**आयकरअपीलीयअधिकरण, कोलकाता**

**पीठ- 'A'**

***IN THE INCOME TAX APPELLATE TRIBUNAL, KOLKATA***
***BENCH-A***

**समक्ष : श्री मनीष बोरड, लेखा सदस्यएवं**

**श्री संजय शर्मा न्यायिक सदस्य**

**Before: DR. MANISH BORAD, ACCOUNTANT MEMBER &**
**SHRI SONJOY SARMA, JUDICIAL MEMBER**

| आयकरअपीलसं.य/ |
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| **ITA No. 619/Kol/2021** |
| निर्धारण वर्ष: |
| Assessment Year:2013-14 |
| **And** |
| **ITA No. 620/Kol/2021** |
| निर्धारण वर्ष: |
| Assessment Year:2014-15 |

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| **Ginza Industries Ltd**<br>A-501 & 502, Lotus Corporate Park, Jay Coach Lane, off Westtern Express Highway, Goregaon (East), Mumbai-400063.<br>PAN: AABCG 0675P | बनाम/<br>**V/s.** | **DCIT, Cir-5(1), Kolkata**<br>Aaykar Bhavan, P-7 Chowringhee Square, Kolkata-700 069. |
| अपीलार्थी /Appellant | .. | प्रत्यर्थी /Respondent |

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| अपीलार्थीकीओरसे/<br>By Appellant/Assessee | ShriRajiv Khandelwal,CA<br>And Shri Gagan Khandelwal, Advocate, Ld.ARs |
| प्रत्यर्थीकीओरसे/By Respondent | ShriVijay Kumar, Addl. CIT, Ld.DR |
| सुनवाईकीतारीख/Date of Hearing | 19-09-2022 |
| घोषणाकीतारीख/<br>Date of Pronouncement | 8-12-2022 |

**आदेश /O R D E R**

**PER MANISH BORAD, ACCOUNTANT MEMBER:**

Both the instant appeals of the assessee are directed against the separate orders dated 11-09-2018 and 02-12-2019 passed u/s. 250 of the Income-tax Act, 1961 ( in short, referred to as the 'Act') by the Ld. Commissioner of Income-tax, Appeals [hereinafter referred to as 'CIT(A)'], 2, Kolkata for the AY 2013-14 and 2014-15 respectively. Since grounds of appeals are common and facts are identical, we dispose of both the appeals by this consolidated order for the sake of convenience.

2. Registry has informed that both the appeals of assessee are time barred by 1146 and 699 days. Condonation application has been filed by the assessee. Perusal of the same shows that the delay was mainly on account of COVID-19 restrictions. We, therefore, in view of the judgment of The Hon 'ble Supreme Court vide Miscellaneous Application No. 21 of 2022 find that the limitation period in filing appeal between 15.03.2020 till 28.02.2022 has been excluded for calculating the limitation period. Since the period of limitation in the case of the assessee falls during this period, the same deserves to be extended and we, therefore, condone the impugned delay 1146and 699 days and admit the appeal(s) for adjudication.

3. The assessee has raised the following grounds of appeal for the assessment year 2013-14 and 2014-15 respectively:-

*AY 2013-14*

*1. The Commissioner of Income-tax (Appeals) - 2, Kolkata (hereinafter referred to as the CIT(A) erred in framing an ex parte order.*
*The appellants contend that on the facts and in the circumstances of the case and in law, the CIT(A) ought not to have passed an ex-parte order.*

*2. The CIT(A) erred in upholding the action of the Assessing Officer in making an aggregate disallowance of a sum of Rs 67,31,165 under section 80JJAA of the Act, being the deduction of employee cost pertaining to income-tax assessment years 2011-12 (Rs 19,27,393) and 2012-13 (Rs 48,03,772) claimed by the appellants.*

*The appellants contend that on the facts and in the circumstances of the case and in law, the CIT(A) ought not to have upheld the action of the Assessing Officer in making impugned disallowance inasmuch as the CIT(A) has not correctly appreciated the provisions of section 80JJAA and the facts of the case in its entirety.*

*The appellants further, contend that on the facts and in the circumstances of the in law, the CIT(A) ought not to have upheld the impugned disallowance inasmuch as the reasons given by the Assessing Officer is merely that, serial nos 11 and 12 are mentioned in the annexure to Form no 10DA issued by the Chartered Accountant whereas the proforma for annexure to Form no 10DA does not mention such serial nos and no other reason is given by the Assessing Officer as such, the impugned disallowance is unwarranted.*

