

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ, J, मुंबई ।

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "J", MUMBAI**

श्री संजय गर्ग, न्यायिक सदस्य एवं

श्री अश्वनी तनेजा, लेखा सदस्य, के समक्ष

**Before Shri Sanjay Garg, Judicial Member, and
Shri Ashwani Taneja, Accountant Member**

**ITA NO.4837/Mum/2014
Assessment Year: 2010-11**

M/s. Jai Corp Ltd. 11-B Mittal Tower, B-Wing, Nariman Point, Mumbai- 400021	बनाम/ Vs.	DCIT, Central Circle-39, R.No. 32(1), GR. Fl. Aayakar Bhavan, M.K. Road, Mumbai-400020
(Assessee)		(Revenue)
P.A. No.AAACJ2591A		

**ITA NO.4737/Mum/2014
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DCIT, Central Circle-39, R.No. 32(1), GR. Fl. Aayakar Bhavan, M.K. Road, Mumbai-400020	बनाम/ Vs.	M/s. Jai Corp Ltd. 11-B Mittal Tower, B- Wing, Nariman Point, Mumbai- 400021
(Revenue)		(Assessee)
P.A. No.AAACJ2591A		

निर्धारिती की ओर से / Assessee by	Shri Vijay Mehta (AR)
राजस्व की ओर से / Revenue by	Shri K. Mohandas, (DR)

सुनवाई की तारीख / Date of Hearing :	17/02/2016
आदेश की तारीख / Date of Order:	16/03 /2016

आदेश / O R D E R**Per Ashwani Taneja (Accountant Member):**

These Cross appeals have been filed by the Assessee and Revenue against the order of Ld. Commissioner of Income Tax (Appeals), Mumbai-41 {(in short 'CIT(A)'}, dated 28.03.2014 passed against assessment order u/s 143(3) of Income Tax Act 1961, dated 19.02.2013 for the Assessment Year 2010-11.

First we take up assessee's appeal in ITA No. 4837/Mum/2014

2. The assessee has filed on the following grounds:

"1.The Hon'ble CIT(A) erred in the facts and circumstances of the case in confirming action of the Assessing Officer to allocate Head Office expenses to 801B and 10B units and reworking total disallowance at Rs.79.92 lakhs. The Appellant prays that the said addition is unjustified and requires to be deleted.

2.The Hon'ble CIT(A) erred law and in the facts and circumstances of the case in confirming disallowance of Rs,20.00 lakhs on adhoc basis in respect of other income of 801B/ 10B units.

The Hon'ble CIT(A) failed to appreciate that the said incomes were earned in the normal course of its manufacturing business and accordingly the Appellant is entitled to the relief u/s. 801B/10B in respect of the same

3.The Hon'ble CIT(A) erred in law and in the facts and circumstances of the case in confirming the action of the Assessing Officer in invoking provisions of section 14A(2) read with rule 8D.

4. The Hon'ble CIT(A) erred in the facts and circumstances of the case in computing disallowance u/s.14A at Rs.154.30 lacs as against

the disallowance of Rs.56.17 lacs computed by the Appellant.

5. The Hon'ble CIT(A) erred in law and in the facts and circumstances of the case in confirming action of the Assessing Officer in charging interest under section 234A of the Income Tax Act, 1961 even though there was no delay in filing the return of income.

6. Each one of the above grounds of appeal is independent and without prejudice to each other.

7. The appellant craves leave to add, to alter or to amend any of the grounds of appeal mentioned herein above.”

3. During the course of hearing, arguments were made by Shri Vijay Mehta, Authorised Representative (AR) on behalf of the Assessee and by Shri K. Mohandas, Departmental Representative (DR) on behalf of the Revenue.

4. In this ground the assessee has challenged the action of Lower Authorities in allocating Head Office expenses to units eligible for deduction u/s 80IB and 10B, and thereby reworking total disallowance at Rs.79.92 lakhs.

