IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH, KOLKATA

BEFORE SHRI RAJESH KUMAR, AM
AND
SHRI PRADIP KUMAR CHOUBEY, JM

ITA No. 1233/KOL/2024

(Assessment Year: 2008-09)

Madhu Transport Company Private Limited 2F, Gajraj Chamber, 86B/2, Topsia Rod, South Kolkata, Kolkata-700046 West Bengal **(Appellant)**	**Vs.**	**ITO, Ward-II (1),** Aaykar Bhavan, P-7, Chowringhee Square, Kolkata-700069, West Bengal **(Respondent)**

PAN No. AADCM1071D

Assessee by	:	Shri G.P. Shukla, AR
Revenue by	:	Shri Subhro Das, DR

Date of hearing: 23.04.2025
Date of pronouncement : 24.04.2025

O R D E R

Per Rajesh Kumar, AM:

This is an appeal preferred by the assessee against the order of the National Faceless Appeal Centre, Delhi (hereinafter referred to as the "Ld. CIT(A)"] dated 31.03.2024 for the AY 2008-09.

02. The ground no. 1 is general in nature and needs no adjudication.

03. The issue raised in ground no.2 is against the order of ld. CIT (A) confirming the addition as made by the ld. AO u/s 40(a)(ia) of the Act on the ground that form 26A was not filed by the assessee in respect of amount of interest paid on which no TDS was deduction at source.

04. The facts in brief are that this is second round of litigation before the Tribunal. In the first round, the appeal of the assessee was allowed by ld. CIT (A) on this issue by giving a clear-cut finding that the recipient of the said interest M/s Srei Infrastructure Pvt. Ltd. has offered the said interest to tax in its return of income filed for the impugned assessment year and after applying the decision of Hon'ble apex court in the case of Hindustan Coca Cola Beverages (P) Ltd. Vs. CIT (2007) 293 ITR 226 (SC), allowed the appeal of the assessee.

05. The tribunal restored the appeal to the file of the ld. AO when the assessee failed to appear on the appointed date of hearing. Now, in the set aside assessment proceeding, the ld. AO again added the amount being interest paid to M/s Srei Infrastructure Pvt. Ltd. on the ground that the facts are different from the decision relied upon by the assessee in the case of Hindustan Coca Cola Beverages (P) Ltd. Vs. CIT (2007) 293 ITR 226 (SC),.

06. In the appellate proceedings, the ld. CIT (A) has gone a step further while affirming the order of AO by holding and observing as under:-

"9. Considering the aforesaid clear mandate of law, as the assessee company except for harping on its claim that the respective payees had included the interest incomes in their respective returns of income for the year under consideration and paid taxes on the same, had however failed to substantiate the same in the manner required under law, therefore, we find no infirmity in the view taken by the lower authorities who had rightly made/sustained the disallowance u/s.40(a)(ia) of the Act. Before parting, we may herein observe that the assessee company had not only failed to file both before the AO and the CIT(Appeals) the certificates of the accountants in the prescribed form i.e. in "Form 26A"_ r.w 31ACB, certifying that the respective payees had fulfilled all the conditions mentioned in the "1st proviso" to Sub-section (1) to Section 201 of the Act, but the Ld. AR on being queried during the course of hearing of the appeal had candidly admitted that the said certificates had till date have not been obtained by the assessee from the said payees. In so far the reliance placed by the Id. AR on the order passed by the ITAT in the case of RKP Company Vs. ITO, Ward-1, Korba, ITA No. 106/RPR/2016, dated 24.06.2016, the same being distinguishable on facts would not assist the case of the assessee company. We, say so, for the reason that a perusal of the record in the present case before us, reveals that both the lower authorities had categorically observed that the assessee had failed to produce the certificates/evidence

*in support of its claim that the respective payees companies i.e NBFC's had included the amount of interests in their respective returns of income and paid tax on the same. Considering the fact that the assessee company despite lapse of substantial time period had till date failed to cumulatively satisfy the mandatory conditions contemplated in the "2nd proviso" to Section 40(a)(ia) a/w *1st proviso" to Section 201 of the Act, which were indispensably required to be done on its part as a pre-condition for it not being held as an assessee-in-default, therefore, we find no infirmity in the view taken by the CIT(Appeals) who had rightly sustained the disallowance made by the A.O u/s. 40(a)(ia) of the Act and, thus, uphold the same."*

Relying on the above discussion the GOA of the assessee is dismissed."