*The appellants further, contend that on the facts and in the circumstances of the case and in law, the CIT(A) ought not to have upheld the impugned disallowance inasmuch asduring the course of regular assessment proceedings for income-tax assessment years 2011-12 and 2012-13, the deduction claimed under section 80JJAA for the respective assessment years has been allowed by the Assessing Officer and as such, the disallowance made in the year under reference is untenable.*

*3. The CIT(A) erred in upholding the action of the Assessing Officer in making a disallowance of a sum of Rs 68,280 by invoking the provisions of section 14A read with rule 8D.*

*The appellants contend that on the facts and in the circumstances of the case and in law, the CIT(A) ought not to have upheld the action of the Assessing Officer inasmuch as such no exempt income has been earned by the appellants during the year under referenceand hence, the impugned disallowance ought not to have been upheld.*

*The appellants crave leave to add to, alter or amend the aforestated grounds of appeal.*

*AY 2014-15*

*1. The Commissioner of Income-tax (Appeals) - 2, Kolkata (hereinafter referred to as the CIT(A) erred in framing an ex parte order.*

*The appellants contend that on the facts and in the circumstances of the case and in law, the CIT(A) ought not to have passed an ex-parte order.*

*2. The CIT(A) erred in upholding the action of the Assessing Officer in making an aggregate disallowance of a sum of Rs 96,66,047 under section 80JJAA of the Act, being the deduction of employee cost pertaining to income-tax assessment years 2012-13 (Rs 48,03,772) and 2013-14 (Rs 48,62,275) claimed by the appellants.*

*The appellants contend that on the facts and in the circumstances of the case and in law, the CIT(A) ought not to have upheld the action of the Assessing Officer in making impugned disallowance inasmuch as the CIT(A) has not correctly appreciated the provisions of section 80JJAA and the facts of the case in its entirety.*

*The appellants further, contend that on the facts and in the circumstances of the in law, the CIT(A) ought not to have upheld the impugned disallowance inasmuch as the reasons given by the Assessing Officer is merely that, serial nos 11 and 12 are mentioned in the annexure to Form no 10DA issued by the Chartered Accountant whereas the proforma for annexure to Form no 10DA does not mention such serial nos and no other reason is given by the Assessing Officer, as such, the impugned disallowance is unwarranted.*

*The appellants further, contend that on the facts and in the circumstances of the case and in law, the CIT(A) ought not to have upheld the impugned disallowance inasmuch as during the course of regular assessment proceedings for income-tax assessment years 2012-13 and 2013-14, the deduction claimed under section 80JJAA for the respective assessment years has been allowed by the Assessing Officer and as such, the disallowance made in the year under reference is untenable.*

*3. The CIT(A) erred in upholding the action of the Assessing Officer in making a disallowance of a sum of Rs.1,89,447/- by invoking the provisions of section 14A read with rule 8D.*

*The appellants contend that on the facts and in the circumstances of the case and in law, the CIT(A) ought not to have upheld the action of the Assessing Officer inasmuch as such no exempt income has been earned by the appellants during the year under reference and hence, the impugned disallowance ought not to be made.*

*4. The CIT(A) erred in upholding the action of the Assessing Officer making a disallowance of a sum of Rs.57,84,206, being depreciation claimed under section 32 in respect of assets purchased and put to use for a period less than 180 days in the previous year preceding the year under reference.*

*The appellants contend that on the facts and in the circumstances of the case and in law, the CIT(A) ought not to have upheld the action of the Assessing Officer inasmuch as the CIT(A) has not correctly appreciated the facts of the case in its entirety and as such, the impugned disallowance ought not to have been upheld.*

*5. The CIT(A) erred in upholding the action of the Assessing Officer in making a disallowance of sum a of Rs 9,26,938, being contribution received from employees towards provident fund, which remained to be deposited on or before the prescribed duedate of the relevant law.*

*The appellants contend that on the facts and in the circumstances of the case and in law, the CIT(A) ought not to have upheld the action of the Assessing Officer inasmuch as the contributions received from the employees towards provident fund have been deposited in the relevant fund before filing of the return of income under section 139(1) of the Act and hence, the impugned disallowance ought not to have been upheld.*

*6. The CIT(A) erred in upholding the action of the Assessing Officer in not allowing credit of minimum alternate tax of Rs 1,11 ,94,855c1aimed per return of income.*

*The appellants contend that on the facts and in the circumstances of the case and in law,the CIT(A) ought not to have upheld the action of the Assessing Officer in not allowing credit of minimum alternate tax ofRs 1,11,94,855 claimed per return of income inasmuch as the same is not in accordance with the prescription of the provisions of section 115JAA of the Act.*

*The appellants crave leave to add to, alter or amend the aforestated grounds of appeal.*

