

**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH 'SMC', KOLKATA
[Before Shri P.M. Jagtap, AM]**

I.T.A. No. 2460/Kol/2017
Assessment Year: 2010-11

M/s. Nidhi Packers Pvt. Ltd.....Appellant
C/o. Salarpuria Jajodia & Co.
7, C.R. Avenue,
Kolkata – 700 072.
[PAN: AABCN 6585 F]

ITO, Ward 1(4) Kolkata.....Respondent
Aayakar Bhawan, 3rd Floor,
P-7, Chowringhee Square,
Kolkata – 700 069.

Appearances by:

Shri S. Jhajharia, AR appearing on behalf of the Assessee.

Shri Robin Choudhury, Addl. CIT appearing on behalf of the Revenue.

Date of concluding the hearing : May 28, 2018

Date of pronouncing the order : June 15, 2018

ORDER

This appeal filed by the assessee is directed against the order of Ld. CIT (Appeals) – 2, Kolkata dated 21.08.2017.

2. The assessee in the present case is a company which is engaged in the business of manufacturing and cultivation of tea. The return of income for the year under consideration was originally filed by it on 11.10.2010 declaring a total income of Rs. 2,06,895/- after claiming deduction of Rs. 29,60,906/- u/s 80IE of the Act. Subsequently a revised return was filed by the assessee on 16.03.2011 declaring a total income of Rs. 2,06,894/- after claiming deduction of Rs. 33,88,317/- u/s 80IE of the Act. In the assessment completed u/s 143(3) vide an order dated 14.03.2013, the total income of the assessee was computed by the AO at Rs. 2,06,895/- as declared in the return of income originally filed. In the income tax computation form,

he however determined the total income of the assessee at Rs. 31,17,800/- after disallowing apparently the claim of the assessee for deduction u/s 80IE and accordingly worked out tax payable by the assessee and interest thereon.

3. Against the order passed by the A.O. u/s 143(3), an appeal was preferred by the assessee before the Ld. CIT(A). During the course of appellate proceedings before the Ld. CIT(A), the assessee challenged the action of the AO in not allowing its claim for deduction u/s 80IE while computing the tax payable as per income tax computation form. It was also contended on behalf of the assessee before the Ld. CIT(A) that the revised return of income filed by it was not considered by the AO. Even the interest charged by the AO under section 234A, 234B and 234C was also challenged by the assessee. After considering the submission made by the assessee, the Ld. CIT(A) directed the AO to pass a speaking order on the issues raised by the assessee relating to its claim for deduction u/s 80IE as made in the revised return. He also directed the AO to re-compute the interest payable by the assessee as per the relevant provisions of the Act.

4. Aggrieved by the order of the Ld. CIT(A), the assessee has preferred this appeal before the Tribunal on the following grounds:

"1. That on the facts and on the circumstances of the case the Ld. CIT(A) had grossly erred in not adjudicating the majority of the grounds, himself and further erred in giving mere direction to the A.O. to consider the grounds after verification.

2. That on the facts and on the circumstances of the case the Ld. CIT(A) had grossly erred in not allowing the full claim of the appellant in respect

of deduction claimed under section 80IE of the Act, and further erred in by merely giving a direction to the A.O. 'pass a speaking order as per law'.

3. That on the facts and on the circumstances of the case the Ld. CIT(A) had grossly erred in not adjudicating the fact that the due date of filing of the assessment year under consideration was duly extended by a further period of 15 days by the CBDT and also the fact that the appellant had filed a revised return which was not considered by the A.O. while framing the assessment under section 143(3) of the Act."

5. I have heard the arguments of both the sides and also perused the relevant material available on record. As rightly contended by the learned counsel for the assessee, the Ld. CIT(A) was not justified in setting aside the issue relating to the assessee's claim for deduction u/s 80IE as made in the revised return with the direction to him to pass a speaking order as per law as he did not have the power to set aside the issue to the Assessing Officer. Even the learned DR has not raised any contention in this regard. I, therefore, set aside the impugned order passed by the Ld. CIT(A) on this issue and direct him to decide this issue raised by the assessee before him on merit in accordance with law after giving the assessee proper and sufficient opportunity of being heard. Ground no 1 and 2 of assessee's appeal are accordingly treated as allowed for statistical purpose.

6. As regards the issue involved in ground no 3 relating to interest charged u/s 234A, 234B and 234C, the learned counsel for the assessee has contended that the due date of filing of return of income for the year under consideration was extended by the CBDT by a period of 15 days and since the return originally filed by the assessee was within such extended period, interest u/s 234A was not chargeable. I direct the Ld. CIT(A) to verify this claim of the assessee

and decide the issue of levy of interest u/s 234A accordingly. As regards the interest u/s 234B and 234C, the learned counsel for the assessee has sought only the consequential relief. The Ld. CIT(A) is accordingly directed to allow the consequential relief to assessee on these issues. Ground no 3 of the assessee's appeal is accordingly treated as allowed.

7. In the result, the appeal of the assessee is treated as allowed for statistical purpose.

Order Pronounced in the Open Court on 15th June, 2018.

Sd/-
(P.M. Jagtap)
ACCOUNTANT MEMBER

Dated: 15/06/2018
Biswajit, Sr. PS

Copy of order forwarded to:

1. M/s. Nidhi Packers Pvt. Ltd., C/o. Salarpuria Jajodia & Co., 7, C.R. Avenue, Kolkata – 700 072.
2. ITO Ward 1(4), P-7, Chowringhee Square, Kolkata – 700 069.
3. The CIT(A)
4. The CIT
5. DR

True Copy,

By order,

Sr. P.S. / H.O.O.
ITAT, Kolkata