07. After hearing the rival contentions and perusing the materials available on record, we find that in this case, the interest was paid to M/s Srei Infrastructure Pvt. Ltd which was duly offered to tax by the recipient. We observe this fact from the appellate order passed in the first round passed by the ld CIT(A) that the payee of the interest has offered the sum to tax by incorporating the same in his return of income and therefore, case is clearly covered by the decision of Hon'ble Apex Court in the case of Hindustan Coc Cola Beverages (P) Ltd. Vs. CIT (supra), wherein it is held that no disallowance has to be made u/s 40(a)(ia) of the Act if the receiver/ payee of income has offered same to tax in the return of income. Therefore, there cannot be any disallowance on this account. Moreover, the finding of the ld. CIT (A) that assessee has not filed the form no.26A read with 31ACB a certificate from Chartered Accountant, certifying the payee had fulfilled all the conditions mentioned in the First Proviso to Sub Section 1 to Section 201 but after perusing the said section along with Rule 31ACB of the Income Tax Rules, 1962, we note that the form 26A was not applicable during the impugned assessment year as the same was brought by IT(11th Amendment) Rules, 2012 with effect from 12.09.2012, which provides that under Rule 31ACB, the assessee is required to obtain a certificate from Accountant under First Proviso to

Section 201 (1) and that certificate should be in form no.26A. Accordingly, we set aside the order of ld. CIT (A) and direct the ld. AO to delete the addition.

08. The second issue raised by the assessee is against the order of ld. CIT (A) not allowing the deduction u/s 80IB of the Act.

09. The facts in brief are that in the set aside proceeding, the ld. AO noted that the assessee has not made his claim in the return filed u/s 139(1) of the Act . In other words no claim u/s 80IA was made in respect of deduction claimed by the assessee qua the profit from the infrastructure facilities. The AO observed that the assessee has also not made its claim by filing a revised return of income and therefore, the same is not allowable to the assessee.

010. In the appellate proceedings, the ld. CIT (A) also rejected the claim of the assessee by observing and holding as under:-

"GOA 2: I find that the mandatory condition for claiming deduction under Chapter VIA is that the claim should be made in a return of income filed within time. For ready reference section 80AC is reproduced below:

> *[Deduction not to be allowed unless return furnished.79*
>
> *80AC. Where in computing the total income of an assessee of any previous year relevant to the assessment year commencing on or after-*
>
> *(i) the 1st day of April, 2006 but before the 1st day of April, 2018, any deduction is admissible under section 80-IA or section 80-IAB or section 80-IB or section 80-IC or section 80-ID or section 80-IE;*
>
> *(ii) the 1st day of April, 2018, any deduction is admissible under any provision of this Chapter under the heading "C.-Deductions in respect of certain incomes",*
>
> *no such deduction shall be allowed to him unless he furnishes a return of his income for such assessment year on or before the due date specified under sub-section (1) of section 139.]*

In view of the same the GOA is dismissed."

011. After hearing the rival contentions and perusing the materials available on record, we find that in the first round of litigation, the ld. CIT (A) admitted the claim of the assessee u/s 80IA of the Act by way of additional ground filed by the assessee and allowed the same by admitting the additional ground for the first time in the appellate proceedings as under:-

"2.7. Viewed in the above perspective, the claim for deduction made by the appellant u/s 801A of the Act, has been exáïained. In the statutory audit report, available on record, the Statutory Auditors certified the fact that: (1) The appellant company had entered into an agreement with Indian Railways under Wagon Investment Scheme on (WIS) 18.07 2006 and as per the said Scheme, the appellant company had purchased four BOXN rakes of Railway Wagons and put the same at the disposal of Indian Railways for 10 years.