4. Facts in brief are that the assessee is a limited company engaged in the business of manufacturing of different types of fabrics, laces, Narrow Woven Tapes, Crimped Yarn, Inner and outer wear etc. and other textile products. Return of income for AY 2013-14 was filed on 28.09.2013 declaring total income of Rs.5,16,84,070/- which was subsequently revised on 30.12.2013 declaring income at Rs.4,52,67,150/-. Return for AY 2014-15 was filed through e-filing on 30.09.2014 declaring an income of Rs.12,41,63,610/-. Assessee claimed deduction u/s. 80JJAA of the Act in respect of both the years. Case was selected for scrutiny through CASS followed by serving of valid notice u/s. 143(2) and 142(1) of the Act.. The Ld. AO after considering the submissions of the assessee framed the assessment for AY 2013-14 on 30.03.2016 assessing income at Rs.5,20,66,589/- and for Ay 2014-15 on 29.12.2016 assessing income at Rs.14,07,30,251/-. Certain disallowances were made including partly allowing the deduction u/s. 80JJAA of the Act for both the years which was challenged by the assessee before the Ld. CIT(A) but failed to get any relief. Aggrieved, assessee is in appeal before this Tribunal for both the years.

5. The first common issue raised in ground no. 3 for both the appeals before us is relating to disallowance u/s. 14A of the Act. Uncontroverted facts at the end of both the parties are that during both the years assessee has not earned any exempt income. We, therefore, respectfully following the settled judicial precedents as consistently held by Hon'ble Delhi High Court in the case of *Cheminvest Ltd. Vs. ITO 378 ITR 33 (Del.*), Hon'ble Calcutta High Court in the case of *Reliance*

*Chemotex Industries Ltd. 138 Taxmann.com 199 (Cal)* and recent judgment of Hon'ble Delhi High Court in the case of *Pr. CIT Vs. Era Infrastructure India Ltd. ITA No. 204/Kol/2022 dated 20.07.2022* hold that in case there no exempt income is earned during the year, provisions of section 14A of the Act cannot be invoked and, therefore, the disallowance of Rs.1,89,447/- and Rs.68,280/- for AYs 2013-14 and 2014-15 made u/s. 14A of the Act are deleted. Thus, the finding of the Ld. CIT(A) is reversed and ground no. 3 in respect of both the appeals of the assessee are allowed.

6. `Another issue raised by the assessee for AY 2014-15 is regarding the disallowance of additional depreciation claimed u/s. 32 of the Act in respect of assets purchased and put to use for a period less than 180 days in the preceding previous year.

7. Brief facts relating to the issue are that Ld. AO in the course of assessment proceeding carried out for AY 2014-15 observed that the assessee has claimed Rs.57,84,206/- on account of balance 50% additional depreciation @ 10% on the assets which were purchased and put to use in the later half of the AY 2013-14. As per Ld. AO, assessee was not entitled to balance 50% of additional depreciation which can be claimed in subsequent year if the assessee had claimed initial 50% of additional depreciation in the year of purchase as it is used for less than 180 days in terms of proviso to section 32(1) of the Act. Assessee failed to get any relief by Ld. CIT(A). Before the Ld. CIT(A), Ld. Counsel for the assessee submitted that second proviso inserted in section 32(1) of the Act effective from 01.04.2016 is held to be curative in nature by

various judicial forums. Reliance was placed on the decision of this Tribunal in the case of *National Engineering Industrial Ltd. 135 Taxmann.com 193.*

8. On the other hand, Ld. DR supported the order of Ld. CIT(A).

9. We have heard rival submissions and carefully gone through the facts and circumstances of the case. Assessee's claim for balance 50% of additional depreciation during AY 2014-15 is in challenge before us which was charged on the assets purchased during AY 2013-14 and put to use for less than 180 days. 50% of the Additional depreciation was charged in AY 2013-14 and the remaining 50% has been claimed for AY 2014-15. We find that similar issue came up for adjudication before this Tribunal in the case of *National Engineering Industrial Ltd. (supra)* and the issue was decided in favour of the assessee by this Tribunal observing as follows:

> *"7. We do not find any force in the above contention of the Ld. DR. We find that the amended provision of section 32(1) has been thoroughly discussed by the Hon'ble Jurisdictional High Court in the case of CITv. Rittal (India) Ltd. [2016] 66 taxmann.com 4/380 ITR 423 (Kar.) wherein, the Hon'ble High Court has observed that the language used in clause (iia) of the said Section clearly provides that additional depreciation equal to 20% of the actual cost of such machinery or plant shall be allowed as deduction. The Hon'ble High Court by discussing the aforesaid provision as reproduced above has held that if only 50% of the allowable depreciation i. e. sum equal to 10% of the actual cost of the plant and machinery is allowed because of the fact that the machinery is put to use for less than 180 days in that financial year, this would necessarily mean that the balance 10%, additional depreciation can be availed in the subsequent assessment year, otherwise the*

