

IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH : BANGALORE

BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT
AND SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER

ITA Nos. 202 & 203/Bang/2019
Assessment year: 2011-12 & 2014-15

M/s Cessna Garden Developers Pvt. Ltd., The Falcon House, No.1,Main Guard Cross Road, Off Infantry Road, Bangalore - 560001 PAN: AAACC 8539R	Vs.	The Assistant Commissioner Income Tax, Circle 2(1)(1) Bangalore.
APPELLANT		RESPONDENT

&

ITA Nos. 225/Bang/2019
Assessment year: 2014-15

The Deputy Commissioner Income Tax, Circle 2(1)(1), Bangalore.	Vs.	M/s Cessna Garden Developers Pvt. Ltd. The falcon House No.1,Main Guard Cross Road, Off Infantry Road, Bangalore - 560001 PAN: AAACC8539R.
APPELLANT		RESPONDENT

Appellant by	:	Smt. R. Premi, JCIT(DR)(ITAT), Bengaluru
Respondent by	:	Shri. B. Sudheendra, Advocate

Date of hearing	:	02.03.2020
Date of Pronouncement	:	05.03.2020

ORDER

Per Pradip Kumar Kedia, Accountant Member

The captioned appeal in ITA No. 202/Bang/2019 has been filed at the instance of the assessee against the order dated 30.11.2018 of the CIT(Appeals)-2, Bengaluru for the assessment year 2011-12. Appeals in ITA Nos.203/Bang/2019 & 225/Bang/2019 are cross appeals filed by the assessee and the revenue respectively against the order dated 30.11.2018 of the CIT(Appeals)-2, Bengaluru for the assessment year 2014-15. All the 3 appeals give rise to common issues and thus were heard together and disposed of by this common order.

2. We shall first take up the appeal filed by the assessee in ITA No.202/Bang/2019 concerning the AY 2011-12 for adjudication.

2.1 Briefly stated, the assessee undertaking is engaged in the development of Special Economic Zone (SEZ) and is eligible for claiming deduction u/s. 80IAB of the Income-tax Act, 1961 [the Act]. The assessee has derived lease/rental income from development of SEZ. The lease/rental income from SEZ was declared by the assessee under the head 'income from house property'. The assessee also claimed deduction from such income u/s. 80IAB while filing the return of income. The lease income so declared by the assessee under the head 'income from house property' was accepted by the AO as such and deduction claimed u/s. 80IAB thereon was also allowed at the time of framing assessment u/s. 143(3) of the Act. The assessment was accordingly completed after allowing deduction of Rs.1,14,54,343 u/s. 80IAB of the Act. After the completion of assessment, the AO initiated rectification proceedings u/s. 154 of the Act whereby deduction allowed u/s. 80IAB against the lease

income declared under the head 'income from house property' was sought to be withdrawn on the ground that deduction u/s. 80IAB is admissible only in respect of profits & gains from SEZ business of developing a Special Economic Zone and not from income taxable under the head 'income from house property'. The deduction claimed u/s. 80IAB amounting to Rs.114,54,343 was accordingly disallowed by a rectification order passed by the AO u/s. 154 of the Act dated 27.10.2016.

2.2 The assessee challenged the authority of the AO to pass rectification order denying the deduction u/s. 80IAB before the CIT(Appeals). The CIT(A), however, confirmed the action of the AO essentially on the ground that lease rent has been reported under the head 'income from house property' and in the absence of any business income from SEZ, the assessee is not entitled to deduction u/s. 80IAB of the Act. The CIT(A) accordingly found that the AO had committed apparent error in allowing deduction while framing assessment u/s. 143(3) of the Act which was rightly withdrawn by passing a rectification order u/s. 154 of the Act.

2.3 Aggrieved by the aforesaid action of the lower authorities, the assessee preferred appeal before the Tribunal.

3. The Id. counsel for the assessee, at the outset, contended that scope of rectification u/s. 154 is limited and restricted to rectification of mistake apparent from the record. It was pointed out that the issue which is debatable and can be justified either way by long drawn process of reasoning is not susceptible to rectification u/s. 154 of the Act. He relied on the decision of the Hon'ble Supreme Court in the case of *T.S. Balaram v. Volkart Bros., 82 ITR 50 (SC)*. It was thereafter submitted that notwithstanding error committed by the assessee in declaring the lease rental income from SEZ under the head 'income from house property', the income so derived essentially and inherently remains the business income

and is chargeable under the head 'income from business/profession'. It was contended that the nature of income is required to be decided on commercial principles and an inadvertent wrong classification of income under a different head by the assessee would not alter the true character of income as held in *CIT v. Cocanada Radhaswami Bank Ltd.*, 57 ITR 306 (SC).