Thereafter, as per the agreement, the ownership of the wagons will transfer to Indian Railways. (ii) In consideration of the same, the appellant company had got 10% freight rebate on normal tariff rates. The said rebate granted to the appellant company for a period of 10 years for guaranteed supply of six wagons per month. Further, two additional wagons per month had been provided to the appellant without giving the rebate of 10%. (iii) The appellant company is maintaining set of books for its operation from Railway wagons at 86B/2 Gajraj Chambers, 2nd Floor, Topasia Road, Kolkata, West Bengal. (iv) For the previous year, relevant to the assessment year, under consideration, the appellant company had received premium from its clients for providing Railway Wagons as per their requirement. Thus the said premium was directly related to the said infrastructure facility i.e. on account and due to confirm supply of railway wagons. (v) For purchasing the Railway Rakes, the appellant company had taken loan from Srei Infrastructure Finance Limited and Directors. (vi) Cost includes interest paid on loan and depreciation on Railway Rakes. Kolkata Branch of the appellant company was looking after all the matters with respect to the said infrastructure facility i.e. for railway rakes. Administrative and selling expenditure incurred by Kolkata Branch was taken into consideration for calculating the claim u/s 801A of the Act.

2.8. The aforementioned facts, certified by the Statutory Auditors, have been verified from the facts obtaining from the record. Infrastructural facility means and includes, amongst others, Rail System. The Indian Railways had formulated a Build - own - lease Transfer Scheme [BOLT scheme). Under this Scheme, a Private Limited Company will provide the necessary and crucial components of a Railway System, own them for a stipulated period but will not maintain or operate the same. Instead, the enterprises will handover the assets back to the Indian Railways and operation and shall ultimately transfer the same to Indian Railways. The private enterprises can claim the benefit of deduction u/s 801A in respect of the infrastructure facility meant for development and augmentation of the Railway System and not to other infrastructure facilities including rolling stocks as per Circular No 733 dated 03.01.1996 rolling stocks are eligible for deduction u/s 801A of the Act. The new fleet of wagons, which were kept at the

disposal of the Indian Railways, by the appellant, under the said scheme, were inducted in the Rail System and the wagons which were previously used were deployed by the Indian Railways for other category. These new fleet of wagons were part and parcel of the Rail System through which it was providing its services through its customers. As the wagons purchased by the appellant under the scheme, were part of the Indian Railway System for carriage of container traffic and were operated and maintained by it, in my considered view, the same constituted 'rolling stock' in terms of the definition as provided in the provisions of the Railway Act [1989]. The CBDT's Circular No 733 dated 03.01.1996 [Para No 2] also specifically provided that for claiming deduction u/s 801A of the Act, relaxation in the conditions to maintain and operate under 'BOLT Scheme' shall be restricted to the Rail System other than on the rolling stock. Hence, in my considered view, the rolling stock would be part of the Rail System. The Infrastructure facilities, built, operated and maintained were not required to be transferred in view of clarification issued by the Railway Ministry. Hence, the wagons owned by the appellant were operated and maintained as part of Rail System which was managed by the Indian Railways and the appellant gets only premium at the rates specified in the agreement. It needs no mention that after 10 years, the impugned wagons will be the assets of the Indian Railways and the appellant company will not have any right over them. Discreet scrutiny of the terms of agreement between the appellant and the Indian Railways clearly evidences the fact that the impugned assets purchased by the appellant and kept at the disposal of the Indian Railways, under the aforementioned Scheme, was not transfer of assets on lease for a particular period. If it were so, immediately on expiry of the lease period, the assets so transferred by the leaser to the lessee, under the lease agreement, were required to be restored back to the lesser, while it was not so in the case of the appellant, under consideration.