*very purpose of insertion of clause (iia) would be defeated. The Hon'ble High Court has further observed that the beneficial legislation should be given liberal interpretation and that since the additional depreciation is a one-time benefit to encouraqe industrialization and therefore, the beneficial provision has to be construed reasonably, liberally and purposively to make it meaningful while granting additional allowance.*

*8. We further find that even in the Explanatory Notes to the Provisions of the Finance Act 2 issued by tile CBDT, in Para 13.2 of the said Notes, it has been mentioned that the aforesaid amendment of providing balance of additional depreciation in the immediately succeeding year has been brought to remove discrimination in the manner of allowing additional depreciation on plant or machinery used for. less than 180 days in the preceding year. The very objective of insertion of a new proviso to section 32(1) is that to remove discrimination and therefore it can be safely said that -the same is just a curative amendment. Even there is no provision u/s. 32(1) prohibiting the balance additional deprecation in the succeeding year. In view of this, we do not find any merit in the above contention of the Ld. DR. The appeal of the Revenue is accordingly dismissed."*

10. On examining the facts of the instant case and in the light of the finding referred hereinabove, we find that the same is squarely applicable on the issue raised before us and thus respectfully following the said decision, we allow the remaining 50% claim of additional depreciation at Rs.57,84,200/- made by the assessee. Thus, finding of the Ld. CIT(A) is reversed. Ground No. 4 raised by the assessee is allowed.

11. Now, we take up ground no. 5 raised by assessee for AY 2014-15 through which disallowance of employees' contribution towards PF & ESI at Rs.9,26,938/- is challenged. Two, uncontroverted facts are that

firstly, the alleged sum was deposited after the due date as prescribed under the Act governing the Provident fund and secondly, the said sum was deposited before the due date of filing of return of income u/s. 139(1) of the Act. We find that recently Hon'ble Supreme Court in *Chekmate Services Pvt. Ltd. Vs. CIT (2022) 143 taxmann.com 178 (SC)* dated 12.10.2022 has settled the issue holding that if the employees' contribution towards PF & ESI is not deposited by the employer before the due date as prescribed under the relevant Act governing PF & ESI then strict compliance has to be made with regard to sec. 36(1)(va) of the Act read with section 2(24) of the Act and such sum shall be treated as income of the employer and Hon'ble Court further held that for such employees' contribution provision of section 43B of the Act cannot be applied. Since in the instant case the alleged sum has been deposited after the due date prescribed under the PF Act, we fail to find any merit in the ground raised by the assessee and respectfully following the judgment of Hon'ble Apex Court in the case of *Chekmate Services Pvt. Ltd.* (Supra) confirm the finding of Ld. CIT(A) disallowing the sum of Rs.9,26,938/-. Thus, ground no. 5 raised by the assessee is dismissed.

12. Now, we are left with the issue raised in ground no. 2 for both the years pertaining to claim of deduction u/s. 80JJAA of the Act.

13. Brief facts relating to this issue are that assessee claimed deduction u/s. 80JJAA of the Act and furnished certificate of the Chartered Accountant on Form No. 10DA along with annexure. Ld. AO on perusal of the annexure observed that two columns no. 11 and 12 have been inserted in the said annexure but these columns are not there

in the form 10DA appearing the I. T. Rules, 1962. Based on this observation, without pointing out any error in the quantum of deduction, Ld. AO only allowed the claim for 30% of the additional wages paid during the year but did not allow the claim of eligible deduction for previous assessment years. The assessee challenged the said action by the Ao but failed to get any relief from the Ld. CIT(A). Aggrieved, assessee is in appeal before this Tribunal.

14. Ld. Counsel for the assessee submitted that the assessee is regularly claiming deduction u/s. 80JJAA of the Act from AY 2011-12 onwards and the claim has been allowed for AYs 2011-12 and 2012-13 by the revenue authorities. Though the Ld. AO has allowed the claim of 30% of additional wages for the respective years but disallowed the claim just for a technical reason which actually arose because the Chartered Accountant who prepared the said return wanted to clarify the year wise quantum of deduction and, therefore, such disallowance by the AO is untenable.