3.1 Adverting further, the Id. counsel for the assessee drew our attention to a Circular No.16/2017 dated 25.4.2017 issued by the Central Board of Direct Taxes (CBDT). With reference to the Circular, it was pointed out that the issue whether income arising from letting out of premises/developing space along with other amenities in an industrial park/SEZ is chargeable under the head 'profits & gains of business' or under the head 'income from house property' has admittedly been the subject matter of litigation all along. On the face of such admission, the CBDT has opined that income generated from SEZ is chargeable under the head 'business income' after taking cognizance of decisions rendered by the jurisdictional High Court of Karnataka in the case of *Velankani Information Systems Pvt. Ltd. and CIT v. Information Technology Park Ltd.* In this backdrop, the Id. AR stridently submitted that the express CBDT Circular clearly spells out that letting out of building/developing the space in SEZ is chargeable under the head 'business income'. Thus, on the face express assertions made in CBDT circular towards raging controversy on nature and character of lease income, eligibility of deduction u/s. 80IAB cannot be denied without indulging in long drawn debate.

3.2 In the circumstances, it was contended that the rectification action of the AO is beyond the scope of section 154 of the Act. The Id. AR further referred to several decisions of the Tribunal to submit that lease rentals

received from SEZ are in the nature of profits & gains derived from business.

3.3 It was thus contended that rectification carried out by the AO u/s. 154 is without authority of law and requires to be quashed. It was further contended that the CIT(Appeals) has overlooked the express CBDT Circular and has misdirected himself in law in affirming the action of the AO without examining the true and essential nature of income derived by the assessee.

4. The Id. DR, on the other hand, relied on the order of AO and CIT(Appeals). It was submitted in furtherance that where the assessee himself has not declared any income under the head profits & gains of business, the revenue authorities were ostensibly justified in denying deduction u/s. 80IAB of the Act, where the deriving income from business is a *sin qua non* for its claim.

5. We have considered the rival submissions. The scope of rectification under Section 154 in the context of the case is in controversy. As broadly noted above, in the instant case, the lease rent from developed space in SEZ has been offered for taxation by the assessee under the head 'income from house property' by the assessee. Deduction u/s. 80IAB was claimed on such lease income and allowed by the AO u/s. 143(3) of the Act. The AO thereafter has sought to withdraw the deduction in a rectification proceeding under S. 154 of the Act on the ground that deduction u/s 80IAB is allowable only with reference to business income and in the absence of any business income from SEZ offered in the ROI, the assessee has wrongly claimed deduction under S. 80IAB and the AO has wrongly admitted the claim of deduction in the assessment completed u/s. 143(3) of the Act. The assessee has challenged the rectification action of the revenue authorities and has claimed that in view of the narrow

sphere of section 154 of the Act, rectification of assessment order is not permissible unless such order suffers from apparent mistake. In its defense, it is claimed on behalf of assessee that lease rent from developed space in SEZ carries the trapping of business income, regardless of its wrong declaration under the head 'income from house property' by the assessee. For advancing such proposition, a reference to the CBDT Circular No.16/2017 dated 25.4.2017 squarely on the point was made and relied upon together with judicial precedents noted above.

6. On perusal of CBDT Circular mentioned above, we observe that the CBDT Circular issued is squarely on the point of taxability of lease rentals and consequent eligibility of deduction available under the Act. Keeping in mind the object of beneficial provision, the CBDT has directed the field officers to allow eligible deduction to the taxpayers in respect of lease rent from let out buildings/developed space in an industrial park/SEZ. The CBDT has clearly directed the Officers to treat such lease rent as business income. Thus, in the light of CBDT Circular, the benefit of deduction available u/s. 80IAB of the Act could not have been denied to the assessee on the pretext the income has been offered for taxation under the head 'income from house property'. At this juncture, we further take note of the decision of the Hon'ble Supreme Court in the case of *Cocanada Radhaswami Bank Ltd. (supra)* and *Chugandas & Co. (supra)* for the proposition that nature of income has to be decided on commercial principles and a wrong classification would not alter the true character of income. The taxability of an income under the appropriate head has also been answered by the Hon'ble Gujarat High Court in the case of *CIT vs. Pranjay Mercantile Ltd. (2014) 43 Taxmann.com 193 (Guj.)* wherein it was observed that the income of the assessee is to be assessed under different heads enumerated in section as per true nature and character of income and not merely on the basis of classification given by the assessee.

7. Having regard to the Circular and judicial precedents referred to and relied upon, it is manifest that the eligibility of deduction u/s. 80IAB is governed by the true character of lease rental income derived. The CBDT circular albeit in the context of S. 80IA(4-(iii)) has expressed its concern on litigation towards taxability of lease income under the appropriate head and granted relief to the taxpayer for eligibility of deduction. The issue thus cannot be said to be totally free of any debate. On the contrary, the debate, if any, leans in favour of the assessee. Thus, the rectification carried out u/s. 154 of the Act, in our view, is beyond the mandate of law and requires to be struck down.