4.1. The brief facts are that during the year under consideration the assessee was in the business of manufacturing cold rolled coils, galvanized coils, galvanized corrugated sheets, woven sacks, fabrics, jumbo bags and partially oriented yarn. Three units of the assessee are claiming deduction u/s. 80IB and 10B. Two units should claim deduction u/s 80IB and one unit u/s 10B.

4.2. During the course of assessment proceedings the AO noted that no part of expenditure of Head Office/Corporate Office and indirect expenses were allocated to any of the

aforesaid units in respect of which deductions u/s 80IB and 10B had been claimed by the assessee (herein after called as tax exempt units). The AO held that part of the Head Office/ Corporate office expenses and other indirect expenses was definitely attributable to the operation of tax exempt units. In reply the assessee submitted that the assessee was maintaining separate books of account for all the manufacturing units as well as corporate office and the expenses debited in the books of accounts for corporate office pertain to head office only and no part thereby could be attributed to any of the units. The AO did not accept the submissions of the assessee and he worked out a sum of Rs.96,87,500/- being head office expenditure related to the aforesaid Units by making and ad hoc addition of 25% in the allocation sheet, which was submitted by the assessee on the instructions of the AO, on no prejudice basis.

4.3. Being aggrieved, the assessee filed an appeal before the Ld. CIT(A) wherein submissions made before AO were reiterated and it was further submitted that corporate office plays a very negligible role in the affairs of the manufacturing units. The manufacturing process was a technical process which was handled by the technical staff available in the units and purchases/ sales and other operations were also handled by the specialized staff deputed at the respective units. It was further contended that the employees of corporate office look after the broader policies of the company and deal with the matters relating to the affairs of the company with State/ Central Government. It was thus submitted in nutshell that no

expenditure of the corporate office/HO should be allocated and entire addition made by the AO for Rs.96,87,500/- should be deleted. The Ld. CIT(A) considered the submissions of the assessee but held that common expenses and head office expenses have to be apportioned amongst the various units or undertakings of the assessee because the HO/Corporate Office incurs expenditure for providing facilities and services which are common to all the units. He further held that appellant had a number of units which were independent of each other. Thus, in case common expenses of head office are not allocated to tax exempt units, it will lead to inflation of profits of such units. Ld. CIT(A) relied upon the judgment of Mumbai Bench of the Tribunal in the case of ACIT v. Asea Brown Boveri Ltd. 110 TTJ (Mum) 502, in support of his view that the approach of the assessee defeats basic principle of taxation whereby only net income i.e. Gross Income less Expenditure is required to be taxed. He also relied upon another judgment of Delhi Bench of ITAT in case of DCIT vs. Eastern Medikit Ltd. 100 TTJ 382 (Del) for upholding the action of the AO in allocating the actual expenditure to all the units, unless there were valid reasons to exclude a particular unit.

4.4. But, with respect to quantification of head office expenses allocable to tax exempt units, Ld. CIT(A) did not fully accept stand of the AO and suggested another working on the basis of his own analysis. We find it appropriate that is observations of Ld. CIT(A) should be reproduced hereunder:

“Coming now to the quantum of HO expenses allocable to the three units eligible for deduction

u/s.10B/80-IB, it is seen that the A.O. did not accept the allocation of Rs.77.50 lakhs carried out by the appellant on the ground that the appellant had not furnished proper working as well as basis for the said allocation. However, it is found that instead of undertaking that exercise after identification of actual expenses incurred at the corporate office, the A.O. also adopted an ad hoc approach and calculated a sum of Rs.96,87,500/- after increasing the appellant's allocation by 25%. Under the circumstances, it is held that the allocation made by the A.O. also lacked a sound or scientific basis and cannot be sustained as such. In the course of appellate proceedings, the appellant has furnished a "Without Prejudice Working containing break up of total HO expenses which are "not related to investment activity" for the purpose of disallowance u/s.14A such as remuneration of MD, Director (Works), VP (HR), Company Secretary, Manager Indirect Taxation), Admn. Manager, Purchase Manager & VP-Real Estate, legal/ professional charges, auditor's remuneration, rates and taxes, insurance, postage and telegram, share department expenses/ share transfer agent fees, listing fee and printing and stationery expenses, travelling/ local conveyance/ vehicle running expenses of marketing and other staff, guest house expenses for factory staff, society maintenance charges, other (miscellaneous) expenses etc. The said working is attached as Annexure-A to this order. A perusal of the said working reveals that the expenses falling under this category are broadly the common HO expenses which are to be considered for allocation among 13 units as under:-