2.9. As already stated, as per section 2(37) of the Indian Railways Act, rolling stock includes locomotives, carriage, wagons, rail-cars, containers, trucks, trolleys and vehicles of all kinds moving on rails. The appellant fulfilled all the aforementioned stipulated conditions, as enumerated above. The appellant company procured four numbers of BOXN wagons from Titagarh Wagon and kept then at the disposal of the Indian Railways for 10 years w.e.f. 18.07.2006, under the above Scheme and it will become property of the Indian Railways after expiry of 10 years from the date of agreement and this practice evident from Para No 5.6 of the said agreement, copy available on record. This agreement was made by the appellant company with the President of India, acting through the Commercial Manager of South Eastern Railways. Since the appellant company is undisputedly an Indian Company, incorporated as per Company's Act 1956, the condition No 2 that it should be owned by Indian Company, also stands fulfilled. According to condition No 3, there should be agreement with the Central or State Government or a local authority or any other Statutory Body for developing, maintaining and operating a new infrastructure facility. As already stated, the appellant company entered into an agreement with The Sovereign, acting through the Chief Commercial Manger, Soüth Eastern Railways and as such there was complete compliance of this condition as well. Record evidences the fact that the appellant company started its operation from 31.12.2007 and as such the condition No 4 that it should start operation on or after 01.04.1995, also stands undisputedly complied with. The appellant company filed Statutory Audit Report which incorporated all the facts and figures obtaining from the audited accounts, relating to this Scheme and as such,

in my considered view, there was complete compliance of the provisions of section 801A(7) of the Act. The procurement of the wagons and kept them at the disposal of the Indian Railways under the said Scheme and maintaining office at Kolkata for smooth augmentation of the said Scheme, were all the infrastructure facilities and since this was not a case where the wagons were purchased and leased them to Indian Railways, on a particular lease rental, the entire steps taken by the appellant under the said Scheme, needs to be cumulatively appreciated in proper perspective particularly when the privileges accorded by the law framers, by allowing such deductions, were only for augmentation and development of the industrial growth and viewed in this perspective and taking into consideration all the aforementioned facts enumerated above, which were not controverted by the AO, in my considered view, the appellant is entitled to the deduction u/s 801A of the Act. The AO is, accordingly, directed to allow the deduction of Rs.1,08.41,626/- u/s 801A of the Act, since the appellant fulfilled all the conditions for entitlement of the said deduction.

3. The total relief allowed is summarized below:

Vide Para No.1.12. Rs. 73,20,545/-

Vide Para No.2.9. Rs.1,08,41,626/-

Total relief Rs.1,81,62,171/-

4. In the result, the appeal is allowed."

012. In the appellate proceeding before the ld. CIT (A) against the order of ld. AO in the second round , the ld. CIT (A) dismissed the appeal of the assessee on the ground that the return of income has not been filed by the assessee within the time allowed u/s 139(1) of the Act and therefore, deduction u/s 80IA is not allowable to the assessee which is perverse finding and factually incorrect. We note that the assessee has filed the return of income within time on 26.09.2008, originally declaring total income of ₹2,30,38,305/-, without claiming the deduction u/s 80IA of the Act in respect of rail and infrastructure system. In our opinion, if the assessee is not made any claim in the return filed u/s 139(1) of the Act, then the same could be made before the appellate authority for the first time. In our opinion, the ld. CIT (A) in the first round has rightly given the finding while allowing the appeal of the assessee by admitting the additional ground which

has been extracted above, whereas in the impugned appellate order, the ld. CIT (A) has given a perverse finding by misconstruing th4e facts. In our opinion, the assessee is entitled to claim u/s 80IA of the Act. Accordingly, we set aside the order of ld. CIT (A) and direct the AO to allow the deduction u/s 80IA of the Act of ₹1,08,41,626/-. The ground raised by the assessee is allowed.

013. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 24.04.2025.

Sd/-
(PRADIP KUMAR CHOUBEY)
(JUDICIAL MEMBER)

Sd/-
(RAJESH KUMAR)
(ACCOUNTANT MEMBER)

Kolkata, Dated: 24.03.2025
Sudip Sarkar, Sr.PS
Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. CIT
4. DR, ITAT,
5. Guard file.

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Kolkata