

IN THE INCOME TAX APPELLATE TRIBUNAL  
“E” Bench, Mumbai  
Before Shri B.R. Baskaran (AM)& Ramlal Negi (JM)

I.T.A. No. 2347/Mum/2012  
(Assessment Year 2008-09)

M/s. Talreja Infotech Pvt. Ltd. 599, J.S.S. Road 1 <sup>st</sup> Floor, Kapadia Chambers Chira Bazar Mumbai-400 002.	Vs.	DCIT Circle 4(3) Aayakar Bhavan 6 <sup>th</sup> Floor M.K. Road Mumbai-400 020.
(Appellant)		(Respondent)

PAN No.AABCT2851Q

Assessee by	Shri Snehal Shah
Department by	Suman Kumar
Date of Hearing	6.10.2016
Date of Pronouncement	6.10.2016

O R D E R

Per B.R. Baskaran (AM) :-

The assessee has filed this appeal challenging the order dated 02-01-2012 passed by Ld CIT(A)-8, Mumbai for assessment year 2008-09, wherein the Ld CIT(A) has confirmed the disallowance of claim for deduction u/s 80IB of the Act.

2. We heard the parties and perused the record. The assessee is engaged in the business of manufacturing, processing and coating of cotton fabrics. It has got two undertakings at Sarigam and Daman. The undertaking located at Daman was eligible for deduction u/s 80IB of the Act and accordingly it claimed deduction of Rs.53,66,892/- under that section. The AO noticed that the expenses claimed in Daman unit were very much lower when compared with the expenses claimed in Sarigam unit. He further deputed his Inspector to ascertain the factual details and in the report submitted, the Inspector reported that the

enquiries made by him on 01-12-2010 with a Bidi shop owner and the persons who were occupying the factory building at that point of time revealed that the assessee had shifted its undertaking to Sarigam about two years back. The assessee submitted the letters filed with Pollution Control Board, Primary Health Centre and VAT officer before the AO, but the AO noticed that those letters did not mention the date of stoppage of commercial activities at Daman unit. The enquiries made by the AO with the above said Government officials also revealed that the assessee did not mention the date of stoppage of commercial activities at Daman unit. In the sales tax return filed with VAT authorities, the sale for the FY 2007-08 was reported at Rs.19,34,022/-, where as the assessee had reported a sales of Rs.2,25,46,109/- in the Profit and loss account. With these details, the AO came to the conclusion that the assessee has stopped manufacturing activity at Daman unit in Feb., 2007 itself and the existing stock as on 31.3.2007 was sold in April, 2007. The AO further drew inference that the remaining amount of sale shown in Daman unit should be of the production done at Sarigam plant. It is pertinent to note that the assessee has also could not produce the details that were called for by the AO, like sales tax records etc., before the AO. The entries made in the inward register did not tally with the purchase bills. The assessing officer also noticed that major portion of expenses have been accounted through self made vouchers. In view of the above, the AO came to the conclusion that entire production and sales of Daman unit were carried out from Sarigam. Accordingly he held that the deduction u/s 80IB could not be allowed, since there was no manufacturing activity in Daman Unit. The Ld CIT(A) also confirmed the same.

3. The Ld A.R submitted that the AO has drawn adverse inferences on the basis of available records without confronting the same with the assessee. He submitted that the Inspector has carried out field visit in the year 2010 and he

has reported that the unit was closed about 2 years back. He submitted that the assessee has transferred the unit after 31.3.2008 and hence the report of the Inspector did say the same only. He submitted that the assessee has carried out production activities from Daman unit in FY 2007-08. He submitted that the assessee was required to report taxable sales only in the VAT return and hence there was difference in the sales amount found in the VAT returns and the Profit and Loss account. He submitted that the sales tax department has since completed the assessment of FY 2007-08 and the sales certified by them did tally with the Profit and Loss account. He submitted that the sales tax assessment order is placed in the Paper book.

4. He further submitted that the assessing officer did not confront the report of the Inspector with the assessee. He submitted that it is not clear as to whether the enquiries were made by the Inspector with Bidi shop owner and the occupants of the building by taking statements from them or by way of oral enquiries. He submitted that the AO should have given opportunity to cross examine those persons. He submitted that, in any case, nothing against the assessee could be inferred out of the report of Inspector and hence the AO should not have placed reliance on the same. He submitted that the non-confronting of the report of Inspector and non-allowing the opportunity to cross examination would render the assessment order illegal. He submitted that the assessing officer has compared the expenses incurred in Daman unit and Sarigam unit and came to the conclusion that the expenses incurred in Daman unit were very much less. He submitted that the Sarigam unit is having turnover many times more than the turnover of the Daman unit. Hence the AO was not justified in comparing the expenses of both the units without considering their respective turnover. Accordingly he submitted that the tax authorities have rejected the claim for deduction u/s 80IB of the Act on incorrect appreciation of

facts. Accordingly he contended that the deduction u/s 80IB should be allowed to the assessee.

5. On the contrary, the Ld D.R submitted that the assessee is furnishing additional evidences in the form of Sales tax assessment order, which was not available with the AO. He further submitted that the AO was constrained to take adverse inference, since the assessee could not furnish certain vital information/record. He submitted that the matter may be set aside to the file of the AO, since the assessee is raising many new contentions and producing additional evidences.

6. When the submission made by Ld D.R was put to the Ld A.R, he also agreed that the matter may be restored to the file of the AO. We have also earlier noticed that the assessee could not furnish certain specific details that were called for by the AO. Further, the Ld A.R is now presenting certain additional evidences and new contentions. Hence we are of the view that this issue requires fresh examination in the light of various contentions and evidences. Accordingly, we set aside the order passed by Ld CIT(A) on this issue and restore the same to the file of the AO with the direction to examine this issue afresh by duly considering the information and explanations that may be furnished by the assessee. After providing adequate opportunity of being heard, the AO may take appropriate decision in accordance with the law.

7. In the result, the appeal filed by the assessee is treated as allowed for statistical purposes.

Order has been pronounced in the Court on 6.10.2016

Sd/-  
(RAMLAL NEGI)  
JUDICIAL MEMBER  
Mumbai; Dated : 6/10/2016

Sd/-  
(B.R.BASKARAN)  
ACCOUNTANT MEMBER

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

PS

BY ORDER,

(Dy./Asstt. Registrar)  
ITAT, Mumbai