S. No.	Particulars	(Rs. In lacs)
1	Salaries (S. No.15)	97.53
2	Payment of Auditors (S.No.14)	73.82
3	Expenses under the heads mentioned at S. Nos. 4,5,6,7,8,9,10,11,12,13,17 & 18	165.70

	<i>of the working furnished by the appellant</i>	
4	<i>Rates and taxes (out of Rs.24.51 lakhs debited to P & L Account, only Rs.15.22 lakhs is relatable to income from house property)</i>	9.29
	<i>TOTAL</i>	346.34

The above table contains the following variations from the working furnished by the appellant:-

Only 50% of the Managing Director's remuneration (Rs.13.1.\$ lakhs) has been considered for allocation to the units and the balance Rs.13.17 lakhs is considered attributable to investment activity involving management of investment portfolio of over Rs.1800 crores.

Payment to auditors has been apportioned equally among the units as well as the corporate office.

Investment management fees (Sr.No.16) for debentures (Rs.50.37 lakhs) is relatable to the activities carried out at the corporate office and has direct nexus with interest income earned by the corporate office. As such, this cannot be allocated among the units.

*5.3.3 The A.O. is, therefore, directed to verify the revised working of allocable/common HO expenses from the record. Considering the aggregate of these sums for apportionment equally among 13 units of the appellant in line with past history of the case, the amount allocable to the three units eligible for deduction u/ss.10B and 801B comes to Rs.79.92 lakhs (346.34 x 3 / 13) or Rs.26.64 lakhs per unit. This turns out to be more or less close to the amount of Rs77.0 lakhs initially worked out by the appellant. The A.O. is, accordingly, directed to recompute the deductions u/s 10B and 80-lB in respect of the eligible units after considering the revised allocation of common HO expenses as worked out above. With these directions, **Grounds bearing Nos.2 and 3** of the present appeal*

are allowed to the extent indicated above.”

4.5. Being aggrieved, the assessee filed appeal before the tribunal. During the course of hearing, it has been submitted by Ld. Counsel that Ld. CIT(A) had accepted that the corporate office has separate stream of income and therefore, total expenses of head office cannot be allocated to all the units. It was suggested by the Ld. Counsel that 50% of the head office expenses should be allocated to head office and balance expenditure can be allocated to all other units, whether taxable or tax exempt. He submitted a chart showing a working of head office expenses allocable to 10B and 80IB units as was done by the Ld. CIT(A). In support of his arguments, he relied upon the judgment of Hon'ble Bombay High Court in the case of Zandu Pharmaceuticals Works Ltd. v. CIT 350 ITR 366, for the proposition that while computing profit and gains for an undertaking, only expenses relating thereto can be deducted.

4.6. On the other hand, Ld. DR opposed the submissions of the Ld. Counsel and submitted that allocation of head office expenses as done by the Ld. CIT(A) is in accordance with law and facts and no interference is required therein.

