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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **ITA 45/2023& CM Nos.3410-12/2023**

M/S LEGACY FOODS PVT. LTD.

..... Appellant

Through: Dr. Rakesh Gupta, Mr Somil Agarwal
and Mr Anshul Mittal, Advs.

versus

DEPUTY COMMISSIONER OF
INCOME TAX & ANR.

..... Respondents

Through: Mr Abhishek Maratha, Sr. Standing
Counsel.

+ **ITA 46/2023& CM Nos.3413-15/2023**

M/S LEGACY FOODS PVT. LTD.

..... Appellant

Through: Dr. Rakesh Gupta, Mr Somil Agarwal
and Mr Anshul Mittal, Advs.

versus

DEPUTY COMMISSIONER OF INCOME TAX, CIRCLE 13(1)
NEW DELHI & ANR.

..... Respondents

Through: Mr Abhishek Maratha, Sr. Standing
Counsel.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MS. JUSTICE TARA VITASTA GANJU

ORDER

% **24.01.2023**

[Physical Hearing/Hybrid Hearing (as per request)]

CM No.3411/2023 in ITA 45/2023

CM No.3414/2023 in ITA 46/2023

1. These are applications moved on behalf of the appellant/assessee seeking condonation of delay in filing the appeal.



1.1 According to the appellant/assessee, there is a delay of 203 days [in ITA No.45/2023] and 197 days [in ITA No.46/2023].

2. Mr Abhishek Maratha, who appears on behalf of the respondents/revenue, says that he does not oppose the prayer made in the applications.

3. Accordingly, the delay is condoned.

4. The applications are disposed of.

CM No.3412/2023 in ITA 45/2023

CM No.3415/2023 in ITA 46/2023

5. Allowed, subject to the appellant filing legible copies of the annexures, at least three days before the next date of hearing.

ITA 45/2023& CM No.3410/2023

ITA 46/2023& CM No.3413/2023*[Applications filed on behalf of the appellant seeking interim relief]*

6. These appeals concern Assessment Year (AY) 2011-2012 [ITA No.45/2023] and AY 2010-2011 [ITA No.46/2023].

7. These appeals assail a common order dated 28.02.2020 passed by the Income Tax Appellate Tribunal [in short “Tribunal”].

8. The core issue which arises for consideration in these appeals is: whether the appellant/assessee is entitled to deduction under the provisions of Section 80IC of the Income Tax Act, 1961 [in short “Act”]?

8.1 The statutory authorities seem to have taken a contrary view, based on the provisions of sub-rule (4) of Rule 18BBB of the Income Tax Rules, 1962 [in short “Rules”] and the provisions of the prescribed form i.e., Form 10CCB.



9. Dr Rakesh Gupta, who appears on behalf of the appellant/assessee, says that Rule 18BBB (4) of the Rules is common to several other provisions, including Section 80IC of the Act.

9.1 It is Dr Gupta's submission, that the requirement of obtaining approval or permission or having an agreement signed i.e., executed by the Central Government or the State Government is not provided in Section 80IC of the Act.

9.2 In the same vein, Dr Gupta also argues, that the reference to the information that is required to be provided against serial No.13 in Form 10CCB would not be applicable, as the said form also applies to deductions claimed *qua* profits derived from eligible business not only *vis-à-vis* Section 80IC but also under Section 80IB of the Act.

10. Furthermore, Dr Gupta also contends, that the Tribunal *via* the impugned order has expanded the scope of the case, and has gone beyond what was the stand of the respondents/revenue.

10.1 According to him, the provisions of Section 80IA(8) & (10) were not adverted to by the Assessing Officer (AO).

11. It is stated by Dr Gupta, that this aspect was not raised by the revenue in the grounds of appeal preferred before the Tribunal.

12. According to us, the issues raised in the above-captioned appeals require consideration.

13. Accordingly, the above-captioned appeals are admitted and the following questions of law are framed for consideration:

(i) Whether the Tribunal misdirected itself on facts and in law in holding that for the appellant/assessee to claim deduction under Section 80IC, it



would have to demonstrate that the conditions set forth in Rule 18BBB(4) are fulfilled and that the information sought against serial No.13 in Form 10CCB is provided ?

(ii) Whether the Tribunal misdirected itself on facts and in law in adverting to the provisions of sub-sections (8) and (10) of Section 80IA of the Act, which was not the subject matter of the appeal filed by the respondents/revenue?

14. Learned counsel for the parties will place on record, their written submissions, not exceeding three pages each, at least five days before the next date of hearing.

15. Dr Gupta will also ensure, that the record made available to the statutory authorities is placed before the Court, *albeit*, in electronic form.

16. List the above-captioned appeals on 04.10.2023.

17. Having regard to the fact that we have admitted the appeals, and considering the aforementioned issues, the operation of the impugned order passed by the Tribunal shall remain stayed during the pendency of the appeals.

18. Consequently, CM No.3410/2023 in ITA No.45/2023 and CM No.3413/2023 in ITA No.46/2023 are disposed of.

RAJIV SHAKDHER, J

TARA VITASTA GANJU, J

JANUARY 24, 2023

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[Click here to check corrigendum, if any](#)