

Summation

In my opinion, as per the provisions of Section 80IA certification of accounts is necessary for claiming incentive relief, maintaining separate set of books is not mandatory. Merely on the fact that assessee has not maintained separate set of accounts the relief granted under section 80IA cannot be retracted.

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This is a reasonable proposition that a relief provided by the statute cannot be easily availed and requirement of availing such relief need to be complied with strictly. Though the courts are of view that such provisions should be liberally interpreted in order that the assessee may serve his objectives better.

For claiming incentive reliefs under section 80HH(5) and 80-I(7), certification of accounts is mandatory. Where the assessee does not keep separate accounts for the industrial undertaking and does not submit audit certificate for them separately the Tribunal will disallow the claim, but the High Court observed that the assessee being a company was not obliged in the relevant years to have the relief certified.

The Supreme Court, therefore, allowed the assessee's appeal in Bongaigon Refinery and Petrochemicals Ltd. v. CIT [2005] 274 ITR 379 (Gauhati) following CIT v. Technotive Eastern P. Ltd. [2002] 255 ITR 253 (Gauhati). It is established

law that no separate accounts need to be maintained for each new industrial undertaking, though such separate accounts would make the task of identification of eligible profits easier. However, the Supreme Court has granted special leave to the Department against the judgment in the Bongaigaon Refinery case vide [2005] 273 ITR (St.) 236 (SC).

The Tribunal, in Leo Meridian Infrastructure Projects and Hotels Ltd. v. Dy. CIT [2013] 24 ITR (Trib) 123 (Hyd), noticed that the assessee had filed the requisite Form 10CCBB along with a Chartered Accountant's certificate and thereby had complied with rule 18DC of the Income tax Rules, 1962. There was no identification of incorrect accounting. Further the Tribunal noted that Section 80-IB(7B) does not stipulate separate accounts to be maintained. Consequently, the Commissioner was incorrect in passing an order under section 263 against the original assessment order to deprive the benefit of Section 80-IB.