4.7. We have gone through the orders of the lower authorities. Ld. Counsel has relied upon the judgment of Hon'ble Bombay High court in the case of Zandu Pharmaceuticals Works Ltd. (supra) for the proposition that only expenses relating to the concerned undertaking can be deducted while computing its

taxable income. We respectfully accept the proposition advanced by the Ld. Counsel on the basis of aforesaid judgment. We find that lower authorities have already accepted this proposition and there is no quarrel by any one on this well settled proposition. But the issue involved here is that there are certain common expenses which have to be allocated in different units so that true profits of the units could be worked out. The assessee has also accepted this proposition that common expenses needs to be worked out. The only quarrel is upon the issue i.e. how and how much of the expenses need to be allocated amongst different units. The AO has done the allocation on ad-hoc basis, Ld. CIT(A) did accept the working of the AO, and on the basis of his own analysis he made an attempt to give relatively more rational working. The assessee has accepted the decision of the Ld. CIT(A) in principle, but contended that only 50% of the HO expenses could be allocated and remaining 50% should be charged to HO only. The only reasoning given by the Ld. Counsel of the assessee is that the head office has its own stream of income and therefore, only 50% of the expenses should be allocated.

4.8. We have carefully gone through the submissions of the Ld. Counsel and find some force therein. It is an accepted factual position that head office has its own stream of income. Thus, under these circumstances, it cannot be said that the entire expenses incurred by the Head Office/Corporate Office were incurred as common expenses. Therefore, under these circumstances the total expenses of the head office cannot be

said to be available for allocation in other units. Thus, next question arises is that how much portion of total expenses of Head Office/Corporate Office can be attributed as common expenses, available for allocation to all the units. The Ld. Counsel has tried to justify that 50% of the total expenses of Head Office/Corporate Office, on an ad-hoc basis, should be taken as the expenses pertaining to the income earned by the head office, and balance 50% can be made available for allocation to all the units. But we find that Ld. Counsel has not given any transparent, scientific or concrete basis of bifurcation, nor has he given any reasoning as to why these expenses should be bifurcated on fifty-fifty basis. It is also noted by us that even lower authorities had not examined this aspect from this angle. This issue is likely to have far reaching implications and may create history in assessee's hands in other years as well. Therefore, principally accepting the stand of the assessee that total expenses incurred by HO/CO are not available for allocation, but for determining that how much portion of these expenses is available for allocation to all the units, we send this issue back to the AO for reexamining this issue and finding out some fair, rational, transparent and scientific basis of bifurcation of these expenses and their allocation among all the units. The AO shall decided this issue afresh after considering all the facts and submissions and evidences as may be brought on record by the assessee in support of its contentions for which the AO shall give adequate opportunity of hearing. The assessee is free to raise all the legal and factual issues in this regard. Thus, with these

directions we send this issue back to the file of the AO. Ground no.1 may be treated as partly allowed for statistical purposes.

5. Ground No.2: In this ground the assessee has challenged the action of lower authorities in confirming the disallowance of Rs.20.00 lakhs on ad-hoc basis in respect of other income of 80IB/10B units.

5.1. During the course of assessment proceedings the AO made an ad-hoc disallowance of Rs.20.00 lakhs on the ground that assessee did not furnish unit wise details as to how the items like interest, miscellaneous income etc. in respect of tax-exempt units were accounted by these units in their books of accounts.

5.2. Being aggrieved, the assessee contested the matter before Ld. CIT(A) and submitted that there is no reason to make disallowance of Rs.20.00 lacs on estimate basis which was totally without any evidences. But Ld. CIT(A) without giving any specific findings confirmed the stand of the AO.

5.3. Since we have sent the issue raised in ground no.1, back to the file of the AO, and we find that the issue raised in ground no.2 is related to the issue raised in ground no.1 therefore, we find it appropriate to send this also back to the file of the AO, in terms of our direction as given in ground no.1 above. Thus, ground no.2 also may be treated as allowed for statistical purposes.

6. Ground Nos. 3 & 4: These grounds are with regard to the issue of disallowance made by the AO u/s 14A which has been partly deleted by the Ld. CIT(A). The assessee has filed an appeal against disallowance sustained by the Ld. CIT(A) and revenue has come in appeal against the relief given by the Ld. CIT(A).

6.1. During the course of hearing, it has been submitted by the Ld. Counsel that these issues are covered by the judgment of the Tribunal in assessee's own case for A.Y. 2008-09 & 2009-10.