15. On the other hand, ld. DR supported the finding of the AO.

16. We have heard rival submissions and carefully gone through the facts and circumstances of the case. The quantum of deduction u/s. 80JJAA of the Act is in dispute before us. Section 80JJAA of the Act refers to deduction in respect of employment of new employees and prior to the amendment made w.e.f. 01.04.2017 as per sub-section(1) of section 80JJAA of the Act where the gross total income of an assessee includes any profits and gains derived from the manufacture of goods in

a factory, there shall, subject to the conditions specified in sub-section (2), be allowed a deduction of an amount equal to thirty per cent of additional wages paid to the new regular workmen employed by the assessee in such factory, in the previous year, for three assessment years including the assessment year relevant in the preivous year in which such employment is provided.

17. In the case of assessee for AY 2013-14 deduction of Rs.1,15,93,440/- claimed u/s. 80JJAA of the Act comprised of following three amounts:-

| Assessment year | Amount |
|---|---|
| 2011-12 | Rs. 19,27,393/- |
| 2012-13 | Rs.48,03,772/- |
| 2013-14 | Rs.48,62,275/- |
| Total : | Rs.1,15,93,440/- |

18. As regards the Assessment Year 2014-15, deduction of Rs.2,02,53,323/- claimed by the assessee u/s. 80JJAA of the Act comprised of the following:

| Assessment year | Amount |
|---|---|
| 2012-13 | Rs. 48,03,772/- |
| 2013-14 | Rs. 48,62,275/- |
| 2014-15 | Rs.1,05,87,276/- |
| Total : | Rs.2,02,53,323/- |

19. On perusal of the assessment order, we note that for the alleged defect of inserting columns 11 and 12 in the annexure to Form 10DA, Ld. AO restricted the deduction u/s. 80JJAA of the Act only to the extent of 30% of the additional wages paid for the particular year i.e. for AY 2013-14 at Rs.48,62,275/- and for AY 2014-15 at Rs.1,05,87,286/-. We fail to find any merit in the said findings of the Ld. AO because he has partly accepted the claim of deduction but the deduction which has been claimed for AY 2011-12 and 2012-13 and stands allowed by the revenue in the past and the assessee was eligible for such deduction for subsequent two assessment years as per the provisions section 80JJAA of the Act. In case the AO has denied the total deduction u/s. 80JJAA of the Act for incorrect report furnished by the assessee then situation may have been different but in the instant case on the basis of the said report part of the claim has been allowed and part of the claim has been denied which in our considered opinion was not correct on the part of lower authorities.

20. Therefore, under the given facts and circumstances of the case, we are of the considered view that for such minor technical defect, which in real sense is not defect since the said audit report has given more clarity to the year wise deduction claimed u/s. 80JJAA of the Act since it constitutes the figure of 30% of additional wages for current year and if eligible than for preceding two years also. Thus, we hold that assessee is eligible for deduction u/s. 80JJAA of the Act in respect of Rs.1,19,33,440/- and Rs.2,02,53,323/- for AYs 2013-14 and 2014-15

respectively and thus ground no. 2 raised by assessee for AYs. 2013-14 and 2014-15 are also allowed.

21. Other grounds are either general or consequential in nature and has not been pressed by the assessee, therefore, they need no adjudication.

22. In the result, both the appeals of the assessee are partly allowed.

आदेशखुलेन्यायपीठमेंदिनांक 08-12-2022कोउद्घोषित।
Order pronounced in open court on -11-2022

| | |
|---|---|
| Sd/- | Sd/- |
| (SONJOY SARMA) | (MANISH BORAD) |
| JUDICIAL MEMBER | ACCOUNTANT MEMBER |

Kolkata/कोलकाता
**PP/Sr.PS
दिनांकः- 08 /12 /2022

**आदेशकीप्रतिलिपिअग्रेषित / Copy of Order Forwarded to:-**

1. अपीलार्थी/Appellant/**Ginza Industries Ltd**
A-501 & 502, Lotus Corporate Park, Jay Coach Lane, off Westtern Express Highway, Goregaon (East), Mumbai-400063. PAN: AABCG 0675P.
2. प्रत्यर्थी/Respondent/**DCIT, Cir-5(1), Kolkata,** Aaykar Bhavan, P-7 Chowringhee Square, Kolkata-700 069.
3.. संबंधितआयकरआयुक्त/ Concerned CIT
4.आयकरआयुक्त- अपील / CIT (A)
5. विभागीयप्रतिनिधि,आयकरअपीलीयअधिकरणकोलकाता / DR, ITAT,Kolkata.
6. गार्डफाइल / Guard file.

/True Copy/ By order/आदेशसे,सहायकपंजीकार
आयकरअपीलीयअधिकरण,**कोलकाता**।