8. In the result, the appeal by the assessee in ITA No.202/Bang/2019 is allowed.

9. We shall now advert to **ITA No.203 & 225/Bang/2019 (AY 2014-15)** for adjudication;

9.1 As per grounds of appeal, the assessee has challenged :-

- i) disallowance of deduction claimed u/s. 80IAB of the Act; &
- ii) allowability of interest expenditure u/s. 36(1)(iii) of the Act.

9.2 The assessee claimed deduction of Rs.18,25,916 u/s. 80IAB of the Act. In the broadly similar facts as discussed in ITA no.202/Bang/2019, the AO in the course of scrutiny assessment under S. 143(3) has denied the deduction on the ground that deduction u/s. 80IAB is admissible only in respect of profits & gains from specified business and not from income from house property. The income from letting out of premises/developed space in SEZ was found by the AO to be declared under the head income from house property by the assessee instead of profits & gains of business. The AO accordingly denied the deduction claimed u/s. 80IAB of the Act.

9.3 In the first appeal preferred by the Assessee against the assessment framed under S. 143(3), the CIT(Appeals) by a very cryptic and brief finding shunned any deliberation on the detailed pleadings of the assessee and held against the assessee on the sole ground that assessee itself has offered income from letting out of SEZ property under the head 'income from house property' and consequently deduction u/s. 80IAB cannot be allowed with reference to income reported under the head 'house property'.

10. We have heard the rival submissions on the issue. We have dealt with an identical issue in ITA No.202/Bang/2019 for AY 2011-12 hereinabove and held that CBDT Circular No.16/2017 clearly addresses the issue in favour of assessee. The CBDT has taken note of the decisions of the jurisdictional High Court while directing the field officers to adjudicate the issue in favour of assessee in similar circumstances. We thus find considerable merit in the plea of assessee for allowability of deduction claimed from income derived by way of letting out of properties. The assessee is entitled to benefit of deduction notwithstanding wrong classification of income under the head 'income from house property'. The AO was under duty to examine the true nature and character of income while framing assessment regardless of error committed by the assessee in this regard. The claim of assessee under S. 80IAB thus deserves to be allowed on first principles.

11. However, as simultaneously pointed out on behalf of the assessee, the wrong classification of income under the head 'income from house property', has resulted in wrong claim of deduction under S. 23/24 while computing income under the head 'house property' and requires correction. Similarly, the normal business expenses incurred were also not claimed from lease rentals in view of restrictions placed under the head 'income from house property'. The correct computation of business income on

realignment of head of income would thus be required to correctly determine the quantum of income eligible for deduction under S. 80IAB of the Act. We, thus, consider it just and appropriate to restore the issue back to the file of Assessing Officer for re-determination of taxable income in accordance with law, having regard to the true nature of income derived by the assessee. The AO shall grant deduction u/s. 80IAB of the Act to the assessee in accordance with law in the light of Circular issued by the CBDT and judicial precedents available in this regard. Needless to say that proper opportunity shall be granted to the assessee while concluding the issue.

12. The first issue concerning disallowance of deduction u/s. 80IAB is allowed for statistical purposes.

13. The second issue concerns allowability of interest expenditure u/s. 36(1)(iii) of the Act. As pointed out on behalf of the assessee, the interest expenditure of Rs.5,27,62,823 was disallowed in the course of assessment under S. 37 for the reason that whole financial cost has been incurred on loans taken for construction of let out property and no loans were taken for business purpose. The interest expenditure was thus not allowed as deduction u/s. 24(b) of the Act while computing income under the head 'income from house property'. The CIT(Appeals) has however granted relief to the assessee on this issue without assigning any reason.

14. Both assessee as per second issue in ITA no.203/Bang/2019 as well as revenue in ITA No. 225/Bang/2019 has challenged in the aforesaid action of the CIT(Appeals) in the appeal.

15. This issue towards claim of interest expenses is also required to be examined *de novo* by the AO in the light of overhaul and realignment of nature of SEZ income under the head business income. Accordingly, the

issue of allowability of interest is restored to the file of AO for re-determination in accordance with the law in the light of provisions applicable in relation to income chargeable under the 'business income' and in the light of observation noted above.

16. Hence, the second issue raised by the assessee in its appeal in ITA no.203/Bang/2019 and the appeal of revenue in ITA No. 225/Bang/2019 is allowed for statistical purposes.

17. In the combined result, the appeals of the assessee in ITA No.202/Bang/2019 is allowed whereas the assessee's appeal in ITA No.203/Bang/2019 is partly allowed. The appeal of the revenue in ITA No.225/Bang/2019 is allowed for statistical purposes.

Pronounced in the open court on this 5th day of March, 2020.

Sd/-
(N V VASUDEVAN)
VICE PRESIDENT

Bangalore,
Dated, the 5th March, 2020.

/Desai S Murthy /

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.
6. Guard file

Sd/-
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

By order

Assistant Registrar
ITAT, Bangalore