6.2. We have gone through the orders of lower authorities and submissions made by both the sides on this issue. It is noted that total disallowance made u/s 14A has two components i.e. interest and expenses. It is noted that with regard to interest of Ld. CIT(A) has given categorical finding relying upon the orders of earlier years that the assessee has paid interest on specific borrowing used for the specific purpose of business activities such as modernization of steel division, acquisition of plant and machinery for textile division and working capital for plastic division etc.; that the interest expenditure has been incurred for the purpose of the business of the assessee; the assessee has successfully established the nexus between the borrowed funds and their use for the purpose of investment. The assessee has also shown that no borrowed funds were used for the purpose of investment. It has been further brought to our notice that there is no change in the facts in this year, therefore, we find that findings of Ld. CIT(A) are in

accordance with facts of this year and orders passed in earlier years. Thus, we uphold the order of Ld. CIT(A) with regard to interest.

6.3. With regard to disallowance of expenses, Ld. CIT(A) has not accepted voluntary disallowance made by the assessee aggregating to Rs.56,17,671/-. He did not accept the disallowance made by the AO, and restricted the disallowance to Rs.14.30 lakhs, over and above the disallowance made by assessee voluntarily. While discussing this issue, it has been observed by the Ld. CIT(A) that it was interesting to note that on the one hand the assessee claimed that all its units were separate and independent and corporate office played negligible role and no part of actual expenses was allocable to the units when issue involved was with respect to allocation of common HO expenses to units eligible for deduction u/s 10B or 80IB. But, on the contrary, while computing disallowance u/s 14A the assessee worked out common expenses of Rs.4,81,82,918/-, out of which only Rs.4,18,139/- (i.e. 8.69%) was allocated to corporate office and the balance above 91% of expenditure was allocated among all the 13 units. It was further observed by him that the basis of allocation of common expenses were also peculiar and unacceptable. He also observed that the assessee did not apply any logical or scientific basis for the purpose of allocation of common HO expenses and that the basis of allocation kept changing depending upon own convenience of the assessee, and accordingly he rejected the basis of allocation done by the assessee.

6.4. It is noted by us that we have sent back to the file of the AO ground nos.1 & 2 wherein the issue of allocation of head office of expenses is involved. We find that the factual analysis to be made by the lower authorities may have bearing upon this issue, and therefore, in the interest of justice and fairness we find it appropriate to send the issue of disallowance of expenses (excluding interest) back to the file of the AO to be decided afresh, after giving adequate opportunity of hearing to the assessee. The assessee shall be free to raise all the factual and legal issues before the AO. Thus, ground nos. 3 & 4 are may be treated as partly allowed for statistical purposes.

7. Ground No.5: This ground is with regard to levy of interest and dismissed as consequential.

8. Ground Nos. 6 & 7: These grounds are general and do not need any specific adjudication and therefore dismissed.

Now, we take up Revenue's Appeal ITA No.4737/Mum/2014

9. Ground Nos. 1 to 6: The solitary issue raised by the Revenue in these grounds is with regard to relief given by the Ld. CIT(A), out of disallowance made by the AO u/s 14A.

9.1. In our order while dealing with ground nos. 3 and 4 of assessee's appeal, we have already held that the disallowance of interest has been rightly deleted by the Ld. CIT(A). Therefore, Revenue's ground with regard to interest stands

dismissed. With regard to grounds of the Revenue for disallowance of expenses u/s 14A, we have sent back the grounds of the assessee back to the file of the AO for re-examination and re-adjudication. Therefore, grounds raised by the revenue are also sent back to the AO with our directions as given above. Thus, these grounds may be treated as partly allowed for statistical purposes.

10. In the result, both assessee's and revenue's appeals may be treated as partly allowed for statistical purposes.

Order pronounced in the open court on 16th March, 2016.

Sd/-
(Sanjay Garg)

न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(Ashwani Taneja)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 16/ 03 /2016

Patel. P.S. नि.स.

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT, Mumbai.
4. आयकर आयुक्त / CIT(A)- , Mumbai
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai